

In addition to challenging the ballot of Leslie G Downey, discussed above, the Union also specifically challenged the ballots of William Root and Richard Ewing, Jr

The ballot of William Root was challenged on the ground that he was a supervisor. The Regional Director's report found that his challenge was made for the first time in the Union's objections and was therefore in the nature of a postelection challenge. As it is well established that challenges to voters may not be raised after an election, we adopt the Regional Director's recommendation to overrule this challenge.⁶

The ballot of Richard Ewing, Jr, was challenged because he was the son of the sole owner of Southern Press and was therefore "not a member of the bargaining unit." The Regional Director recommended that this challenge be sustained upon the ground that Section 2 (3) of the Act excludes any individual employed by his parent from the definition of employee. We adopt the Regional Director's recommendation.

In view of the above, we find that the challenges to the ballots of William Root and Leslie G Downey and to the remaining ballots cast in the election be overruled and that all such ballots be opened and counted except that of Richard Ewing, Jr, which challenge is sustained.

[The Board directed that the Regional Director for the Twenty-first Region shall, within ten (10) days from the date of this Direction, open and count the ballots of Louis Bass, Willard Bass, Ray Barnett, Ray Eugene Barnett, Joseph Bosante, Leslie G Downey, Roy M Ewing, Vincent A Ferruccio, Richard Grady, Charlotte Hensher, Joan Johnson, James B Mercer, Salvador Mills, Joseph Novotny, William Root, Martin Simanick, Rueben Valencia, William Veronn, Robert S Wolgin and Thomas Faulkner, and serve upon the parties a supplemental tally of ballots.]

⁶ *The Babcock & Wilcox Company*, 118 NLRB 944, 945

Quaker State Oil Refining Corporation, Petitioner and Oil, Chemical and Atomic Workers International Union, AFL-CIO. *Case No 9-RM-171 September 29, 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 Harry David Camp,

hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

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.¹

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 Employer-Petitioner requests an election among its production and maintenance employees whom the Union has represented for about 10 years. However it seeks, over the Union's objection, to exclude from the existing unit, as technicals, certain employees now in the unit who are classified as testers and senior day testers. In support of its position it relies upon the Board's policy of excluding technical employees from production and maintenance units where any party objects to their inclusion.² We find, however, no warrant for excluding the testers and senior day testers from the existing unit, even assuming that they are technicals. For, where technicals have been included in an established unit and that unit does not contravene any statutory policy, essentials of fairness and bargaining stability dictate that the employer test the majority status of the bargaining representative only in that unit.³ Accordingly, we find that only the existing unit is appropriate in this case.

In view of the foregoing, 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 production and maintenance employees, including testers and senior day testers, employed at the Employer's St. Mary's, West Virginia, plant, but excluding guards, watchmen, office clerical employees, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

CHAIRMAN LEEDOM and MEMBER BEAN took no part in the consideration of the above Decision and Direction of Election.

¹ Oil, Chemical and Atomic Workers International Union, AFL-CIO, Local 10-590 was, together with its parent International, a party to the recently expired contract covering the employees in question and on the basis of this contractual interest, was permitted to intervene.

² *Humble Oil & Refining Company*, 115 NLRB 1485, 1487.

³ See, *Triangle Publications Inc.*, 115 NLRB 941, 943; *Standard Oil Company of California*, 113 NLRB 475, 477. Moreover, an Employer may not in any event file a decertification petition. *Clyde J. Merris*, 77 NLRB 1375.