

In the Matter of R. C. A. MANUFACTURING COMPANY, INC. and
UNITED ELECTRICAL & RADIO WORKERS OF AMERICA

Case No. R-39.—Decided August 3, 1936

Radio and Related Products Manufacturing Industry—Election Ordered: controversy concerning representation of employees—rival organizations; substantial doubt as to majority status; refusal by employer to recognize union as exclusive representative—question affecting commerce: confusion and unrest among employees; prior strike caused by unrest and strife over question of representation—*Union Appropriate for Collective Bargaining:* production and maintenance employees; hourly paid employees; community of interest—*Election:* boycott of by one of rival organizations—*Majority Rule:* meaning of, Section 9 (a) interpreted—*Certification of Representatives.*

Mr. Charles Fahy, Mr. A. L. Wirin, Mr. Ralph T. Seward, and Mr. Samuel G. Zack for the Board.

Mr. Henry S. Drinker, Jr., and Mr. Lewis H. Van Dusen, Jr., of Philadelphia, Pa., *General Hugh S. Johnson,* of New York City, *Mr. Robert R. Kane* and *Mr. Floyd H. Bradley,* of Camden, N. J., for the Company.

Mr. Saul C. Waldbaum, of Philadelphia, Pa., and *Mr. James B. Carey,* of Glassboro, N. J., for the Union.

Mr. Carl Kisselman and *Mr. Harry Kline,* of Camden, N. J., and *Mr. Michael F. Doyle,* of Philadelphia, Pa., for Employees' Committee Union.

Mr. Herbert Bennett, of Harrison, N. Y., for International Brotherhood of Electrical Workers.

Mr. Stanley S. Surrey, of counsel to the Board.

DECISION

STATEMENT OF CASE

On July 10, 1936, United Electrical & Radio Workers of America, hereinafter referred to as the Union, filed with the Regional Director for the Fourth Region a petition alleging that a question affecting commerce had arisen concerning the representation of the employees, excepting clerical and supervisory employees, of the R. C. A. Manufacturing Company at its Camden, New Jersey plant and requesting the National Labor Relations Board to conduct an investi-

gation pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. On July 17, 1936, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued an order authorizing the Regional Director for the Fourth Region to conduct an investigation and to provide for a hearing in connection therewith. On July 18, 1936, an amended petition was filed by the Union. The amended petition stated that the employers involved were the Radio Corporation of America and the R. C. A. Manufacturing Co., Inc., whose business was described at length with special reference to the Camden, New Jersey plant; that 12,444 persons were employed at said plant; that those employees, with the exception of the clerical and supervisory staffs, constituted an appropriate bargaining unit; that the Union represented 9,000 employees in said unit; that the Employees' Committee Union¹ and the International Brotherhood of Electrical Workers claimed to represent the employees in said unit; and that because of such conflicting claims, which had led to discontent, unrest and strife, finally culminating in a strike at the Camden plant still in effect at the time of the filing of the amended petition, a question affecting commerce concerning the representation of the employees in the said unit had arisen within the meaning of the Act. On July 21, 1936, the Board, pursuant to Article III, Section 10 (c) (1) of its Rules and Regulations—Series 1, as amended, ordered the proceeding transferred to and continued before it.² Said orders of the Board and a notice of hearing were duly served upon the various parties.

On July 25, 1936, pursuant to notice thereof, a hearing was held by the Board at Camden, New Jersey. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. Upon motion of counsel for the Board, concurred in by the other parties, the petition was dismissed as to the Radio Corporation of America. The R. C. A. Manufacturing Company, Inc., hereinafter referred to as the Company, filed an answer to the petition in which it stated that it was entirely agreeable to the holding of an election by the Board. At the hearing counsel for the Company and counsel for the Employees' Committee Union stated that they were not contesting the jurisdiction of the Board.

¹ This organization had on June 15, 1936, filed a petition requesting an election but the petition was later withdrawn.

² On July 18, 1936, the Board had amended its prior order, directing the Regional Director to conduct an investigation, in respect to a portion not here relevant.

Upon the entire record in the case, including the pleadings; the stenographic report of the hearing, and the documentary and other evidence received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY

The R. C. A. Manufacturing Company, Inc. is engaged at its Camden, New Jersey plant in the manufacture and distribution of radio and sound transmission and receiving products. A substantial portion of these products are produced and distributed pursuant to orders from the Radio Corporation of America, a corporation engaged in the business of radio and wireless communication throughout the United States and foreign countries and which controls the R. C. A. Manufacturing Company, Inc. The products so produced are essential to the maintenance of the interstate and international communications system operated by the Radio Corporation of America. In the course of its operations at the Camden plant, the Company purchases and has transported from States other than New Jersey large quantities of materials, such as steel, rubber, glass, lumber, copper, aluminum, durielium, porcelain, magnesium, tungsten, celluloid, paints, mica, iron and other goods. It maintains sales and service branches and distributing points throughout the United States and in foreign countries for the purpose of selling, distributing and servicing the products manufactured at Camden. Certain parts and equipment assembled and produced at Camden are transported by the Company to other plants, assembly points and distribution centers, owned by the Company and located in States other than New Jersey, and there assembled with other parts and equipment into finished products which are thereafter distributed among the several States and in foreign countries. A substantial number of the employees at the Camden plant are employed in the shipping department of the Company and are engaged in the preparation and packing of the products for shipment and the actual shipping of the products. Another substantial group of employees are engaged in the servicing and installing of the products of the Company throughout the United States.

