

3 A question affecting commerce exists concerning the representation of certain employees of the Employer, within Section 9 (c) (1) and Section 2 (6) and (7) of the Act²

4 The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9 (b) of the Act³

All production and maintenance, warehousemen and shipping employees at the Employer's Brooklyn, New York, marine life saving and water sports equipment manufacturing plant, excluding office, professional, and clerical employees, watchmen, guards, and supervisors as defined in the Act.

[The Board dismissed the petition in Case No 2-RC-9094]

[Text of Direction of Election⁴ omitted from publication]

signed with the IBT, the IBT replied "No, if there was a picket line there" In other words, it would appear that to remove the pickets, the Employer would have to sign with both unions Although the IBT alone made the joint demand, we will not absolve the MAWD from responsibility Its silent acquiescence was tantamount to an implied demand by the MAWD which raises also, as to it, a question concerning representation We note also, in this connection, that the New York State Supreme Court similarly found that the two unions had demanded a "package deal whereby the [Employer] would have to sign up with" both unions

Although the picketing was subsequently enjoined on November 27, by the New York Court and the injunction was affirmed on appeal, the MAWD continued financing the truckdrivers, at least to the hearings herein on June 23, 1958, when it reiterated that it had no interest in the Employer's employees Such continued payments reflect conduct inconsistent with unequivocal disclaimer Accordingly, we find that despite the injunction against picketing, the MAWD is maintaining a present interest in the Employer's employees sufficient to warrant placing it on the ballot in the election directed herein

² On August 20, 1957, the IBT petitioned in Case No 2-RC-9094 for a unit of truckdrivers Subsequently, the Employer sold its trucks and contracted out all work previously done by drivers As the Employer no longer employs drivers, we find that the IBT petition raises no question concerning representation and we shall dismiss it

³ The Employer and the Life Saving Equipment Employees Union, Inc, called the LSEEU, the petitioner in Case No 2-RC 9144, substantially agree to the unit of production and maintenance employees Contrary to the LSEEU, we shall not include truckdrivers as the Employer no longer has such job category

⁴ As the jobs of the five truckdrivers were effectively abolished when the Employer terminated its trucking operations and as the unfair labor practice charges relating thereto were dismissed by the Regional Director, we find these former strikers are ineligible to vote in the election herein *Meridian Plastics, Inc*, 108 NLRB 203, at p 205 The pending appeal from the dismissal of the unfair labor practice charges will not affect our direction of an immediate election *McQuay, Incorporated*, 107 NLRB 787

Spencer Press Incorporated and Retail, Wholesale and Department Store Union, AFL-CIO, Chicago Joint Board, Petitioner.

Case No 13-RC-5749 September 8, 1958

DECISION, DIRECTION, AND ORDER

On October 29, 1957, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the

direction and supervision of the Acting Regional Director for the Thirteenth Region among the employees in the stipulated appropriate unit. Following the election the Acting Regional Director served on the parties a tally of ballots which showed that all of the approximately 168 eligible voters cast ballots of which 77 were for, and 69 were against, the Petitioner. There were also 22 challenged ballots.

As the challenged ballots were sufficient in number to affect the results of the election, the Acting Regional Director investigated them and on July 23, 1958, issued and duly served upon the parties a report on challenged ballots in which he recommended that 8 challenges be overruled, that a hearing be held to determine factual issues regarding 13 ballots and that no action be taken regarding 1 ballot because the eligibility of this voter was being decided in a separate case (13-CA-2868). The Employer and Petitioner filed timely exceptions to the report.

The Board ¹ has considered the stipulation of the parties, the Acting Regional Director's report, the Employer's and the Petitioner's exceptions thereto, and the entire record in this case and hereby makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All warehouse and office employees at the Employer's Chicago, Illinois, warehouse, including clerical, production, shipping, receiving and maintenance employees, elevator operators, and janitors, but excluding plant manager, assistant plant manager, personnel manager, confidential secretaries, salesmen, guards, professional employees, department managers, and supervisors as defined in the Act.

5. The Petitioner challenged five voters, Bertha Brewton, Jeanne Leaner, Lillian Simandl, Violet Woodall and Ophelia Webb, on the ground that they were confidential employees. The Acting Regional Director recommended that these challenges be overruled. The Employer concurred with this recommendation; the Petitioner took exception to it. The Acting Regional Director's investigation disclosed

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Fanning].

that these employees act as secretaries, clerks, or bookkeepers to various department heads, but that they do not "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations" *The B. F. Goodrich Company*, 115 NLRB 722, 724. We find they are not confidential employees and overrule the challenges to their ballots.

The Board agent challenged the ballots of Eleanor Penny and Delores Wenfrey because their names did not appear on the eligibility list. The name of the former was inadvertently left off the eligibility list and all parties concerned agree that the challenge to her ballot should be overruled. We hereby do so overrule it. As the status of the latter is currently being decided in an unfair labor practice case (Case No. 13-CA-2868), we make no finding as to her voting eligibility at this time.

