

In the Matter of THE AMERICAN TOBACCO COMPANY and TOBACCO
WORKERS' INTERNATIONAL UNION, LOCAL No. 192

Case No. R-32.—Decided September 1, 1936

Tobacco Industry—Election Ordered: controversy concerning representation of employees—refusal by employer to recognize union as exclusive representative; request by substantial number in appropriate unit—question affecting commerce: confusion and unrest among employee; strike threatened—*Unit Appropriate for Collective Bargaining:* occupational differences; community of interest; functional coherence; eligibility for membership in petitioning union—*Labor Organization:* Board will not intervene in internal affairs of—*American Federation of Labor—Jurisdictional Dispute—Certification of Representatives.*

Mr. Mortimer Kollender, Mr. Nathan Witt, and Mr. Jacob Blum for the Board.

Mr. Jones Fuller, of Durham, N. C., Mr. P. W. Glidewell, of Reidsville, N. C., Mr. Sherwood E. Silliman and Mr. Leonard P. Moore, of New York City, for the Company.

Mr. O. R. Strackbein, of Washington, D. C., for Tobacco Workers International Union, Local No. 192.

Mr. David Kaplan, of Washington, D. C., for International Association of Machinists.

Mr. I. S. Dorfman, of counsel to the Board.

DECISION

STATEMENT OF CASE

On March 30, 1936, Tobacco Workers' International Union, Local No. 192, hereinafter called the Union, filed with the Regional Director for the Tenth Region a petition alleging that a question affecting commerce had arisen concerning the representation of the workers employed in the cigarette department of the Reidsville, North Carolina plant of The American Tobacco Company, hereinafter called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. On April 13, 1936, the National Labor Relations Board, hereinafter called the Board, authorized the said Regional Director to conduct an investigation and to provide for an appropriate hearing upon due notice. On April 29, 1936, the Regional Director

issued a notice setting the hearing for May 7, 1936. An amended notice of hearing was issued by the Regional Director on May 6, 1936, postponing said hearing from May 7 to May 14, 1936. The notice and amended notice of hearing were duly served upon the parties.

The hearing was held at Greensboro, North Carolina, on May 14, 1936, before Walter Wilbur, the Trial Examiner duly designated by the Board, and testimony was taken. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties.

The Company appeared specially by its attorney and moved to dismiss the petition for lack of jurisdiction and unconstitutionality of the Act. The Trial Examiner reserved judgment on the motion directed to the jurisdiction of the Board, but denied the motion relating to unconstitutionality. We affirm the latter ruling of the Trial Examiner, and deny the motion to dismiss for lack of jurisdiction.

Without waiving its objections to the jurisdiction of the Board, the Company filed with the Trial Examiner an answer denying that its employees engaged in processing cigarettes constitute a unit appropriate for the purposes of collective bargaining; denying that it refused to bargain collectively with its employees; denying that any question concerning representation in the cigarette department affecting commerce within the meaning of the Act had existed or now exists; and alleging that Tobacco Workers' International Union, Local 191, as well as the Union, claims to represent employees of the company engaged in the processing of cigarettes.

Without waiving the objections asserted in connection with its motion to dismiss, the Company at the hearing entered into a stipulation with the Board covering the pertinent facts relating to the nature of its business. After the submission of the stipulation the Company withdrew from further participation in the hearing.

An additional hearing was held before the Board at Washington, D. C., on July 29, 1936, for the purpose of oral argument. The Company was represented by counsel, and participated in the hearing.¹

Upon the entire record in this case, including the pleadings, the stenographic report of the hearing, the stipulations and other evidence offered and received, the Board makes the following:

¹ Prior to the hearing, an additional stipulation was entered into between the Company and the Board and made part of the record. Pursuant to the terms of this stipulation, resolutions adopted on June 26, 1936, by the Union and by Tobacco Workers' International Union, Local No. 191, a labor organization of colored workers employed at the Reidsville plant, and at the Reidsville branch of American Suppliers, Inc., were also made part of the record.