All of the aforesaid operations constitute a continuous flow of trade, traffic and commerce among the several States and with foreign countries.

II. THE LABOR ORGANIZATIONS INVOLVED

United Electrical and Radio Workers of America is a national labor organization with locals in various cities throughout the

United States. Its locals at the Camden plant, Locals 103 and 104, admit to membership production, maintenance and service employees employed at that plant. At the time of the hearing the Union claimed to have 6,500 members in the locals at the plant.³

The Employees' Committee Union is a labor organization, unaffiliated with any other body, admitting to membership all employees of the company employed at the Camden plant, with the exception of persons "identified with the company, such as foremen and supervisors". This organization claimed a membership of 7,000 at the time of the hearing.

The International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor. It admits to membership, with other classes not here involved, workers engaged in the production of electrical and radio apparatus, and inside and outside electrical workers. Although the petition stated that the International Brotherhood of Electrical Workers claimed to represent some of the employees of the company, this organization has advised the Board that it did not desire to be placed upon the ballot if an election were held.

III. THE EXISTENCE OF A QUESTION AFFECTING COMMERCE CONCERNING REPRESENTATION

The amended petition stated that for a number of months there has been discontent, unrest and strife among the employees of the Company at the Camden plant because of the claim of each of the above labor organizations to represent these employees. The Company has never recognized any labor organization as the bargaining agency for all of its employees and in its answer stated that it has never had any reliable information from which it could conclude that a single labor organization represented a majority of the employees. It further stated that the controversy between the Union and the Employees' Committee Union has given rise to unrest among its employees and has seriously interfered with the production and shipment of its products and the volume of raw materials acquired in the course of production.

On June 23, 1936, a strike of the Company's employees occurred as a result of the unrest and strife existent at the plant. The petition stated that the strike was participated in by about 9,000 employees; the answer of the Company placed the number of strikers at about 2,500. The strike was marked by considerable violence, police action, sympathetic demonstrations by large numbers of em-

³The Union permits some office or clerical employees to become members but limits their activities as members to the social work of the organization. There are now less than 100 persons participating upon that basis in the locals at the Camden plant.

ployees of other concerns, and widespread publicity was given to it. The strike caused a substantial stoppage of production and shipment of products at the plant. It was finally settled on July 20, 1936, by an agreement between the Union and the Company, one of the provisions of which expresses the desire of both parties for an election pursuant to the Act. This desire of the Union and the Company is shared by the Employees' Committee Union, so that all of the parties directly involved join in a request for an election to be conducted by the Board.

The Board concludes that a question exists concerning the representation of the employees of the Company at the Camden plant. The controversy has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce among the several States and with foreign countries.

IV. THE APPROPRIATE BARGAINING UNIT

The Union contended that the "production, maintenance and service workers" should be considered as the appropriate bargaining unit. Such a unit is coterminous with the groups of employees eligible for membership in the Union. The Employees' Committee Union argued for a wider unit which would include clerical employees and those employees who, although not actual production workers, were engaged in tasks closely related to the production operations, such as process engineers, rate-setters, etc. Such employees are eligible for membership in the latter organization. The Company furnished for the record a complete list of the various occupations in the plant, with a brief description of the occupations that were disputed, and charts illustrating the internal organization of the various departments.

The main group in dispute consists of clerical employees of various types. Some of these clerical workers, in the main classified as typists, stenographers, clerks, file clerks, bookkeepers, messengers, etc., work in the Treasurer, Comptroller and Sales Departments, located in Buildings 2 and 15. These employees, all of whom are salaried employees, perform purely clerical tasks in large part bound up with the management and administration of the Company and their immediate working conditions and problems are significantly different from those of actual production workers. Other clerical employees work in the various buildings in which production takes place and are on the production department payroll. In addition to the types of employees generally classified as clerical workers, this group includes such occupations as expeditors, dispatchers, dispatch clerks, time keepers, breakdown clerks, etc. The majority are salaried employees; some are paid on an hourly rate. In some divisions

their hours differ from those of actual production employees; in others they are the same. In many cases they occupy offices adjoining the foreman's office and have the appearance of a foreman's office staff. Their tasks are clerical in nature, carried on at desks, and they do not handle materials or products. As in the case of the clerical workers in the other departments, their immediate interests and problems are not those of actual production workers. The Board concludes that in the plant under consideration none of the clerical workers should be included in the same bargaining unit with the actual production workers.

