limited to New York State. Indeed, even if Cenit and Noll had previous comparable and pertinent experience with interstate advertising and its results, it is questionable whether mere reference to the effort expended by them in advertising and promoting the Company's product would enable them even to approximate the percentage of out-of-State sales—much less the dollar figure of such sales—which would result during the first year of the Company's operations.

The General Counsel contended in his oral argument that the reasonableness and reliability of Cenit's and Noll's expectancy of annual out-of-State sales ranging from $150,000 to $192,500 (and certainly of more than $50,000) are also shown by the substantial investments which they, as reasonable, prudent business men, made through the Company: i. e., in the $9,000 annual rental for the plant, in the $20,000 expended for machinery and equipment, and in the development of advertising and the procurement of sales agents reaching potential out-of-State customers. This argument, essentially, is that the Company, organized and operated as it has been by Cenit and Noll, would not have made this investment unless these 2 men felt certain that, in addition to sales within the State of New York, they would secure at least $50,000 of out-of-State business each year. Not only does this not appear from the evidence, but the volume of the Company's intrastate sales during the initial period of 3 months suggests the contrary and more likely possibility that the New York market alone was a sufficient lure for the investment and that the interstate market was merely an additional attraction which might perhaps be developed in time and at but little, if any, increase in cost.

Upon all the evidence, upon the facts found thereon, and upon consideration of the arguments of counsel, the Trial Examiner concludes that, although the Company's operation of its business is not wholly unrelated to commerce, there is no basis in the record for holding either that an annual projection of the Company's business indicates that the Company will attain a volume of $50,000 in direct sales out of the State during the current year of its operations, or that there is otherwise a reasonable expectancy that it will do so. Accordingly, because of the failure of any proof showing that the Company's business will meet this or any of the other policy standards promulgated by the Board in the *Jonesboro Grain Drying Cooperative* case (110 NLRB 481), the Trial Examiner believes that the Board should not assert jurisdiction in the present case and should therefore dismiss the complaint.

[Recommendations omitted from publication.]

Martin Aircraft Tool Company, Petitioner *and* International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local No. 811, AFL–CIO.[1] *Case No. 21–RM–363. February 3, 1956*

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election issued by the Board on August 29, 1955, an election by secret ballot was conducted on September 20, 1955, under the direction of the Acting Regional Director for the Twenty-first Region, among employees in the unit found appropriate by the Board. At the close of the election, the parties were furnished a tally of ballots. The tally shows that of approximately 62 eligible voters, 28 cast ballots for, and 23 cast ballots against, the Union, and 5 cast challenged ballots.

In accordance with the Board's Rules and Regulations, the Acting Regional Director investigated the challenges, which were sufficient

[1] The AFL and CIO having merged, we amend the identification of the Union's affiliation.

in number to affect the election results. On November 4, 1955, the Acting Regional Director issued a report on challenges, which he duly served upon the parties. In this report, the Acting Regional Director found that, of the employees who cast challenged ballots, 3 were eligible, and 2 ineligible, to vote. Accordingly, he recommended that challenges to the ballots cast by the ineligible employees be sustained and those cast by the eligible employees be overruled. The Employer-Petitioner thereafter filed timely exceptions to part of the Regional Director's report.

1. As no exceptions were filed to the Acting Regional Director's recommendation that the challenges to the ballots cast by Hazel Rogers, Charles Baines, and George Koons be overruled [2] and that the ballots be opened and counted, we adopt that recommendation.

2. Paul Given and James Speaks were challenged by the Union on the ground that they were supervisors and hence ineligible to vote. The Acting Regional Director concluded that these individuals were supervisors and therefore ineligible to vote. The Employer-Petitioner takes issue with this conclusion and questions certain factual findings made by the Regional Director in arriving at that conclusion. Even assuming the facts to be as found by the Acting Regional Director, however, we find merit in the Employer-Petitioner's exceptions.[3]

Given is leadman in the polishing and buffing department. The work in that department passes from one operation to another in a routine manner, each employee performing a single operation. Given himself spends most of his time in production work. Although he may spend some part of his time inspecting the work of four less highly paid employees and returning defective work for correction, such authority does not establish Given as a supervisor.[4] Nor is Given's supervisory status established by the additional fact that, but for Given, the employees in the department would be subject to the control of only the shop foreman.[5] Under all the circumstances,[6] we find that Given is not a supervisor within the meaning of the Act.

Speaks has been leadman in the turret lathe department since January 1955. He is one of the Employer-Petitioner's oldest employees and is more highly paid than any other employee in the department.

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[2] Rogers was challenged by the Union on the ground that her employment had terminated prior to the election, and Baines and Koons were challenged by the Union on the ground that they were supervisors. Baines' ballot was challenged on the additional ground that he was a professional employee.

[3] A hearing for the purpose of resolving such issues of fact as are raised by the exceptions is therefore unnecessary.

[4] *Bausch & Lomb Optical Company*, 92 NLRB 139.

[5] It is noteworthy that Baines and Koons were found by the Acting Regional Director not to be supervisors even though the shop foreman exercises the only control in the departments where they are leadmen and that no exceptions were filed to this finding.

[6] Neither Given nor Speaks has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline employees, or the authority to effectively recommend such action, nor is either empowered to adjust grievances.

It appears that Speaks exercised supervisory duties before assuming his present position, but he is now engaged in setting up jobs on the various turret lathes to which the employees in the department are assigned.[7] This allocation of jobs appears to depend merely upon the physical capabilities of the lathes. Speaks "at times" changes employees from one lathe to another, such changes being made only when it is necessary that a job on a particular lathe be performed by an employee more skillful than the one assigned to the lathe. He performed some of the duties of the shop foreman when the latter was on vacation in June 1955. All these facts relied upon by the Acting Regional Director do not, in our opinion, show that Speaks, as a leadman, regularly exercises duties of a supervisory nature. Accordingly, we find that he is not a supervisor as defined in the Act.

As we have found that Paul Given and James Speaks are not supervisors we shall, contrary to the Acting Regional Director's recommendation, overrule the challenges to their ballots and direct that those ballots be opened and counted.

[The Board directed that the Regional Director for the Twenty-first Region shall, pursuant to the Rules and Regulations of the Board, within ten (10) days from the date of this Direction, open and count the ballots of Paul Given, James Speaks, Hazel Rogers, Charles Baines, and George Koons, and thereafter prepare and cause to be served upon the parties a revised tally of ballots, including therein the count of the aforementioned ballots.]

[7] According to the Acting Regional Director's report, the employees were made aware of the change in Speaks' duties but they were never "officially informed" that his supervisory "authority" had been withdrawn.

Mason Can Company *and* Mason Can Employees Independent Union, Petitioner. *Cases Nos. 1–RC–4201 and 1–RC–4230. February 6, 1956*

ORDER DENYING MOTION

On January 18, 1956, the Board issued a Decision, Order, and Direction of Election [1] in the above-entitled proceeding. Thereafter, on January 26, 1956, counsel for International Jewelry Workers Union, AFL–CIO, and Local 18, International Jewelry Workers Union, AFL–CIO, filed a motion to stay election and to initiate an administrative investigation with respect to the compliance status of the Petitioner. On January 31, 1956, counsel for the Petitioner filed objections thereto. The Board having duly considered the matter,

[1] 115 NLRB 105.