

included therein solely on the basis of the parties' stipulation in the original consent election. This does not suffice to remove the contract as a bar⁵ Accordingly, we find that the contract herein is a bar to this proceeding and we shall dismiss the petition.⁶

[The Board dismissed the petition.]

⁵ See, *Sonotone Corporation*, 100 NLRB 1127, where the Board held that the exclusion from a plantwide contract unit of guards, who had been improperly included in the certified plantwide unit, did not remove the contract as a bar

⁶ In view of our disposition of this case, we do not find it necessary to consider the other reasons argued by Intervenor for dismissing the Petition

**B. B. McCormick & Sons and Teamsters, Chauffeurs & Helpers,
Local 79, International Brotherhood of Teamsters, Chauffeurs,
Warehousemen & Helpers of America, Petitioner. Case No.
12-RC-146. February 21, 1958**

SUPPLEMENTAL DECISION, DIRECTION, AND ORDER

Pursuant to a Decision, Order, and Direction of Elections of the Board dated August 19, 1957,¹ an election was held in the above-named case on September 11, 1957, under the direction and supervision of the Regional Director for the Twelfth Region. Thereafter, a tally of ballots was furnished the parties which showed that of approximately 58 eligible voters, 2 cast ballots for the Petitioner, 3 cast ballots against the Petitioner, and 42 ballots were challenged. As the challenges were sufficient to affect the results of the election, the Regional Director conducted an investigation of the challenged ballots in accord with the Rules and Regulations of the Board, and on September 23, 1957, issued his report on challenged ballots, in which he recommended that 6 challenges be sustained and 36 challenges be overruled. Thereafter, the Petitioner filed exceptions to the report on challenged ballots in which it contended that the Board should sustain 17 additional challenges. On October 16, 1957, the Regional Director issued a supplemental report on challenged ballots in which he recommended that the Petitioner's exceptions be overruled and reaffirmed his original recommendation. Thereafter, the Petitioner filed exceptions to the supplemental report.

On December 24, 1957, the Board issued an order directing hearing² as to certain specified challenges. On January 20, 1958, the Employer filed a petition for amendment of order directing hearing in which it requested that before proceeding to hearing the Board direct the Regional Director to count all ballots which the Regional Director

¹ *Graver Construction Company*, 118 NLRB 1050

² Not published in printed volumes of Board Decisions and Orders

recommended be overruled and are no longer in issue. With its motion the Employer filed a copy of a telegram from the Petitioner indicating agreement with the Employer's Petition.

Upon the entire record in this case, the Board finds:

In his report on challenged ballots, the Regional Director recommended that the challenges to the ballots of G. D. Ludlam, Arthur Penny, C. E. Pickett, J. E. Mackison, R. T. Williams, Jr., and S. O. Bounds be sustained and that challenges to the ballots of E. Harris, Troy Barfield, E. J. Bolton, R. G. Cotney, D. E. Harris, Clyde Jenkins, S. W. Lee, E. E. McCall, Geo. Sanford, B. T. Williams, F. G. Bragg, Fred Copeland, E. A. Crawford, J. E. Miller, H. C. Price, C. E. Wilson, W. E. Keenan, Henry Leggett, and J. C. Ward be overruled. As no exceptions were filed to any of these recommendations, they are hereby adopted.

The Regional Director found that George Ivy, and F. W. Palmer were employed by the Employer as cement-mixer drivers, driving trucks hauling ready-mixed concrete from the batch-plant to the sites where concrete is poured. He found that Charles Refoe spent all his time driving a transport hauling heavy supplies and equipment between the Employer's home office and its project. He concluded that all three employees should be included in the unit and recommended that the challenges to their ballots be overruled. In its exceptions, the Petitioner contended that the challenges to the ballots of these three employees should be sustained because Ivy and Palmer were supervisors and Refoe spent the major part of his time outside the scope of the unit. In his supplemental report the Regional Director found that no evidence was submitted to support the contention that Ivy and Palmer were supervisors and that Refoe's duties came within the scope of the unit. He repeated his recommendations as to their ballots. Although the Petitioner generally excepted to these recommendations in its exceptions to the supplemental report, it made no further allegation of fact in support thereof. Accordingly, we shall adopt the Regional Director's recommendations and overrule the challenges to their ballots.

Accordingly, as there is a possibility that the ballots as to which challenges have been overruled above may be determinative of the election, we shall grant the Employer's Petition and direct that they be opened and counted before proceeding to hearing herein. In the event that these ballots are determinative of the election we shall direct the Regional Director to issue a certification of representative or results of election, as necessary, and will rescind our previous order for hearing. In the event that these ballots are not determinative of the election, we shall direct the Regional Director to proceed with the hearing as ordered.

[The Board directed that the Regional Director for the Twelfth Region shall, within ten (10) days from the date of this decision open and count the ballots of employees E. Harris, Troy Barfield, E. J. Bolton, R. G. Cotney, D. E. Harris, Clyde Jenkins, S. W. Lee, E. E. McCall, Geo Sanford, B. T. Williams, F. G. Bragg, Fred Copeland, E. A. Crawford, J. E. Miller, H. C. Price, C. E. Wilson, W. E. Keenan, Henry Leggett, J. C. Ward, Geo. Ivy, F. W. Palmer, and Charles Refoe, and serve upon the parties a revised tally of ballots. If the remaining unresolved challenges can not affect the results of the election, the Regional Director shall issue a certification of representatives if the Petitioner has received a majority of the votes cast, or the Regional Director shall issue a certification of results of election if the Petitioner has not received a majority of such votes. If, the remaining unresolved challenges can affect the results of the election, the Regional Director is hereby directed to proceed to hearing in accordance with the Board's Order of December 24, 1957.]

[The Board ordered that disposition of the above-entitled matter be referred to the Regional Director and that the Board's Order of December 24, 1957, be amended to provide that the hearing ordered be held only in the event that after issuance of the revised tally of ballots the unresolved challenges can affect the results of the election.]

MEMBERS RODGERS and FANNING took no part in the consideration of the above Supplemental Decision, Direction, and Order.

International Woodworkers of America, AFL-CIO, Local Union 13-433 [Ralph L. Smith Lumber Company] and Charles R. Hatfield. *Case No. 20-CB-408. February 24, 1958*

SUPPLEMENTAL DECISION

On February 20, 1957, the Board entered its Decision and Order in this proceeding¹ in which it found that Respondent Union had violated Section 8. (b) (1) (A) and (2) of the Act by causing the discharge of woods employee Hatfield under its valid union-security agreement, at a time when Hatfield had made a full and unqualified tender of initiation fees and dues. In its opinion the Board referred as precedent to its decisions in *Aluminum Workers International Union (The Metal Ware Corporation)*,² and in *Technicolor Motion Picture Corporation*,³ wherein it held that a full and unqualified tender of dues and initiation fees at any time before actual discharge was a

¹ 117 NLRB 405.

² 111 NLRB 411, 112 NLRB 619

³ 115 NLRB 1607.

119 NLRB No. 211.