While nearly all of the actual production workers are paid on an hourly basis, there are employees working in the production department who are paid on a salary basis. Most of the employees in the engineering department are on a salary basis.⁴ All salaried employees receive two weeks' vacation with pay, are paid for holidays, and are paid semi-monthly and not weekly. While in certain cases the tasks performed by some of these salaried workers are not different from those performed by comparable hourly paid workers, the benefits flowing from a salaried status result in a difference of interests and viewpoints that is sufficiently marked to prevent in this case the inclusion of both employees in the same unit. The Board therefore concludes that salaried employees, regardless of classification, should not be included in the same bargaining unit with hourly paid production employees.

While the above two principles dispose of most of the classifications in dispute, it is advisable briefly to advert to certain special groups. The employees in the lunch club section, such as waitresses, chefs, cooks, dishwashers, etc., are engaged in tasks under the supervision of the personnel relations division and are not engaged in work directly connected with production. The employees in the cost control division of the production department, classified as time study men and rate setters, the process engineers in the various manufacturing divisions, and the junior engineers in the quality division (who perform a sample check on finished products and report through their head direct to the general superintendent) perform important tasks that are closely related to the functions of management. The watchmen in the maintenance division, classified as guards by the Company and possessing a uniformed appearance, are a group obviously separate from the regular production employees. None of the above for the reasons stated should be included in the same bargaining unit with the production employees. The super-

⁴ Besides clerical workers, the only employees in the engineering department in dispute were the draftsmen. These employees, like the engineers of various types, are specially skilled technicians whose training, experience and work are clearly not similar to those of production employees.

visory employees, apart from executives, are classified by the Company as superintendents, general foremen, foremen, assistant foremen, sub-foremen and working group leaders (there being male and female foremen, etc.).⁵ While both organizations agreed that supervisory employees should be excluded, the Employees' Committee Union claimed that the working group leaders were really production employees and not supervisory employees. These working group leaders, who may on occasion actually work on materials, possess authority to give orders to the employees under their supervision and to recommend disciplinary action to the foremen or assistant foremen. They are therefore to be considered as part of the supervisory force.

Restating the conclusions reached above, we find that the hourly paid employees in the production department, the model making shop (Division No. 77)⁶ in the engineering department, and the office service division (Division No. 03),⁷ employed by the Company at its Camden plant, exclusive of the following groups: all supervisory employees down through and including working group leaders, all clerical employees wherever located, all lunch club section employees, process engineers, watchmen and guards, constitute a unit appropriate for the purposes of collective bargaining.⁸ It was agreed by both organizations that, within the appropriate unit found by the Board, all employees on the payroll of June 12, 1936, should be eligible to vote.⁹

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. The hourly paid employees in the production department, the model making shop (Division No. 77) in the engineering department, and the office service division (Division No. 03) employed by the R. C. A. Manufacturing Company, Inc. at its Camden plant, exclusive of the following groups: all supervisory employees down through and including working group leaders, all clerical employees

⁵ In a few sections the supervisory employee is called a "storekeeper"

⁶ Employees in this division are engaged in the production of models from engineering blueprints and charts and their work is similar to that of employees engaged in the production of articles to be sold. Both organizations agreed that they should be grouped with the employees in the production department.

⁷ This division includes only people performing maintenance tasks and hence the employees in the division are to be included along with the other maintenance employees.

⁸ It should be noted that the exclusion of all salaried employees results in the exclusion of only 18 employees (four tool designers—first class, 13 inspectors of incoming material and one elevator operator) who would not otherwise be excluded for one or more of the other reasons stated above.

⁹ This covers employees working during the week ending June 5, 1936, as they are paid a week later, and those employees on sick or other leave during that period but still considered as employees by the Company and on its payroll.

wherever located, all lunch club section employees, process engineers, watchmen and guards, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question affecting commerce has arisen concerning the representation of the employees in said unit, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the R. C. A. Manufacturing Company, Inc., an election by secret ballot shall be conducted within 15 days from the date of this Direction, under the direction and supervision of the Acting Regional Director for the Fourth Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the hourly paid employees in the production department, the model making shop (Division No. 77) in the engineering department, and the office service division (Division No. 03) on the June 12, 1936, payroll of the R. C. A. Manufacturing Company, Inc. for its Camden, New Jersey plant, exclusive of the following groups: all supervisory employees down through and including working group leaders, all clerical employees wherever located, all lunch club section employees, process engineers, watchmen and guards, to determine whether they desire to be represented by United Electrical and Radio Workers of America or by the Employees' Committee Union. Notices of election shall be posted at least three days prior to the date of election and in places in the plant selected by the Acting Regional Director as those places in which employees are customarily informed of matters affecting them.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Direction of Election.

[SAME TITLE]

AMENDED DIRECTION OF ELECTION

August 12, 1936

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Direction of Election issued on August 3, 1936 is amended to read as follows:

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the R. C. A. Manufacturing Company, Inc., an election by secret ballot shall be conducted on or before August 18, 1936, under the direction and supervision of the Acting Regional Director for the Fourth Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the hourly paid employees in the production department, the model-making shop (Division No. 77) in the engineering department, and the office service division (Division No. 03) on the June 12, 1936, payroll of the R. C. A. Manufacturing Company, Inc. for its Camden, New Jersey plant, exclusive of the following groups: all supervisory employees down through and including working group leaders, all clerical employees wherever located, all lunch club section employees, process engineers, watchmen and guards, to determine whether they desire to be represented by United Electrical and Radio Workers of America or by the Employees' Committee Union. Notices of election shall be posted at least twenty-four hours prior to the commencement of balloting on the date of election and in places in the plant selected by the Acting Regional Director as those places in which employees are customarily informed of matters affecting them.

