venors in bargaining for the established production and maintenance unit. Thus, as one of the joint representatives, it has been bargaining with the Employer for the existing plantwide unit, while at the same time seeking to sever part of that unit. In view of this inconsistency in the Petitioner's actions, we find that no question concerning representation exists and shall dismiss the petitions for the reasons set forth in *Hollingsworth & Whitney Division of Scott Paper Company.*[6]

[The Board dismissed the petitions.]

MEMBER BEAN took no part in the consideration of the above Decision and Order.

[6] 115 NLRB 15.

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**Balfre Gear & Manufacturing Company *and* Frank J. Mulzof, et al., Petitioner *and* District No. 8, International Association of Machinists, AFL–CIO.** *Case No. 13–UD–22. January 6, 1956*

## DECISION AND CERTIFICATION OF RESULTS OF ELECTION

On September 1, 1955, Frank J. Mulzof and others filed a petition pursuant to Section 9 (e) (1) of the National Labor Relations Act, seeking to rescind the authority of District No. 8, International Association of Machinists, AFL–CIO, herein called the Union, to enter into a union-shop agreement pursuant to Section 8 (a) (3) of the Act. On September 28, 1955, the Regional Director for the Thirteenth Region conducted an election among the employees in the contract unit. Upon the conclusion of the election, a tally of ballots was furnished the parties. The tally shows that of 44 eligible voters, 39 cast valid ballots, of which 34 were for rescinding the authority of the Union to require, under its agreement with the Employer, that membership in the Union be a condition of employment, 5 were against the above proposition.

On September 30, 1955, the Union filed objections to the election. On October 27, 1955, the Regional Director issued his report on objections, in which he recommended that the objections be overruled and that the Board certify the results of the election. The Union filed timely exceptions to the Regional Director's report.

The Union contends: (1) The election was prematurely ordered by the Regional Director over the objections of the Union at a time when it was impossible to determine who was eligible to participate in the election; (2) the Employer refused to maintain its neutrality but, to the contrary, encouraged the Petitioner in contravention of its

signed contract with the Union; (3) the presence of police officers at the Employer's premises on the day of the election indicated to the employees that the Employer feared that the Union would cause either personal injury to the employees or harm to its property; (4) the field examiner failed to notify the Union that the election was being conducted without a union observer; (5) the field examiner failed to accept challenges to the ballots of certain employees who were subject to discharge because they had not complied with the provisions of the union-shop agreement and therefore were not eligible to vote; and (6) the field examiner failed to open the polls at 3 p. m. as scheduled, said polls not being opened until approximately 3:25 p. m., thus creating an atmosphere of uncertainty.

On August 17, 1955, the Employer and the Union entered into a collective-bargaining agreement containing a union-security clause which provides as follows:

> *Section 1.2* All employees . . . who are presently members of the Union must, as a condition of employment, maintain their membership in good standing for the duration of this Agreement. Thirty (30) days after their date of hire or thirty (30) days after the effective date of this Agreement, whichever, is the later, all employees . . . must, as a condition of employment, become and remain members of the Union in good standing. Membership in good standing shall mean the payment (or tender) of periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.
>
> *Section 1.3* In the event a dispute arises as to whether an employee should be terminated under Section 1.2, a prompt effort shall be made to settle the dispute. If the Company decides under the available evidence that the employee should not be terminated the Union may resort to the grievance procedure commencing at Step 3.

The Regional Director reported that a joint conference of all parties was held on September 20, 1955, for the purpose of permitting the parties to present any evidence or argument to the Regional Director, that notwithstanding more than 30 days had elapsed from the time of the execution of the August 17, 1955, agreement, the Union had not made a demand upon the Employer to enforce the union-security provision of the agreement, and that he was of the opinion "that there were no questions raised which should have been decided by the Board before the election and, following normal Board procedure, issued an Order of Election setting forth the date of the election as September 28, 1955, and the eligibility date as September 16, 1955."

In its exceptions, the Union contends that its first opportunity to discuss the eligibility of those employees who had "automatically ter-

minated" [1] their employment with the Employer because of noncompliance with the union-shop clause was at the joint conference, that it discussed the ineligibility of a large number of employees in the presence of a Board agent, and that it made no objection to holding an election but desired a later date for the same because of the large number of ineligible voters.

It is the Board's policy to leave the matter of scheduling elections to the discretion of the Regional Director.[2] We can perceive no abuse of the Regional Director's discretion in this case. If the Union believed that a large number of employees were ineligible to vote, it could have preserved its position by challenging the votes of those employees at the election. Having failed to do so, it cannot correct its oversight by postelection challenges in the form of an objection.[3]

The Union contends that the Employer was not neutral because it allegedly failed to enforce the union-security clause in the contract and it transported the Petitioner to the joint conference. The Regional Director reported that the Union first requested the Employer to enforce the union-security clause on September 28, 1955, after the election. The Union contends that it made such a request at the joint conference in the presence of the Board agent. Assuming, *arguendo*, that the request was made as claimed by the Union, we can perceive no reason why this inaction by the Employer would prevent the holding of a free election.

