Unions and the Employer was entered into on October 28, 1955, to run until October 28, 1956, and from year to year thereafter absent 60 days' written notice by either party. No such notice had been given at the time of the hearing. However, the contract also provides that ". . . in the event of cessation of operations at the company's plant at the present location in Nelsonville, Ohio, and the company continues operations at a new plant in Somerset, this contract . . . shall terminate in all respects 90 days subsequent to the start of operations at the company's new location. . . ."[7] On April 30, 1956, the Employer commenced operations at its new plant in Somerset, Ohio. We find, therefore, that the foregoing contract terminated by its own terms on July 29, 1956. As the decertification petition was filed on May 15, 1956, we find that it was timely filed with respect to the termination date of the then existing contract, and that such contract may not operate as a bar to an election at this time.[8]

Accordingly, we find that 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. The Employer, an Ohio corporation, is engaged in the wholesale egg business at its plant located in Somerset, Ohio. The parties agree that the contract unit is the appropriate unit for purposes of decertification. Accordingly, we find that the following employees of the Employer at its Somerset, Ohio, plant 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, including truckdrivers and office clerical employees, but excluding guards and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

[7] Article 14, entitled "Termination," of the October 28, 1955, contract.

[8] In view of our determination herein, it is unnecessary to consider other grounds for finding the contract no bar.

Alterman-Big Apple, Inc. *and* Truck Drivers and Helpers Local Union No. 728, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner. *Case No. 10-RC-3484. September 12, 1956*

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election, executed by the parties on May 17, 1956, and approved by the Regional

Director on May 21, 1956, an election by secret ballot was conducted on May 25, 1956, under the direction and supervision of the Regional Director for the Tenth Region. Upon conclusion of the balloting, a tally of ballots was issued and served upon the parties. The tally shows that of the approximately 115 eligible voters, 46 voted for the Petitioner, 46 voted against the Petitioner, and 1 ballot was challenged. There were no void ballots.

The Petitioner filed timely objections to the election. Thereafter, on July 18, 1956, following an investigation, the Regional Director issued and duly served upon the parties his report on election, objections to election, and recommendations to the Board, in which he recommended that the election be set aside. The Employer filed timely exceptions to the Regional Director's report and recommendations.

The Board has considered the Regional Director's report and recommendations, the exceptions, and the entire record in this case and finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization named below claims to represent certain employees of the Employer.

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

4. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees at the Employer's 933 Lee Street, S. W., Atlanta, Georgia, wholesale warehouse, including truckdrivers and helpers, lift operators, and plant clerical employees, but excluding office clerical employees, watchmen and guards, professional employees, and supervisors as defined in the Act.

5. The Petitioner's objections alleged, *inter alia*, that some eligible voters were deprived of an opportunity to vote.

The Regional Director's investigation reveals that the polls were open for only 1 hour, from 4:30 to 5:30 p. m. on Friday, May 25, 1956, as provided in the stipulation of the parties, the Board agent who arranged the election having been informed that all eligible employees would have an opportunity to vote if the polls were open for this period. However, 11 truckdrivers, all of whom were eligible voters, were working away from the plant on the Employer's trucks in the course of their duties during the entire time the election was conducted. All 11 had left the plant many hours before the polls opened, and did not complete their work and return to the plant until after the polls were closed. Therefore, as these employees were not afforded an opportunity to cast their ballots, the Regional Director recommended that the election be set aside, without attempting to assess responsi-

bility for the disenfranchisement of these employees. In its exceptions, the Employer denies it informed the Board agent that all employees would be available to vote, and contends that the Petitioner, by agreeing to the stipulation with knowledge that some drivers would be away from the plant in the normal course of their duties, thereby waived its right to object to the timing of the election.

It is the Board's responsibility to establish the proper procedure for the conduct of its elections, which procedure requires that all eligible employees be given an opportunity to vote.[1] As this is a matter of Board responsibility, it is not subject to waiver by the parties.[2] It is therefore immaterial whether, as the Employer contends, the Employer was not the cause of the Board agent's erroneous impression, or whether the Petitioner had knowledge of the drivers' work schedules. As a number of employees sufficient to affect the results were denied the opportunity to vote because of improper scheduling of the election, we shall, in accordance with the Regional Director's recommendation, set the election aside and direct a new election.[3]

[The Board set aside the election held on May 25, 1956.]

[Text of Direction of Second Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision, Order, and Direction of Second Election.

[1] *Repcal Brass Manufacturing Company*, 109 NLRB 4.
[2] *Active Sportswear Co., Inc.*, 104 NLRB 1057.
[3] In view of our determination herein, we find it unnecessary, and therefore do not, rule upon the other issues raised by the Petitioner with regard to the election.

County Electric Co., Inc., Field Electric Co., Inc., and Carroll Ratner Corporation, doing business as a Joint Venture *and* Buell Winslow *and* Local 501, International Brotherhood of Electrical Workers, AFL–CIO, Party to the Contract

Universal Electric Co. *and* Buell Winslow

Local 781, International Brotherhood of Electrical Workers, AFL–CIO *and* Buell Winslow

International Brotherhood of Electrical Workers, AFL–CIO *and* Buell Winslow. *Cases Nos. 2–CA–4332, 2–CA–4344, 2–CB–1383, and 2–CB–1506. September 13, 1956*

DECISION AND ORDER

On January 13, 1956, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that some of the Respondents had engaged in and were engaging in cer-