Mr. CARMODY took no part in the consideration of the above Amended Direction of Election.

[SAME TITLE]

DECISION
ON
CERTIFICATION OF REPRESENTATIVES

November 7, 1936

A petition for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, was filed on July 10, 1936, with the Regional Director for the Fourth Region by the United Electrical & Radio Workers of America, hereinafter referred to as the Union, said petition alleging that a question affecting commerce had arisen concerning certain employees of the R. C. A. Manufacturing Company, Inc. at its Camden, New Jersey plant. After a hearing on July 25, 1936, the Board issued a decision¹ in which it found that a question existed concerning the representation of certain employees of the R. C. A. Manufacturing Company, Inc., hereinafter referred to as the Company, at the Camden plant, because of the conflicting claims of the Union, a national labor organization with locals in various cities throughout the United States, and of the Employees' Committee Union, a labor organization confined to the Camden plant and unaffiliated with any other body, to represent the employees in the plant. The Board further found that a strike of the Company's employees had occurred on June 26, 1936, as a result of the unrest and strife created at the plant by such controversy between the Union and the Employees' Committee Union. This strike, participated in by over 2,500 employees, was marked by considerable violence, police action, sympathetic demonstrations by large numbers of employees of other concerns, and widespread publicity was given to it. The strike caused a substantial stoppage of production and shipment of products at the plant. It was finally settled on July 20, 1936, by an agreement between the Union and the Company, one of the provisions of which expressed the desire of both parties for

¹ *Matter of R. C. A. Manufacturing Company, Inc. and United Electrical & Radio Workers of America*, decided August 3, 1936, *supra*, p. 159. The Company filed exceptions to the following statements in that decision:

"A substantial portion of these products are produced and distributed pursuant to orders from the Radio Corporation of America a corporation engaged in the business of radio and wireless communication throughout the United States and foreign countries and which controls the R. C. A. Manufacturing Company, Inc. The products so produced are essential to the maintenance of the interstate and international communication system operated by the Radio Corporation of America."

After a consideration of the record, and inasmuch as the statements objected to are not necessary to the decision, the Board feels that they should not be considered as part of the findings of fact in the case

an election pursuant to the Act, a desire shared also by the Employees' Committee Union.

As a consequence of its findings, the Board on August 3, 1936, directed that an election by secret ballot should be conducted among the

"hourly paid employees in the production department, the model making shop (Division No. 77) in the engineering department, and the office service division (Division No. 03) on the June 12, 1936, payroll of the R. C. A. Manufacturing Company, Inc. for its Camden, New Jersey plant, exclusive of the following groups: all supervisory employees down through and including working group leaders, all clerical employees wherever located, all lunch club section employees, process engineers, watchmen and guards, to determine whether they desire to be represented by United Electrical and Radio Workers of America or by the Employees' Committee Union."²

Pursuant to this Direction of Election, an election was conducted on August 15, 1936, under the supervision of the Acting Regional Director for the Fourth Region, Robert D. Hooke, and in conformity with Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended.³ Thereafter the Acting Regional Director prepared and served upon the parties to the proceeding his Intermediate Report in which he made the following findings with respect to the results of the election:

Total number employees eligible to vote.....	9,752
Total number ballots cast.....	3,163
Total number blank ballots.....	8
Total number void ballots.....	9
Total number ballots cast for United Electrical & Radio Workers of America.....	3,016
Total number ballots cast for Employees' Committee Union.....	51
Total number challenged ballots.....	79

The Acting Regional Director, after a recital of the circumstances surrounding the election and a consideration of the issues involved, recommended in the Intermediate Report that the Union be certified by the Board as the exclusive representative for collective bargaining of the employees concerned. The Employees' Committee Union and the Company filed objections to the Intermediate Report with the Board. On October 7, 1936, a hearing for the purpose of oral argument upon the Intermediate Report and the objections thereto was

² The Direction of Election was amended on August 12, 1936, in a particular not here important (*Supra*, p 167.)

³ The Company supplied the Acting Regional Director with the necessary payrolls and otherwise cooperated in the mechanics of the election.

held by the Board at Washington, D. C., and all parties were given full opportunity to participate.

A brief recital of some of the events preceding the election is necessary to a proper understanding of the issues in the case. The agreement entered into by the Company and the Union which terminated the strike contained the following paragraph:

"5. The Company and the Union agree to an election to be held under the auspices of the National Labor Relations Board and in accordance with the National Labor Relations Act, to determine the question of majority representation as between Local No. 103 (United Electrical and Radio Workers of America), Employees' Committee Union, and any other employee organization in the Camden plant. The election to be held in the shortest space of time in which such board finds that it can conduct such election in complete accordance with that Act. The Company and the Union agree that the sole bargaining agency shall be the candidate receiving a majority of the votes of all those eligible to vote in such election."

