

(a) All production and maintenance employees, excluding all employees included in unit (b), below, all office clerical and laboratory employees, guards, watchmen, foremen, and all other supervisors as defined in the Act.

(b) All truckdrivers and warehouse employees, including the receiving clerk,⁷ but excluding all other employees, the traffic manager, and all other supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

⁷ The Employer would exclude, and Teamsters include, the receiving clerk. The duties of the receiving clerk are to receive any raw materials or goods coming into the plant and keep records of the foregoing. We find that the receiving clerk is a plant clerical employee and shall include him in the warehouse unit.

Coffey's Transfer Company, Petitioner and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, General Drivers and Helpers, Local No. 554, AFL-CIO. Case No. 17-RM-91. March 21, 1956

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election issued by the Board in the above-entitled proceeding on December 12, 1955,¹ an election by secret ballot was conducted on January 24, 1956, under the direction and supervision of the Regional Director for the Seventeenth Region among the employees in the unit found appropriate. Following the election, a tally of ballots was furnished to the parties. The tally shows that there were approximately 4 eligible voters in the unit; that no votes were cast for or against the Union; and that there were 7 challenged ballots.

On January 27, 1956, the Union filed timely objections to the election, alleging in substance that: (1) Holding and processing the election while an unfair labor practice charge filed by the Union in Case No. 17-CA-1072 was in existence was contrary to Board policy; (2) at the time the election was held the time for filing an appeal to the General Counsel from the Regional Director's refusal to issue a complaint in Case No. 17-CA-1072 had not yet expired and the Union intended to appeal; and (3) by holding the election at the Employer's place of business when picket lines had been established, the Board in effect forced the strikers to go through a picket line contrary to the traditional policy of the labor movement. After an investigation, the Regional Director, on February 17, 1956, issued and served upon the parties his report on objections and challenged ballots, in which he recommended that the objections be overruled,

¹ Not reported in printed volumes of Board Decisions and Orders.

that 3 of the challenges be sustained, and that 4 of the challenges be overruled. The Union filed timely exceptions to the Regional Director's report.

As to the Union's first and second objections, the Regional Director reported as follows: The unfair labor practice charge filed by the Union in Case No. 17-CA-1072 related to conduct that allegedly had occurred in September 1955, and was not filed until December 27, 1955, several days after the Regional Director had scheduled the election for December 29, 1955. When the charge was filed, a 30-day extension of the period for conducting the balloting was granted to enable the Regional Director to investigate the charge. On January 18, 1956, after an investigation, the Acting Regional Director dismissed the charge because of insufficient evidence of violations of the Act, and thereafter rescheduled the election for January 24. On January 27 the Union filed a timely appeal from the refusal to issue a complaint, and on February 16 the General Counsel sustained the Acting Regional Director's action.

As a matter of policy, the Board does not ordinarily hold an election while unfair labor practice charges are pending. In this case, however, at the time of the election the Regional Director had dismissed the pending charge, and the General Counsel subsequently sustained his action. We agree with the Regional Director that the fact that the election was scheduled and held before the time for an appeal had elapsed did not interfere with the employees' free choice in the election.

As to the Union's third objection, that the election was held at premises where the Union was picketing, the Regional Director found, and we agree, that as all potential voters cast ballots, it is obvious that the picketing did not deter the voters from voting.

Under the circumstances, therefore, we agree with the Regional Director that the Union's objections are without merit. Accordingly, the objections are hereby overruled.

As to the challenges, the Regional Director reported as follows: The Employer challenged the ballots of William Henley, Ed Jansa, and James Faulhaber on the ground that these persons left their employment on September 20, 1955, to engage in an economic strike against the Employer and were subsequently replaced by new employees. The Union challenged the ballots of Emil J. Severyn, Howard Shurts, Duane Graber, and Carvin Moreland, the replacements, on the ground that Henley, Faulhaber, and Jansa were unfair labor practice strikers, and could not lawfully be replaced. The Union also asserted that Severyn is a supervisor.

The investigation showed that Henley, Faulhaber, and Jansa were last employed by the Employer on September 19, 1955, as local truck-drivers at the Employer's Omaha, Nebraska, terminal; that the Union

called a strike against the terminal on September 20, 1955; that Henley, Faulhaber, and Jansa have not been employed by the Employer since September 19 and have not requested reemployment or reinstatement; and that the strike has not been abandoned. Severyn was first employed by the Employer in May 1950; until September 20, 1955, he performed some work in the office and on the dock and otherwise assisted the terminal manager, but since September 20, has been employed exclusively as a local driver. There is no indication that he has supervisory authority over other drivers. We therefore find that Severyn is not a supervisor as defined in the Act.

Shurts, Graber, and Moreland have been employed as local drivers since September 26, October 3, and November 28, 1955, respectively. According to the Employer, they were all told at the time of their employment that they were hired as permanent employees.

As the General Counsel has refused to issue a complaint in Case No. 17-CA-1072, we find that the strike that commenced on September 20, 1955, is an economic strike.² Accordingly, as the strikers have been permanently replaced, we find they were ineligible to vote in the election herein. We therefore sustain the challenges to the ballots of William Henley, Ed Jansa, and James Faulhaber.

As Emil J. Severyn, Howard Shurts, Duane Graber, and Carvin Moreland were permanently employed by the Employer on the eligibility date, we find that they were entitled to vote in the election. Accordingly, we hereby overrule the challenges to their ballots, and shall direct that these ballots be opened and counted.

[The Board directed that the Regional Director shall, within ten (10) days from the date of this Direction, open and count the ballots of Emil J. Severyn, Howard Shurts, Duane Graber, and Carvin Moreland, and serve upon the parties a revised tally of ballots.]

² *Times Square Stores Corporation*, 79 NLRB 361.

Meat & Provision Drivers Union, Local No. 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO¹ and Lewis Food Company. *Case No. 21-CC-190.*² *March 22, 1956*

DECISION AND ORDER

On July 11, 1955, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding, finding that the Re-

¹ The AFL and CIO having merged subsequent to the hearing in this proceeding, we are amending the identification of the affiliation of the Respondent accordingly.

² At the hearing, allegations in the complaint relating to violations of Section 8 (b) (4) (C) of the Act by Teamsters, Chauffeurs, Warehousemen & Helpers, AFL-CIO, Local