the predominantly intellectual and varied character, nor the constant exercise of discretion and judgment, which the Act requires of professional employees. We shall, therefore, exclude him as a nonprofessional employee.[4]

The Petitioner seeks to include two senior load dispatchers who have professional engineering degrees. They control the generation and transmission of power to distribution areas. Although their work requires the exercise of considerable skill, a professional degree is not a requirement of their classification, and it appears that other dispatchers of comparable grade do not possess the same educational qualifications. We find that the senior load dispatchers are not professional employees and exclude them.

We find that the following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All engineers, including those assigned to the power pool, and distribution supervisors, employed in the Employer's public utility system with headquarters at Bellevue, Washington, excluding the surveyor, the senior load dispatchers, junior engineers and junior distribution engineers, all other employees, the section heads in the general engineering office, the head distribution engineers, the senior distribution engineers, the supervisor of engineering, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[4] *Pacific Gas and Electric Company*, 98 NLRB No. 130 (not reported in printed volumes of Board Decisions and Orders). The Board found that surveyors with duties similar to those performed by the surveyor here, were technical employees.

The Jacksonville Journal Company *and* Jacksonville Newspaper Guild, Local 134, American Newspaper Guild, AFL–CIO,[1] Petitioner

The Jacksonville Journal Company *and* Jacksonville Mailers Union, No. 138, International Mailers Union, Ind.,[2] Petitioner.

Cases Nos. 12–RC–2 (formerly 10–RC–3402) and 12–RC–4 (formerly 10–RC–3435). May 29, 1957

SECOND SUPPLEMENTAL DECISION AND CERTIFICATIONS OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election issued on September 19, 1956,[3] in the above consolidated case, elections by secret

[1] Hereinafter called the Guild.
[2] Hereinafter called the Mailers.
[3] 116 NLRB 1136.

ballot were conducted on November 3, 1956, among the employees of the Employer in the units found appropriate by the Board. At the conclusion of the elections, the parties were furnished with tallies of ballots. The tallies showed that, among the employees sought by the Guild in Case No. 12–RC–2, approximately 26 employees cast ballots of which 25 were for, and 1 was against, the Guild. Among the employees sought by the Mailers in Case No. 12–RC–4, 20 employees cast ballots of which 18 were for, and 2 were against, the Mailers.

On November 13, 1956, the Employer filed objections to the conduct of both elections. On December 6, 1956, the Regional Director issued his report on election, objections to election and recommendations to the Board in which he recommended that the Board overrule the Employer's objections in both cases as untimely filed and issue a certification of representatives in both units. On December 14, 1956, the Employer filed timely exceptions to the Regional Director's report. On February 13, 1957, the Board issued a Supplemental Decision and Direction,[4] in which it directed that an investigation be conducted into the issues raised by the objections. The case was transferred to the Twelfth Region and, on March 8, 1957, the Regional Director for that Region issued a supplemental report on objections to election and recommendations to the Board, in which he recommended that the Board overrule the objections in both cases and issue a certification of representatives in both units. On March 19, 1957, the Employer filed timely exceptions to the Regional Director's supplemental report on objections.

Case No. 12–RC–2

The Employer's objections allege that the election is invalid because the secrecy of the ballot was not maintained as required by the Act and the Rules and Regulations of the Board in that the only employee who voted by mail was provided with a blue ballot, whereas voters who appeared personally at the polls were furnished with pink ballots, and the Board agent disclosed to the Employer that the blue ballot was the only mail ballot.

The Regional Director found that the facts alleged in the Employer's objections, as set forth above, were true. He concluded, however, that these facts are insufficient to invalidate the election because the ballot whether considered valid or invalid is insufficient to affect the numerical results of the election, citing *Machinery Overhaul Company, Inc.*, 115 NLRB 1787. There the Board held that, even assuming that the secrecy of nine ballots had been impaired,

[4] 117 NLRB 360.

since they were not sufficient in number to affect the results of the election, the election would not be set aside. The Employer excepts to this finding contending that the right to a secret ballot is absolute particularly where, as here, the disclosure could have been avoided by using ballots of a uniform color. We do not agree. The reason for the requirement of secrecy of the ballot in Board elections is to assure that the voter will exercise his franchise without fear of reprisal. In the instant case there is no contention or evidence that the voters by mail or any other voters were at the time of the election in fear of reprisal by either the Employer or the Petitioner as a result of their selection of a bargaining representative. We adhere to the rule of the *Machinery Overhaul* case, and, as the mail ballot cannot affect the results of the election, we shall adopt the Regional Director's recommendation and overrule this objection of the Employer.

The Employer in its exceptions, asserts further that the Regional Director has made no investigation of the objections because he filed his report without notice to the Employer and without communicating with it in regard to the objections or the issues raised by them. We find no merit in this exception as the Employer fails to state in its exceptions what evidence or information would have been submitted to the Regional Director had he communicated with it. As already stated, the facts alleged in the Employer's objections were accepted as true by the Regional Director and the Employer disputes only the legal effect given to these facts by the Regional Director.