The Employees' Committee Union was not one of the signatories to this agreement but its complete acceptance of it was expressed at the hearing held on July 25, 1936, in the following manner:

"Chairman Madden. Will one of the gentlemen who speaks for the Employees' Committee, either Mr. Doyle or Mr. Kisselman, make a statement for the record as to your position with reference to Petitioner's Exhibit 1? I am right, am I not, in the identification?"

"Mr. Waldbaum. Petitioner's Exhibit 1, yes."

"Chairman Madden. Namely, the agreement between the Electrical & Radio Workers Union and the R. C. A. Manufacturing Company."

"Mr. Kisselman. I want to say for the record in behalf of the Employees' Committee Union that we are willing to stipulate those conditions set forth in that agreement shall be the conditions of the election so far as they apply to it."

"Chairman Madden. And they will be bound by that agreement in the same way as though you had been a party to it at its original execution?"

"Mr. Kisselman. Yes, sir."

The Acting Regional Director, after consultation with all interested parties, first set the election for August 13 and 14, and posted proper notices to that effect on August 9, 1936. Thereafter, a statement issued August 11, 1936, by Thomas Nessler, Secretary of the Employees' Committee Union, stated that the officers and stewards

of that organization had voted unanimously to refuse to participate in the election and had pledged that their constituents would remain away from the polls. On the same day, at a meeting called for that purpose, approximately 1,000 members of the Employees' Committee Union ratified this decision of their officers. Upon learning of this action through the public press, the Acting Regional Director issued a statement on August 12, 1936, in which he said:

"The press reports that the officials of the Employees' Committee Union have voted to refuse to participate in the election scheduled by the National Labor Relations Board for Thursday and Friday of this week and that decision was approved at a general meeting of the membership of the Employees' Committee Union, held Tuesday evening. This action of the officials of the Employees' Committee Union might have the effect of a serious interference with the complete assurance of individual employes on the secrecy of their balloting if the vote were to be taken with the plant in operation.

"It had originally been planned, after a conference with representatives of both labor unions involved in the election, to release employes by departments during the two working days, so that all employes in each department or section might leave the plant together and proceed to the voting place (about a half-mile from the plant). In view of the action taken by the Employees' Committee Union officials, it is now probable that certain groups of employes will remain at their jobs, thus signifying clearly their intention not to vote. This means that those employes who desired to leave their jobs to vote could be immediately identified and the secrecy of their ballot impaired. Many of the employes may be reluctant to vote under such conditions, since they may feel that their intention to vote will be understood or misunderstood as a desire to vote for the United Electrical and Radio Workers of America. The action of the officials of the Employees' Committee Union, one of the parties on the ballot, may thus have the effect of coercing and intimidating employes who may desire to vote either way."

The Acting Regional Director, by proper notice, then postponed the date of election to Saturday, August 15, 1936, a day on which the plant was closed.

From the time of that announcement by the Acting Regional Director until the closing of the polls on August 15, the Employees' Committee Union waged an unceasing campaign to boycott the election. As part of this campaign circulars which went far beyond normal electioneering statements were distributed throughout Camden and the vicinity. Some of these circulars reminded the em-

ployees of the violence that occurred during the strike, attributing all of such violence to the Union, and attempted to spread the belief that the election likewise would be marked by considerable violence and that the employees should therefore remain away from the polls in order to avoid injury. For example, one circular stated:

"Tomorrow the UERWA—according to Mitton—will attempt an 'old fashioned' election. RCA workers know what this means.

"It means violence, bloodshed and perhaps loss of life.

"It means rioting, street fighting and general disorder.

"To Avoid This, We Advise You to Refrain from Voting."

In this same circular, under the guise of preventing illegal voting, a thinly-veiled threat was made to expose by means of motion pictures all employees who voted. The circular stated:

"Every precaution will be taken to prevent illegal voting by strikers having jobs elsewhere, by false passes, by persons using another voter's pass, and the dozens of tricks used in elections.

"If necessary, motion pictures will be taken of everyone entering Moose Hall (the voting place) or affidavits will be secured from over 4904 voters to prove they never voted."

Such a threat was obviously aimed at the normal fear of employees to be individually identified with union activities or support, especially where the manner of identification is such that it may fall into the hands of the employer.

These coercive tactics were designed to intimidate employees and thus prevent their participating in the election. The stratagem behind this campaign was also revealed in the circulars. One circular, entitled, "How To Beat The UERWA", stated that, "Unless 4904 Participate, The Election Will be Null And Void." Hence, it exhorted employees to "Beat the UERWA by Not Voting" and stated, "Refusal to Vote is a Vote *AGAINST* the UERWA." These circulars also clearly indicated that the Employees' Committee Union members were boycotting the election as an organization, for they stated that, "Regardless of What You Read or Hear ECU Members Will Not Vote." In addition to the circulars, a sound truck operating in the vicinity of the plant on August 13 and 14, broadcast statements that no member of the Employees' Committee Union should vote under any circumstances, and warnings similar to those contained in the circulars.

