

2. The following was, on June 17, 1955, is now, and has been at all material times, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All office and laboratory employees employed by American Smelting and Refining Company at its Tacoma, Washington, plant, but excluding Accountant Manager, Accounting Manager's Secretary, Chief Accountant, Assistant Chief Accountant, Chief Settlement Clerk, Metallurgical Accountant, Power Plant Engineer, Chief Engineer, Engineering Department, Storekeeper, Chief Chemist, Chief Draftsman, Superintendent's Secretary, Nurse, Manager's Secretary, Purchasing Agent, Chief Timekeeper, Safety and Welfare Supervisor, Assistant Safety and Welfare Supervisor, Employment Clerk, Secretary to Safety and Welfare Supervisor, and all supervisors as defined in the Labor Management Relations Act of 1947 as amended, and all other employees of the American Smelting and Refining Company.

3. Office Employees International Union, Local 23, AFL, was, on June 17, 1955, is now, and has been at all material times, the exclusive representative of the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By failing and refusing on June 17, 1955, and since that date, as found in section III, above, to bargain collectively with Office Employees International Union, Local 23, AFL, as the exclusive representative of the Respondent's employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its said employees in the exercise of the rights guaranteed to them in Section 7 of the Act, as found in section III, above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

R. L. Faubian Company, Petitioner and International Association of Machinists, District Lodge No. 71, A. F. L. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Lodge No. 83, AFL.¹ Case No. 17-RM-90.
January 13, 1956

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Charles A. Fleming, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.

¹ The Unions are referred to hereinafter as IAM and Boilermakers, respectively.

As the AFL and CIO merged after the instant hearing we are taking notice thereof and are amending the designations of the Unions.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's Kansas City, Missouri, plant, excluding office clerical employees, guards, and supervisors as defined in the Act.²

5. The determination of representatives:

The IAM contends that 34 alleged unfair labor practice strikers are eligible to vote in the election. The Boilermakers and the Employer assert that these individuals are economic strikers who have been permanently replaced and are, therefore, ineligible to participate in the election.

On August 10, 1955, a strike commenced at the Employer's plant. On August 31, 1955, the Employer sent a letter to each of its employees offering to reinstate as many strikers to their jobs as business conditions permitted. It further stated that, unless this offer was accepted before September 6, 1955, it would hire new employees as permanent replacements for the strikers. Although some strikers returned, 34 did not accept the offer, and, after September 6, 1955, the Employer hired 34 new employees. The record discloses that the new employees were hired as permanent replacements for strikers and were so informed; that at the time of the hearing there were no vacancies in any job classification at the Employer's plant and the Employer does not intend to increase its labor force in the immediate future.

The IAM filed unfair labor practice charges with the Board. In August 1955 the Regional Director and the Employer executed a settlement agreement, as a result of which the IAM's charges of violation of Section 8 (a) (1), (2), and (3) by the Employer before the inception of the strike were dismissed.³ The IAM did not join in this agreement and appealed from the dismissal. The Regional Director also dismissed on the merits a charge by the IAM filed in September 1955, alleging that the Employer violated Section 8 (a) (5) of the Act. This dismissal was also appealed by the IAM. Both appeals have been denied by the General Counsel, who has approved the settlement.

² The parties are in agreement as to the composition of the unit except that the IAM would exclude Jones, Heath, and Nolan as supervisors and the Employer would include them in the unit. The record discloses that these employees possess no supervisory authority. We shall, therefore, include them.

³ That agreement required the Employer to post immediate notices and to offer reinstatement to three employees. We have been administratively advised that the Employer has complied fully with the terms of this agreement.

As no complaint has been issued, and the charges have been dismissed, we must find that the employees participating in the strike are economic strikers.⁴ They are therefore ineligible to vote as it appears on the basis of the present record that they have been permanently replaced and that vacancies in their job do not exist.

[Text of Direction of Election omitted from publication.]

⁴ *Times Square Stores Corporation*, 79 NLRB 361.

**Qualiton and Bookbinders & Bindery Women Union Local No. 63,
Petitioner.** *Case No. 21-RC-4089. January 13, 1956*

DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION

Pursuant to a stipulation for certification upon consent election executed August 22, 1955, an election by secret ballot was conducted on August 26, 1955, under the direction and supervision of the Acting Regional Director for the Twenty-first Region of the National Labor Relations Board among the employees in the unit herein found appropriate. Following the election the parties were furnished a tally of ballots. The tally shows that of the approximately 14 eligible voters, 14 cast ballots, of which 3 were for the Petitioner, 10 were against the Petitioner, and 1 ballot was challenged. The challenged ballot is not sufficient to affect the results of the election.

On September 2, 1955, the Petitioner filed timely objections to conduct affecting the results of the election, a copy of which was served on the Employer. In accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation of the objections and, on October 27, 1955, issued and served on the parties his report on objections in which he found that the objections did not raise substantial or material issues to conduct affecting the results of the election and recommended that the objections be overruled. On November 21, 1955, the Petitioner filed timely exceptions to the Acting Regional Director's report and requested that the election be set aside.

Upon the basis of the entire record in this case, the Board finds the following:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.