The Petitioner was driven to the joint conference by the Employer's representative. The Union alleges that his transportation constituted improper assistance to the Petitioner by the Employer. We agree with the Regional Director that this was apart from other considerations too isolated an occurrence to constitute improper assistance to the Petitioner.

The Union's third objection is that the presence of city policemen at the election, as requested by the Employer, was an attempt to discredit the Union and thereby interfered with the holding of a free election. The Regional Director's investigation reveals that on September 27, 1955, the Union, after expressing disagreement with the eligibility list, told the Employer that it would post representatives outside the plant on election day as the employees went to work. It was only after this notification that the Employer asked for a detail of policemen to be at the plant on election day. The policemen, who were dressed in street clothes, were stationed outside the plant away from and out of sight of the polling area, which was located inside the plant. There was no evidence of coercion or interference with the election either by the police or the union representatives. We agree

[1] Section 1 2 of the contract does not provide for automatic termination of the employment of any individual who fails to maintain his membership in good standing

[2] *University Metal Products Co Inc*, 98 NLRB 1194.

[3] *Oppenheim Collins & Co*, 108 NLRB 1257.

with the Regional Director that the mere presence of these plain clothes policemen did not interfere with the holding of a free election.

The Union also objects that the field examiner did not notify it of the fact that it did not have an observer present at the election. The Regional Director's report reveals that the parties agreed at the joint conference that each party would have one observer present at the election. Moreover, rules governing the conduct of observers, as well as notices of election, which included, among other things, instruction that observers were to report to the polling place prior to the commencement of the morning balloting, were distributed to all parties. The Union did not have an observer present during the morning voting. At his first opportunity immediately after the morning voting period, the field examiner notified the Union that it had been without an observer. In spite of this notification, the Union failed to provide an observer for the afternoon polling. Under these circumstances, the Union's neglect did not preclude the holding of a free and impartial election.

The Union's fifth objection is that, although it provided the field examiner with a list of employees whom it wanted challenged, the field examiner refused to challenge any of these employees. After it discovered that it did not have an observer present at the election the Union drew up a list of employees, whose eligibility it questioned. The Union presented this list to the field examiner and asked him to challenge these voters. The field examiner refused this request.

We are of the opinion that, if the Union had any doubt about the eligibility of any employees, it was incumbent upon the Union to challenge these voters at the time of the election through its own observer. The Union's failure to provide an observer did not shift the responsibility of challenging to the Board agent. The Board agents are required to challenge voters only when they have knowledge that such employees are ineligible to vote.[4] In the instant case, under the terms of the contract as set forth above, it is clear that an employee's employment is not automatically terminated for noncompliance with the union-security provisions of the contract. Consequently, since the Employer had not terminated the employment of any of the employees allegedly violating these provisions, the Board agent had no reason to question their right to vote.

Finally, the Union objects that a 25-minute delay in the opening of the afternoon polls created an atmosphere of uncertainty and was in violation of the notice of election. The report on objections shows that the polls were scheduled to open at 3 p. m. At 2:50 p. m. the Union requested the field examiner to challenge certain voters. The field examiner unsuccessfully attempted to secure advice from the Regional Office in regard to this request. He then went to the polling

[4] *Beggs & Cobb, Inc*, 62 NLRB 193

area where he told the observers for the Petitioner and the Employer that no employees were to be released for voting until he had received instructions from the Regional Director. The Board agent remained at the polling area until 3:15 p. m. at which time he again left to telephone the Regional Office. He advised the observers to detain any voters presenting themselves at the polls during his absence. He returned after approximately 7 to 10 minutes and commenced the balloting at about 3:25 p. m. At no time during the period between 3 p. m. and 3:25 p. m. did any employees present themselves at the polls to vote. No employees were disenfranchised by this deviation from the scheduled hours for voting. Moreover the tally results show that the five eligible voters who did not vote could not have affected the results of the election.

We find the Union's objections to the election to be without merit and, in accordance with the recommendation of the Regional Director, hereby overrule them. As a majority of the employees eligible to vote have voted in favor of the proposition, we shall certify the results of the election.

## CERTIFICATION OF RESULTS OF ELECTION

IT IS HEREBY CERTIFIED that at least a majority of employees eligible to vote in the election have voted to rescind the authority of District No. 8, International Association of Machinists, AFL–CIO, to make an agreement requiring membership therein as a condition of employment as provided in Section 8 (a) (3) of the Act.

MEMBER BEAN took no part in the consideration of the above Decision and Certification of Results of Election.

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**International Union of Operating Engineers, Local 12 *and* Crook Company** [1]

**International Union of Operating Engineers, Local 12 *and* Willard W. Shepherd and Norma D. Shepherd, d/b/a Shepherd Machinery Company.** *Cases Nos. 21–CC–198 and 21–CC–200. January 9, 1956*

## DECISION AND ORDER

On September 7, 1955, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that

[1] The caption in this consolidated proceeding has been amended to show the names of the Employers involved rather than the name of Mrs. Edwin Selvin, the individual who filed the charges on behalf of the Employers Furthermore, although the Intermediate Report designates Mrs Selvin as appearing *"pro se,"* she appeared as the representative of both Employers, and the report is hereby corrected accordingly.