in this proceeding.[7] Accordingly, we hereby deny the Employer's motion to dismiss the instant petition.

2. The labor organization involved 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 parties, which agree on a unit of truckdrivers, are in dispute only as to the unit placement of the tire serviceman, Vernon Hale. Hale has frequent contact with the truckdrivers in the course of his tire repair and maintenance work. He receives the same hourly rate of pay, attends the same safety meetings, and is under the same supervision as the truckdrivers. As his interests are allied to those of the truckdrivers and he would otherwise be unrepresented, we shall include the tire serviceman in the unit. Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All truckdrivers employed by Allen's, Inc., Wichita, Kansas, including the tire serviceman, but excluding professional employees, all other employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBERS BEAN and FANNING took no part in the consideration of the above Decision and Direction of Election.

[7] *Jonesboro Grain Drying Cooperative*, 110 NLRB 481, 483–484.

Cooper Supply Company, Petitioner *and* Tulsa General Drivers, Warehousemen, and Helpers, Local No. 523, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. *Case No. 16–RM–155. May 15, 1958*

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election issued by the National Labor Relations Board on December 19, 1957 (not published), an election by secret ballot was conducted on January 14, 1958, under the direction and supervision of the Regional Director for the Sixteenth Region among the employees in the unit found appropriate by the Board. At the close of the election the parties were furnished a tally of ballots which showed that there were approximately 10 eligible employees and that 11 ballots were cast, of which

none were cast for the Union, 8 were cast against any labor organization, 1 was void, and 2 were challenged. The challenged ballots were insufficient in number to affect the results of the election.

On January 17, 1958, the Union filed objections to the conduct of election and tally of ballots and asked that the election be set aside. After investigation, the Regional Director, on February 18, 1958, served upon the parties his report on objections to the election in which he found that the objections were without merit and recommended that they be overruled and the results of the election be certified. The Union has filed timely exceptions to the Regional Director's report and asked that a hearing be held.

The principal objections[1] we are now required to consider arise from the fact that following a strike at this plant the Union filed charges accusing the Employer of illegally refusing to bargain. On investigation the Regional Director found no merit in this charge and refused to issue a complaint.[2] The Union contended, nevertheless, both at the hearing and in its objection to the election, that it should be accorded an opportunity to prove, in this proceeding, that its strike resulted from unfair labor practices and not from an economic dispute. We ruled in the original direction of election, and we repeat here, that allegations of unfair labor practices may not be litigated at any stages of a representation proceeding.[3] For purposes of this proceeding, therefore, the strike was over economic matters, the strikers were not unfair labor practice strikers, and, as the Board found in the original decision, they were ineligible to vote in the election because all of them had been permanently replaced.

In view of this basic fact, we reject, as did the Regional Director, the objections that: (1) The Union has not been afforded a chance in this case to litigate the eligibility of the strikers as unfair labor practice strikers; (2) the Board agent improperly refused to permit those same strikers—expressly found ineligible by the Board—to cast challenged ballots; and (3) the Board agent ought not to have explained the Board's eligibility ruling—including the specific exclusion of these strikers—to the assembled workmen before the election. It is the Board agent's duty adequately to explain to the employees both the election procedure and the Board's decision in the particular case; he is not required to issue ballots, even subject to challenge, for obviously ineligible persons.[4]

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[1] The Union did not take exceptions to the Regional Director's recommendation that the Union's other objections were without merit and that they be overruled To the extent that such other recommendations stand without exceptions, they are hereby adopted *pro forma*

[2] On appeal to the General Counsel the Regional Director's dismissal of the charge was upheld

[3] *National Foundry Company of New York, Inc.*, 109 NLRB 357, 359; see *Times Square Stores Corporation*, 79 NLRB 361, 365

[4] one of the original objections was that the Board agent improperly refused to issue a ballot to the union observer, Mr Stout. Stout was one of the original strikers found

Another objection rests on the assertion that a supervisor acted as an election observer for the Company. Liggett, the employee in question, is a shipping and receiving clerk. None of his regular duties are supervisory in nature and he has no authority over other employees. Each month, for 1 or more days, the Company hires extra casual laborers and ordinarily obtains them by telephoning the Oklahoma Unemployment Security Commission. After the strike started in August 1957, that Commission refused to refer workmen because of the labor dispute. In consequence, and as a stopgap arrangement, since that time Liggett, the clerk, has driven to the Commission to pick up extra help from those waiting in line outside the Commission. His choice was determined by the sobriety and the physical fitness of those in line. No such employees were used after the first of December. We agree with the Regional Director's conclusion that Liggett's relation to the casual laborers was only a temporary expedient and in view of the routine clerical nature of his regularly assigned duties, we find that he is not a supervisor within the meaning of the Act. We therefore overrule this objection.

The Board refused to accept the Union's challenges to the ballots of the countermen, order packer, janitor, dispatcher, and the shipping and receiving clerk. The bargaining unit described in the Board's decision reads: "All warehousemen, truckdrivers, porters, shipping and receiving clerks, and helpers . . .," in accordance with the stipulation of the parties to the preelection hearing. At that time the Employer testified without contradiction that the job titles in its warehouse operations included foreman, receiving clerks, dispatcher, truckdrivers and helpers, countermen and order fillers, and the stockmen. Like the Regional Director, we find no merit in the Union's objection that the election was improperly conducted because the Board agent refused to accept these challenges. He was under no obligation to accept promiscuous challenges.

The Union also alleged that two employees loitered around the voting area after casting their ballots and were in a position to be able to converse with others waiting to vote and thus could have electioneered near the polls. The Regional Director found that two voters did not immediately quit the area after voting, but did so, at once, upon the request of the Board agent. He concluded that the presence of these two voters within the polling area for so short a period of time was insufficient grounds to set aside the election in the absence of any evidence of electioneering. We agree and overrule this objection also.

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ineligible in the Board's original decision. The Union excepted to the Regional Director's failure to consider this specific objection in his report. This exception is clearly without merit because as one of the permanently replaced economic strikers, Stout was not entitled to a ballot

Finally, the Union contends that the eligibility list was improper because the company attorney challenged its accuracy just before the voting began, and that the tally of ballots as originally made out was fatally defective because it showed only 10 ballots issued when in fact 11 were used, and it stated that a majority of ballots had been cast for the "Employer and Petitioner," instead of against any labor organization. The Regional Director found that the company manager noticed the 11 employees in line to vote when only 10 names were on the eligibility list and upon checking notified the Board agent of the name of the employee whose name had been omitted from the list. There is no allegation that this employee did not properly belong in the unit. The tally of ballots was corrected on January 17, 1958, by the issuance of an amended tally of ballots. Like the Regional Director we find no merit in any of these objections; in any event we also agree with the Regional Director's conclusion that any possible temporary inaccuracy of this type on the tally sheet could not have interfered with the election because the sheet was not made out until after the ballots were counted.

Accordingly, we adopt the Regional Director's recommendation that none of the objections or exceptions raise material or substantial issues respecting the results of the election. In view of the foregoing, we also deny the Union's request for a hearing. As the Union has failed to secure a majority of the ballots cast we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for Tulsa General Drivers, Warehousemen and Helpers, Local No. 523, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and that this Union is not the exclusive representative of the employees at the Employer's Tulsa, Oklahoma, plant in the unit found to be appropriate.]

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

Barrett Division, Allied Chemical & Dye Corporation *and* United Cement, Lime and Gypsum Workers International Union, AFL–CIO, Petitioner. *Case No. 22–RC–120. May 16, 1958*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Leonard Bass, hearing