The election was conducted on August 15 by the Acting Regional Director: In marked contrast to the violence and strife accompany-

ing the strike and to the prophecies of the Employees' Committee Union, the balloting proceeded entirely without disorder. The Employees' Committee Union had observers present at the election and participated in the counting of the ballots. But the number of votes received by that organization—51—and the whole tenor of the balloting showed that the boycott urged by its officers and members was highly effective.

After a review of the above circumstances and a consideration of the legal precedents, the Acting Regional Director recommended that the Union be certified as the exclusive representative for collective bargaining of the employees in the unit involved. The question in this case is whether under Section 9 (a) of the Act the Union may be so certified. That Section reads as follows: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . ." Three interpretations of this language as applied to election cases have been suggested: (1) the phrase, "majority of the employees", refers to an affirmative majority of the employees eligible to vote, so that to be certified as the exclusive representative an organization must have received a number of affirmative votes equal to a majority of the employees eligible to vote in the election; (2) the phrase, "majority of the employees", refers to the employees participating in the election, so that the organization which is the victor in an election participated in by at least a majority of the eligible employees is to be certified as the exclusive representative; (3) the phrase, "majority of the employees", refers to a majority of the eligible employees voting in the election, so that the organization receiving a majority of the votes cast is to be certified as the exclusive representative.

While the Company in its oral argument urged that the first of these interpretations is the most logical, both the courts and the Board have rejected that interpretation. In *Virginian Railway Company v. System Federation No. 40*, 84 F. (2d) 641 (June 18, 1936), the Circuit Court of Appeals for the Fourth Circuit was required to consider the effect of an election under the Railway Labor Act in which an organization had received a majority of the votes cast, but not a majority of those qualified to vote, although the latter number had participated in the election. Section 2, paragraph 4 of the Railway Labor Act, as amended, provides that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of that craft or class for

the purposes of this Act." In rejecting the contention that this language required the affirmative votes of a majority of the eligible employees, the Circuit Court said:

"The clause of the act which we have quoted does not in terms require a majority vote of the craft. It merely prescribes the political principle of majority rule. Another section of the act provides the means of determining the majority, the political device of the secret election. Nothing is said as to whether the choice at such election shall be by a majority of the qualified votes, or merely by a majority of the votes cast; but the act clearly does not contemplate that there shall be such a failure of election as could easily result if the obtaining of a majority of the qualified voters were required. The universal rule as to elections of officers and representatives is that a majority of the votes cast elects, and that those not voting are presumed to acquiesce in the choice of the majority who do vote. Popular government would hardly be workable on any other basis." (Page 653.)

In a similar case, and upon identical reasoning, the Circuit Court of Appeals for the Seventh Circuit reached the same conclusion. *The Association of Clerical Employees of the A. T. & S. F. Railway System v. Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees*, 85 F. (2d) 152 (July 8, 1936). Inasmuch as the language of the two Acts is very similar and there is nothing in the legislative history to offset the normal presumption that the Congress intended to apply the same principles to the fields covered by the respective Acts, the Board has followed these decisions in two cases decided by it, *Matter of the Associated Press, a Corporation, and American Newspaper Guild*, Case No. R-26, decided July 3, 1936 (1 N. L. R. B. 686), and *Matter of New England Transportation Company and International Association of Machinists*, Case No. R-10, decided July 24, 1936 (1 N. L. R. B. 130), and has not required that an organization must receive a number of votes equal to a majority of the eligible employees in order to be certified as the exclusive representative.

The second interpretation was adopted by the District Court in the *Virginian Railway* case. In that case there were several elections. In one, a majority of the employees eligible to vote had participated in the election and one organization had received a majority of the votes cast, but not a majority of those eligible to vote. In another, less than a majority of the eligible employees had participated in the election but one organization had received a majority of the votes cast. The District Court ruled that the organization in the first election should be certified, but that the second

contest was no election because of the failure of a majority of the eligible employees to participate in the election. In so ruling it interpreted the phrase, "majority of any craft or class", to refer to the number of employees participating in the determination of the representative, by analogy to the requirement of a quorum in corporation cases. *System Federation No. 40 v. Virginian Railway Company*, 11 F. Supp. 621 (E. D. Va., 1935). The ruling on the second contest was not appealed so that the Circuit Court of Appeals had before it only an election in which both a majority of the eligible employees had participated and one organization had received a majority of the votes cast. The Circuit Court thus was not required to choose between the second and third interpretations, since either interpretation would result in the certification of the same organization. The decision of the Circuit Court is consequently not determinative between the two interpretations; the Railway Labor Act was held to embody the political principle of majority rule at least where a majority of the eligible employees had participated in the election and the question of whether such majority participation was necessary was expressly left open. The Circuit Court said:

"We see no reason why the act should not be interpreted as contemplating that this well settled rule of elections should be applied in the case of the employees' election for which it provides, in cases like this where a majority of those qualified to vote participate in the election. Such a rule is fair and just to all parties. It gives every employee an opportunity to express his choice. It preserves the secrecy of elections. And it prevents the breaking down of the plan of collective bargaining which it was the purpose of the act to set up. The rule as applied by the judge below would, on the principles applicable to a quorum in legislative assemblies, limit the choice by the majority of those voting to cases where a majority of the qualified voters participate in the election. Without passing on the validity of the limitation, we think that there can be no question as to the validity of the choice where its conditions are complied with . . . Whether the choice of a majority of those voting would also be valid even if a majority of the eligible voters do not participate in the election is a question we need not now decide." (Page 653.)⁴

