

**Winston Steel Works, Inc. and Operating Engineers Local Union  
No. 3, International Union of Operating Engineers, AFL-CIO,  
Petitioner. Case No. 20-RC-3102. January 14, 1957**

**SUPPLEMENTAL DECISION AND CERTIFICATION OF  
RESULTS OF ELECTION**

On September 19, 1956, pursuant to a Decision and Direction of Election issued by the Board herein on September 7, 1956,<sup>1</sup> the Regional Director for the Twentieth Region conducted an election by secret ballot among the employees in the unit found appropriate in the Decision. After the close of the election the Regional Director issued a tally of ballots to the parties. The tally shows that of approximately 4 eligible voters, 3 cast ballots, of which 1 was for, and 1 was against the Petitioner, and 1 was challenged. No objections to the conduct of the election were filed by any of the parties.

As the challenged ballot was decisive of the election, the Regional Director investigated it and thereafter issued a report in which he recommended that the challenge be overruled and the vote counted. Within the time provided therefor, the Employer filed exceptions to the Regional Director's report.

The Board has considered the Regional Director's report, the Employer's exceptions, and the entire record in the case, and finds as follows:

The challenged ballot is that of Conrad E. Kempf. The Employer challenged his right to vote on the ground that his name was not on the eligibility list and that he is not included in the unit found appropriate.

The Board found appropriate a unit consisting of "all drafting department employees . . . excluding office clerks, professional employees, management and sales employees. . . ." In a footnote, the Board's Decision stated: "The Employer does not contest the appropriateness of the above unit, but leaves the determination of its appropriateness to the Board. The drafting department employees appear to be the only technical employees in the Employer's employ. As a technical unit, we find it appropriate."

Kempf is classified as an estimator. At the formal hearing no mention was made of his job classification. Upon the basis of his investigation, the Regional Director was of the opinion that Kempf was a technical employee and therefore should be included in the unit.

The drafting department is a separate department supervised by a chief draftsman. Kempf is in the sales and not in the drafting department. According to the Regional Director, Kempf's principal

<sup>1</sup> Not reported in printed volumes of Board Decisions and Orders.

work consists of preparing cost and price estimates for customers. He receives the basic data for making his estimates either from customers or from a field salesman and exercises a certain degree of judgment and discretion in his calculations. The estimates prepared by Kempf are checked by the sales manager or general manager and transmitted to the customer by either the salesman or the sales manager. In some instances, Kempf also prepares drawings. The Regional Director does not discuss the skill required to make these drawings. In its exceptions, the Employer states flatly that Kempf is not a draftsman and that the drawings he occasionally makes are rough sketches intended for his own use in making estimates.

We do not agree that, on the basis of the Regional Director's report, Kempf should be classified as a technical employee. Kempf is part of the sales and not the drafting department. There is no evidence that he has the training or experience of a technical employee. It is significant that at the formal hearing the Petitioner made no contention that Kempf should be in the unit. Accordingly, we find, contrary to the Regional Director, that Kempf is not included in the unit and sustain the challenge to his ballot. As the Petitioner has not secured a majority of the valid votes cast in the election, we shall certify the results thereof.

[The Board certified that a majority of the valid votes was not cast for Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO, and that the said labor organization is not the exclusive representative of the employes in the unit heretofore found appropriate.]

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

---

**San Diego Glass & Paint Company and Retail Clerks International Association, Local Union #1222A, AFL-CIO, Petitioner.**  
*Case No. 21-RC-4464. January 15, 1957*

#### DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election executed July 9, 1956, an election by secret ballot was conducted on July 19, 1956, under the direction and supervision of the Regional Director for the Twenty-first Region among certain employees of the Employer. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations. The tally shows that of approximately 16 eligible