Case No. 12–RC–4

In its first objection in this case, the Employer alleges that certain employees were permitted by the Regional Director to vote by mail, which was not authorized in the Decision and Direction of Election. The Regional Director in his supplemental report on objections found no merit in this objection and recommended that it be overruled. As no exception has been taken to this finding, we adopt the finding and recommendation and overrule this objection of the Employer.

The second objection relates to the eligibility of certain part-time employees in the mailing room and the reasons for their failure to vote. The appropriate unit in this case, as found by the Board, included "the regular part-time employees in the mailing room." This objection recites that at a preelection conference held on November 2, 1956, the Employer submitted to the Board Agent a list of all employees on its payroll during the eligibility period ending September 14, but stated that certain part-time employees not on this list might have worked during periods prior to, and after, such eligibility period;

and that, as a matter of fact, the Employer has ascertained, since the election, that at least 3 named employees who were not on the payroll during the eligibility period worked for 5 weeks immediately before, and 4 of the 6 weeks immediately after the eligibility period.

The Regional Director found no merit in this objection because there was no evidence that any of the employees involved was denied an opportunity to vote under challenge, and the three employees named by the Employer in its objection were not sufficient in number, in any event, to affect the result of the election. We agree.

The Employer's position, as set forth in its exceptions, appears to be (1) that these part-time employees were in fact eligible, although not employed during the eligibility period, and (2) that, when warned of the possible incompleteness of the eligibility list submitted by the Employer, the Regional Director should have postponed the election pending application by the Employer to the Board for clarification of the eligibility of these part-time employees.

Even if we assume, as the Employer apparently contends, that the employees involved were temporarily laid off during the eligibility period and therefore eligible to vote, the fact that their names were not on the eligibility list would not preclude them from voting under the challenge, in accordance with the Board's established procedures. As it is the function of the Board's challenge procedures to clarify after the election the status of any voters whose eligibility is in doubt, it was not incumbent upon the Regional Director to postpone the election pending determination of the eligibility of the Employer's part-time employees.

In its exceptions, the Employer also challenges the Regional Director's finding that none of the part-time employees was denied an opportunity to vote, asserting that, as the employees worked only on Saturdays they may have had no opportunity to see the election notices. It argues further, that, in any case, the notices were misleading in that they limited voting eligibility to regular part-time employees in the mailing room "employed during the payroll period ending September 14, 1956. . . ." The Employer states that the quoted language is not a correct statement of the law as actual employment during the eligibility period is not the sole test of eligibility. However, the election notice contained the further statement that employees not working during the eligibility period because of temporary layoff, illness, vacations, or military service were nevertheless eligible. This statement of the factors bearing on eligibility is identical with that customarily furnished in Board elections. It is not clear, and the Employer does not suggest, that more could have been done to apprise the part-time employees of their right to vote.

Finally, although the Employer contends that there may have been more than three employees involved, it does not contend that there were enough of them to have affected the result of the election.[5]

In its third objection, the Employer contends that, although proper notices of the election were posted at its plant, certain part-time employees who may have been eligible to vote did not receive adequate notice of the election because of the irregularity of their work hours.

The Regional Director found no merit in this objection because, *inter alia*, the number of employees (the same part-time employees as are discussed above) who allegedly failed to receive adequate notice was insufficient to affect the results of the election. We agree.[6]

In its fourth objection, the Employer alleges that eligible (part-time) employees were not properly notified of their eligibility through no fault of the Employer. Here again, the Regional Director found no merit in the objection because not enough employees were involved to affect the result of the election.

In its exceptions, the Employer questions the validity of the Regional Director's mathematical computation, relying on grounds already discussed.[7] For reasons already stated, we find no merit in this exception.

In view of all the foregoing, we find that the Employer's objections and exceptions raise no material or substantial issues of fact, and they are hereby overruled.[8]

[The Board certified Jacksonville Newspaper Guild, Local 134, American Newspaper Guild, AFL–CIO, as the collective-bargaining representative of the employees in the circulation department at the Employer's Jacksonville, Florida, plant.]

[The Board further certified Jacksonville Mailers Union, No. 138, International Mailers Union, Ind., as the collective-bargaining representative of employees in the mailing room at the Employer's Jacksonville, Florida, plant.]

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[5] The Employer states in its exceptions that "there could conceivably have been a different result if there were" 8 part-time employees who were eligible to vote and were not notified and if the votes of 8 other employees who did vote and were, as the Employer alleges, ineligible, were deducted from the tally of prounion votes. However, even if we regard this as an assertion that there were 8 eligible employees who did not vote, in the absence of any timely challenge to the votes of the other 8, the Board will not now find that they were ineligible. *N L R B.* v *A J. Tower Co.*, 329 U. S. 324.

[6] As this is sufficient reason, in itself, for overruling this objection, it is not necessary to discuss the Employer's contention in its exceptions that the Regional Director did not make an adequate investigation of this and other objections and did not give the Employer an opportunity to submit evidence The Employer fails to specify what would be shown by such evidence as it may now wish to submit

[7] See footnote 5, *supra.*

[8] It is not clear from the Employer's exceptions whether it desires a hearing on the subject matter of its objections. In any event, no basis appears for holding such a hearing.