⁴ *The Association of Clerical Employees of the A, T & S. F. Railway System v. Brotherhood of Railway and Steamship Clerks*, decided by the Seventh Circuit Court of Appeals, and *Matter of The Associated Press*, and *Matter of New England Transportation Company*, decided by the Board, also involved elections in which both a majority of the eligible employees had participated and one organization had received a majority of the votes cast

The District Court's decision appears to be the first case to suggest that the "quorum" interpretation is applicable to election cases. For that reason, and also in view of the Circuit Court's implied disapproval of the suggestion, this interpretation should be carefully explored. In such a consideration the special factors operating in labor elections must be kept in mind. The facts of the instant case are especially important in this regard, for they illustrate the inadvisability of an interpretation which fastens upon actual participation of a majority of the eligible employees. Such an interpretation defeats the purpose of the Act by placing a premium upon tactics of intimidation and sabotage. Minority organizations merely by peacefully refraining from voting could prevent certification of organizations which they could not defeat in an election. Even where their strength was insufficient to make a peaceful boycott effective, such minority organizations by waging a campaign of terrorism and intimidation could keep enough employees from participating to thwart certification. Employers could adopt a similar strategy and thereby deprive their employees of representation for collective bargaining.

In all such situations the purpose of the Act would be thwarted. One of its basic policies is to encourage "the practice and procedure of collective bargaining" between an employer and his employees. Section 9 (a), and especially the election procedure, is designed to promote collective bargaining by means of a prompt determination of the representative of the employees to carry on that bargaining. The object of the whole procedure is the elimination of obstructions to the free flow of commerce caused by the refusal to accept the procedure of collective bargaining. The realization of that object thus depends upon the efficacy of the election device as a peaceful means of settling disputes between contesting labor organizations. If an election is allowed to fail on account of the causes mentioned above, the results will be the continuation of unrest and strife consequent upon the doubt as to which organization is entitled to represent the employees. In the instant case such doubt has already led to a bitter strike which materially disrupted the commerce of the Company. A failure to certify in this case would perpetuate the conditions which caused that strike and thereby defeat the intent of the Act.

The "quorum" interpretation thus introduces a qualification that places in the hands of employers and rival labor organizations a weapon which may easily defeat the collective bargaining sections of the Act. Nor has the interpretation any sound basis in law or in fact. It is straining things too far to assert, as did the District Court in the *Virginian Railway* case, that in an election which was won by organization A, those employees who participated and voted

for organization B had thereby "determined" that organization A should represent them.

It is an accepted canon of statutory construction that an unwise and unworkable interpretation is to be rejected if another, and sensible, interpretation is at hand. Consequently, we feel that the third interpretation mentioned above, a majority of the eligible employees voting in the election, is required if the intent of Congress in enacting the Act is to be fulfilled. Such an interpretation is in harmony with decisions of the Supreme Court interpreting similar phrases to refer to the votes cast rather than to the number of eligible voters. In *County of Cass v. Johnston*, 95 U. S. 360 (1878), the Supreme Court considered a provision of a State Constitution which stated in part that no county, city or town could loan credit to corporations "unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto". Two-thirds of those who had voted in such an election had indicated their assent, but such number was less than two-thirds of the qualified voters. The Court held that the constitutional provision was satisfied, stating:

"This (the principle that a majority of those voting determines the issue⁵) we understand to be the established rule as to the effect of elections, in the absence of any statutory regulation to the contrary. All qualified voters who absent themselves from an election duly called are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares. Any other rule would be productive of the greatest inconvenience, and ought not to be adopted, unless the legislative will to that effect is clearly expressed." (Page 369.)

Carroll County v. Smith, 111 U. S. 556 (1884), involved a similar constitutional provision, the pertinent language being the same as that quoted above. The Court affirmed its previous ruling, stating that: "The words 'qualified voters', as used in the Constitution, must be taken to mean not those qualified and entitled to vote, but those qualified and actually voting. In that connection a voter is one who votes, not one, who, although qualified to vote, does not vote." (Page 565.) In this case, while the number of qualified voters was 3,129, the number of voters participating in the election was only 1,280, so that a quorum of two-thirds was distinctly lacking.⁶ Following

⁵ The majority governs except where the statute prescribes a different figure, such as two-thirds, etc. But the principle remains the same: two-thirds of the votes cast determines the issue; neither concurrence nor participation of two-thirds of the eligible voters is required.