The Petitioner challenged the ballot of August Thomas alleging that he is a guard. As the Acting Regional Director's investigation disclosed factual contradiction giving rise to a material and substantial issue regarding the status of this employee, he recommended that the Board direct a hearing to determine Thomas' eligibility. The Employer excepted to this recommendation contending that Thomas clearly was not a guard as defined in the Act. The Petitioner acquiesced to the recommendation. We find that the issue should be resolved at a hearing and will direct that one be held for this purpose.

Irene Cooke was employed as an IBM operator and instructor. Although she is no longer employed her status has been challenged by the Petitioner as being professional. She has had approximately 2 years of college, and some on-the-job training; all of which was concerned with the operation of business machines. We find that she is not a professional employee, and, affirming the recommendation of the Acting Regional Director, overrule the Petitioner's challenge to her ballot. Cf. *Potomac Electric Power Company*, 111 NLRB 553, 562.

The Petitioner challenged the ballots of 13 individuals² contending that they are supervisors and therefore ineligible to vote. The Acting Regional Director found that Ray Malkowski works alone and has no subordinates. He therefore recommended that the challenge to his ballot be overruled, on the ground that he is not a supervisor. The Petitioner excepted to this recommendation, the Employer concurred in it. We find that Ray Malkowski is not a supervisor and affirm the Acting Regional Director's recommendation to overrule the challenge to his ballot. The Acting Regional Director's report, the

² Ennis Martin, Bozie Shine, Tillie Zelechower, Laura Frost, Ray Malkowski, Cordelia Smith, Frankye Mooney, Hettie Herman, Theresa Cannon, Helen Hallen, Mary Mims, Gentry Scroggs, and Herman Thomas.

Employer's exceptions, and the Petitioner's concurrence therein raise substantial and material issues of fact with respect to the supervisory status of the remaining 12 individuals whose ballots have been challenged on that ground. These issues can best be resolved by a hearing.

We shall direct that the eight ballots listed in Appendix A, the challenges to which have been overruled, shall be opened and counted. If these ballots are not determinative of the election, we shall order a hearing to determine the eligibility of the 13 voters listed in Appendix B.

[The Board directed that the Regional Director for the Thirteenth Region shall, within ten (10) days from the date of this decision, open and count the ballots of the employees listed in Appendix A and shall serve upon the parties a revised tally of ballots. If the revised tally discloses that a majority of votes have been cast in favor of the Petitioner, and it appears that the remaining unresolved challenges cannot affect the results of the election the Regional Director shall issue a Certification of Representatives. If, however, it appears that the remaining unresolved challenges can affect the results of the election the Regional Director is directed to proceed to hearing in accordance with the following order.]

[The Board ordered that in the event the revised tally of ballots indicates that the results of the election are not determinative, the case is referred to the Regional Director for the Thirteenth Region for hearing before a hearing officer to resolve the issues raised by the challenges to the ballots of the employees listed in Appendix B.]

[The Board further ordered that the hearing officer prepare and serve upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the challenged ballots. Within ten (10) days from the date of the issuance of such report, any party may file with the Board in Washington, D. C., an original and six copies of exceptions. Immediately upon filing of such exceptions, the party filing the same shall serve a copy upon each of the other parties, and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the hearing officer's recommendations.]

APPENDIX A

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|-------------------|--------------------|
| 1. Bertha Brewton | 5. Eleanor Penny |
| 2. Irene Cooke | 6. Lillian Simandl |
| 3. Jeanne Leaner | 7. Ophelia Webb |
| 4. Ray Malkowski | 8. Violet Woodall |

APPENDIX B

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|-------------------|-----------------------|
| 1. Theresa Cannon | 8. Gentry Scroggs |
| 2. Laura Frost | 9. Bozie Shine |
| 3. Helen Hallen | 10. Cordelia Smith |
| 4. Hettie Herman | 11. August Thomas |
| 5. Ennis Martin | 12. Herman Thomas |
| 6. Mary Mims | 13. Tillie Zelechower |
| 7. Frankye Mooney | |

Pyramid Mouldings, Inc. and United Steelworkers of America, AFL-CIO, Petitioner. *Case No. 13-RC-5915. September 8, 1958*

DECISION, ORDER, AND DIRECTION OF SECOND
ELECTION

On April 18, 1958, pursuant to a stipulation for certification upon consent election, an election was conducted under the direction and supervision of the Regional Director for the Thirteenth Region among the employees in the agreed-upon unit. Following the election, the Regional Director served upon the parties a tally of ballots which showed that of approximately 159 eligible voters, 152 cast ballots, of which 3 were for the Intervenor, the International Union, United Industrial Workers of America; 62 were for the Petitioner, the United Steelworkers of America, AFL-CIO; and 87 were for no labor organization. Three ballots were challenged, which are not sufficient in number to affect the results of the election.

On April 21, 1958, the Petitioner filed timely objections to conduct affecting the results of the election. After an investigation, the Regional Director, on July 18, 1958, issued and duly served upon the parties his report on objections, a copy of which is attached hereto.¹ The Regional Director found that the Petitioner's objection No. 1 had merit, and recommended therefore that the election be set aside, and a new election conducted. He found that the Petitioner's objection No. 2 lacked merit, and recommended that it be overruled. The Employer filed timely exception to the Regional Director's report regarding objection No. 1.

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

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.

¹ The report on objections sets forth in full the alleged objections.