

As we have sustained the challenges to the ballots of Helzer and Warfield, the ballot of Hornberger cannot affect the results of the election. We, therefore, find it unnecessary to consider the challenge to Hornberger's ballot.

As the tally of ballots shows that the Petitioner received a majority of the valid votes cast, we shall certify the Petitioner as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified Retail Clerks International Association, Local 1682, AFL-CIO, as the designated collective-bargaining representative of the employees of Consolidated Retail Stores, Inc., d/b/a Bon Marche, Grand Rapids, Michigan, department store, in the unit heretofore found appropriate.]

Westinghouse Electric Corporation and Local 68, International Union of Operating Engineers, AFL-CIO, Petitioner. Case No. 22-RC-1 (formerly 2-RC-8403). October 15, 1957

**SUPPLEMENTAL DECISION AND CERTIFICATION
OF REPRESENTATIVES**

Pursuant to a Decision and Direction of Election issued by the Board herein on March 1, 1957,¹ an election by secret ballot was held on March 29, 1957, under the direction and supervision of the Regional Director for the Second Region, among the employees in the appropriate unit. Upon completion of the election, the parties were furnished with a tally of ballots which showed that all five of the eligible voters voted for the Petitioner, and none for the Intervenor, Local 420, International Union of Electrical, Radio & Machine Workers, AFL-CIO.

On April 2, 1957, the Intervenor filed timely objections to conduct allegedly affecting the results of the election.² In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation, and, on May 29, 1957, issued and duly served upon the parties his report on objections. In this report, the Regional Di-

¹ 117 NLRB 520

² On May 16, 1957, the Petitioner requested permission to withdraw its petition for certification of representatives filed herein. By order denying request dated August 5, 1957, the Board denied this request as untimely filed.

On August 27, 1957, the Intervenor filed a motion for reconsideration requesting that the Board set aside this order, because 4 of the 5 employees signed checkoff authorization cards for the Intervenor in July 1957, subsequent to the withdrawal request. The Board has held that repudiation by employees of an election, made shortly thereafter, may not overturn and void the election results, because conclusive effect must be given to the results of a Board-conducted election for a reasonable period. Accordingly, the motion is hereby denied. *Soerens Motor Company*, 106 NLRB 1388, 1390.

rector found that the Intervenor's objections were without merit, and recommended that they be overruled and the Petitioner certified as the exclusive bargaining representative of the employees. Thereafter, on June 10, 1957, the Intervenor timely filed exceptions to the Regional Director's report with respect to objections 1, 2, and 3, but not to objection 4, and to his recommendation that the Petitioner be certified.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

The Intervenor's initial objection is that the observer for the Employer at the election, Richard D. Atherley, is a supervisor and should not have been permitted to act in that capacity. No objection was made to his participation in the election until after the election.

According to the Regional Director, Atherley is classified as an "Industrial Relations Assistant." He is mainly concerned with wage administration and job evaluation programs. He makes effective recommendations as to jobs and pay rates, but not as to individual employees. He participates with his supervisor in meetings or negotiations with employee representatives, but only as an adviser on questions concerning wage administration or job evaluation. He does not settle grievances, speak for the Employer in industrial relations matters, or authorize union stewards to leave their places of work to participate in grievance matters. Atherley has the working conditions and fringe benefits of a nonsupervisory, salaried employee. He is assisted by a personnel clerk who performs clerical work for him and other office employees, but has no authority with respect to the status of this clerk. The Regional Director concluded that Mr. Atherley was not a supervisor and recommended overruling this objection.

In its exceptions, the Intervenor alleges that it has resolved a number of job evaluation grievances with Atherley and that without his signature on "time report" cards the Intervenor's stewards and officers could not have participated in grievance meetings. We find these allegations, even if proved, not sufficient to establish Atherley as a supervisor within the meaning of the Act. Moreover, the Intervenor did not object to Atherley's serving as an observer until after the election. Accordingly, we find the Intervenor's objection 1 to be without merit and hereby overrule it.³

Concerning objection 2, the Intervenor alleged that the official ballots attached to the notice of election were improperly marked by

³ *Northrop Aircraft, Inc.*, 106 NLRB 23, 25.

the insertion of an "X" in the box appearing under the Petitioner's name. As the Intervenor failed to submit the alleged altered notice or any evidence as to who marked it improperly, the Regional Director found no merit in this objection. In its exceptions the Intervenor stated that it was submitting therewith photostatic copies of the original notices of election posted on March 29, 1957, showing improper markings. However, no such documents were in fact submitted to the Board. Accordingly, as there is no evidence supporting the Intervenor's objection 2, we hereby overrule it.⁴

In its objection 3, the Intervenor contended that it had properly challenged the eligibility of the voters to participate in the election, but that the Board's agent had refused to accept these challenges and failed to impound the ballots. The Regional Director found that the attempted challenge was a "mass challenge" of each and every voter and as such not a proper challenge under Board precedent.⁵ He also found that the ground assigned for the challenge, i. e., that the Petitioner was not qualified to represent the employees because of the "no-raiding" provisions of the AFL-CIO constitution, was a matter based on internal union considerations and not pertinent.

In its exceptions the Intervenor alleged that its observer had attempted to challenge each and every voter individually, but that the Board's agent had refused to accept this challenge or to give him an opportunity to state the reason or basis for the challenges. It also contends that irrespective of whether the Board will consider a challenge based on the "no-raiding" provisions of the AFL-CIO constitution, the Petitioner has, pursuant to these provisions, moved to withdraw its petition, and that this fact, rather than the underlying reasons therefor, are determinative herein.

We agree with the Regional Director that the Intervenor's attempted challenges were in the nature of a "mass challenge" regardless of whether they were made individually, or simultaneously for all voters. There can be no doubt that the voters were challenged as a group and for the same reason. Moreover, we have denied the Petitioner's motion to withdraw the petition.⁶ Accordingly, we find no merit in objection 3 and hereby overrule it.⁷

As we have overruled the Intervenor's objections to the conduct of the election and as the tally of ballots shows that a majority of the ballots were cast for the Petitioner, we shall certify that labor organi-

⁴ *Rheem Manufacturing Company*, 114 NLRB 404, 406.

⁵ *William R. Whittaker Co., Ltd.*, 94 NLRB 1151, footnote 6.

⁶ See footnote 2.

⁷ No exception was taken to the Regional Director's recommendation that objection 4 be overruled. Accordingly, we adopt this recommendation *pro forma*.

zation as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified Local 68, International Union of Operating Engineers, AFL-CIO, as the designated collective-bargaining representative of the employees of Westinghouse Electric Corporation, Belleville, New Jersey, in the appropriate unit.]⁸

⁸ In the event that the Petitioner should hereafter fail to act as the bargaining representative of the employees in accordance with Section 9 (a) of the Act, the Board will entertain a motion for revocation of this certification.