⁶ In *County of Cass v. Johnston* the number of voters participating was in excess of two-thirds of those qualified to vote.

these cases the phrase, "majority of the employees", in the Act must be interpreted as meaning a majority of the employees who participate in the election, so that the organization receiving a majority of the votes cast is entitled to certification. Such an interpretation is both consistent with the broad declarations of the Act in favor of the procedure of collective bargaining, since it facilitates the choice of representatives to carry on that bargaining, and in accord with the general concepts and court decisions concerning elections.⁷

As a final matter, it was contended by the Company that whatever may be the rule established by the Act, the Board is prevented from applying that rule in this case because of the agreement concluded between the Union and the Company and affirmed by the Employees' Committee Union, and that such agreement is the law of the case. The last sentence of Paragraph 5 of that agreement states that "the Company and the Union agree that the sole bargaining agency shall be the candidate receiving a majority of the votes of all those eligible to vote in such an election." The Company contends that under this sentence the Union needed the affirmative votes of a majority of the eligible voters and having failed to secure such a number of votes cannot be certified as the exclusive representative. But such a contention overlooks entirely the fact that the election was not held pursuant to the agreement, to which the Board was not a party, but as the result of an investigation and hearing conducted by the Board in accordance with the authority conferred upon it by the Act. Under that authority the Board's power is an exclusive one and not in any way dependent upon, or affected by, such agreements between private parties in situations of this nature. Consequently, the Act and not the agreement furnishes the rule that must guide the Board in its determination.

However, in view of the nature of the agreement and the possibility of the occurrence of similar agreements in later cases, it may be profitable to analyze it further in the light of the Company's contention that it embodies the principle of an affirmative designation by a majority of the eligible employees.⁸ Under such a conten-

⁷ We need not now decide whether as an administrative matter the Board would certify even where the number of votes received, although a majority of those cast, is unsubstantial in relation to the entire unit. In *Matter of Chrysler Corporation and Society of Designing Engravers*, Case No. R-16, decided May 12, 1936 (1 N. L. R. B. 164), the Board refused to certify an organization which received 121 votes in an election in which 700 employees were eligible to vote.

⁸ Despite the Company's contention, the agreement is susceptible of another, and more reasonable, construction. The first sentence in Paragraph 5 reads as follows: "The Company and the Union agree to an election to be held under the auspices of the National Labor Relations Board and in accordance with the National Labor Relations Act * * *". The second sentence speaks of an election to be conducted "in complete accordance with that Act". In view of such language it is a reasonable interpretation of the agreement to read the last sentence of Paragraph 5 as merely embodying the views of the parties as to

tion, the last sentence must be taken to read as follows: "The Company states that it will recognize as the exclusive representative only that organization which shall receive a number of votes equal to a majority of the eligible employees and that an organization receiving a lesser number shall neither be recognized nor bargained with collectively." But as seen above, the Act in Sections 8 (5) and 9 (a) provides that an organization receiving a majority of the votes cast at an election becomes the exclusive representative for the unit and the employer must bargain with it. Thus this portion of the agreement, if construed as contended by the Company, is tantamount to a violation of the Act and its declared policy and therefore cannot be given any effect by the Board. *Weil v. Neary*, 278 U. S. 160 (1929); *Miller v. Ammon*, 145 U. S. 421 (1892); *Norman v. Baltimore & Ohio Railroad Co.*, 294 U. S. 240 (1935), and cases cited therein, pp. 306-311; *cf. System Federation No. 40 v. Virginian Railway Company*, 11 F. Supp. 621, 628 (E. D. Va., 1935). Even if the last sentence be said to be no more than a decision by the Union not to press its claim as the exclusive representative unless it received a number of votes equal to a majority of the eligible employees, that decision must be regarded as being subject to change at any time, for a binding agreement preventing it from representing employees in accordance with the Act would likewise be contrary to the policy of the Act and therefore of no effect. Nor could the Union be said to be estopped by reason of any such agreement. *Waskey v. Hammer*, 223 U. S. 85 (1912); *Pope Manufacturing Company v. Gormully*, 144 U. S. 224 (1892). The agreement therefore has no effect upon the determination of the issues in this proceeding. The right of the Union to be certified as the exclusive representative must be decided solely by reference to Section 9 (a) of the Act. That Section, as shown above, provides that the organization receiving a majority of the votes cast at an election shall be the exclusive representative for collective bargaining. Having received such a majority, the Union will be certified by the Board in accordance with Section 9 (c).

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

what is the rule of the Act, i e., their interpretation of Section 9 (a). If that interpretation is erroneous, no violence is done to the intent of the parties if the Board applies the proper interpretation of Section 9 (a) to the situation, for the election would unquestionably be "in accordance with the National Labor Relations Act". Under this construction of the agreement, the basic question must be answered solely by reference to Section 9 (a).

IT IS HEREBY CERTIFIED that the United Electrical & Radio Workers of America has been selected by a majority of the employees in an appropriate bargaining unit consisting of the hourly paid employees in the production department, the model making shop (Division No. 77) in the engineering department, and the office service division (Division No. 03) of the Camden plant of the R. C. A. Manufacturing Company, Inc., exclusive of the following groups: all supervisory employees down through and including working group leaders, all clerical employees wherever located, all lunch club section employees, process engineers, watchmen and guards, and that pursuant to Section 9 (a) of the National Labor Relations Act, the United Electrical & Radio Workers of America is the exclusive representative of all employees in the above unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.