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

The American Tobacco Company, which is one of the three largest companies in the tobacco industry, is a corporation organized and existing under the laws of the State of New Jersey. Its principal office is in New York, New York. The Company and its subsidiaries manufacture and market a widely diversified line of cigarettes, cut and granulated smoking tobacco, chewing and plug chewing tobaccos and cigars, and import and sell in the United States cigarette papers in booklet form for hand rolling of cigarettes. Among the principal trade-marked brands are the following:

CIGARETTES	SMOKING TOBACCO	PLUG AND TWIST
Lucky Strike	"Bull" Durham	Piper Heidsieck
Herbert Tareyton	Half and Half	Cotton Boll
Lord Salisbury	Tuxedo	Mayos
Sweet Caporal	Blue Boar	Spear Head
Pall Mall	Carlton Club	Penn's Natural
Melachrino	Five Brothers	Leaf
Johnnie Walker	Cutty Pipe	Boot Jack
Kensitas	Ivanhoe	
CIGARS	LITTLE CIGARS	CIGARETTE PAPERS
La Corona	Piccadilly	Rix La Croix
Bock y Ca	Sweet Caporal	La Croix Wheatstraw
Henry Clay		
Cabanas		
Antonio y Cleopatra		
El Roi Tan		
Chancellor		
Cremo		

In the conduct of their business the Company and its subsidiaries own, or lease, and operate plants and other important units in the States of North Carolina, South Carolina, Virginia, Kentucky, Tennessee, Maryland, New Jersey, Connecticut, Pennsylvania, Ohio, Wisconsin and California, and in the following countries: Greece, Turkey, Italy, Cuba and Puerto Rico. A total of approximately 15,000 workers are employed at these plants and other units.

The petition before us relates to the operations of the Company at Reidsville, North Carolina, hereinafter called the Reidsville plant. Approximately 39 per cent of the Company's total production of Lucky Strike cigarettes are manufactured in and shipped from the

Reidsville plant. Little cigars are also manufactured at the Reidsville plant, but in comparatively small quantities. The plant employs 1,155 employees.

Tobacco is purchased by the Company through two wholly-owned subsidiaries, American Suppliers, Inc. and The American Tobacco Company of the Orient, Inc., purchasing in the domestic and foreign markets, respectively. Through American Suppliers, Inc., the Company purchases in the State of North Carolina approximately 30 per cent of all the domestic tobacco used by it in the manufacture of cigarettes, the remaining 70 per cent being purchased in the States of Virginia, Georgia, South Carolina, Kentucky and Tennessee. The normal inventory of tobacco maintained by the Company and its subsidiaries, throughout each year, is approximately \$100,000,000, 12 to 15 per cent of which represents tobacco purchased in foreign countries, principally Turkey and Greece.

Ingredients other than tobacco used in the manufacture of the Company's products are purchased in States outside of North Carolina, and in foreign countries. The paper used in the manufacture of cigarettes is imported from France, where it is made by a French subsidiary of the Company, known as "de Mauduit". The major portion of the materials used in wrapping the tobacco products into individual packages and cartons, including cellophane, paper wrappings, tin and wood containers, is obtained in States other than North Carolina.

A branch of American Suppliers, Inc., situated at Reidsville, North Carolina, normally effects 68 per cent of its purchases of leaf tobacco in the markets of North Carolina.² Other States supply the remaining requirements of that branch. All tobacco purchased by the branch, with the exception of burley tobacco obtained in the State of Kentucky, is shipped directly to it, where the tobacco is redried and stored for from one to three years for purposes of aging and mellowing. The burley tobacco is redried and stored in Kentucky, and then transported to the branch as needed. Upon completion of the storage period, the stems are removed from the tobacco leaf at the same branch. Thereafter the Reidsville plant requisitions from the branch all of its domestic tobacco leaf requirements. It receives its Turkish tobacco through The American Tobacco Company of the Orient directly at the plant.

At the Reidsville plant the following operations occur: The tobacco, segregated in types, such as flue cured, burley and Turkish tobacco, is treated to create uniform moisture conditions; held a day

² The percentage quoted does not take into account burley tobacco purchased in Kentucky. The record does not disclose the absolute or relative quantities of such tobacco purchased

or two until it is in proper condition for cutting and shredding; cut and shredded; blended, reblended and otherwise treated; held for approximately 6 days for proper conditioning; dressed and conveyed to cigarette making machines, where the cigarettes are formed and placed in trays. The cigarettes are then conveyed to packing machines and wrapped in individual packages of twenty cigarettes. The packages in turn are conveyed to a cellophane wrapping machine. The wrapped packages are then packed in cartons containing 200 cigarettes. Machines close and seal the cartons. Fifty such cartons are packed in individual shipping containers, which are sealed and placed in storage for from two to three weeks. The finished containers are then stacked, and loaded from platforms into railroad cars for shipment to customers. These operations are consecutive, 7 to 10 days being required to produce and prepare the finished product for shipment. In all, about 987 workers directly participate in the receipt of tobacco and the production, packing and shipping of cigarettes.

Certain of the Company's products, especially Lucky Strike cigarettes, are advertised on a nation-wide scale through the media of billboards, newspapers, magazines, window displays and the radio, such advertising costing over several million dollars a year. The Company maintains a force of salesmen operating in every State of the United States. Orders by telephone, telegraph and letter are received at the offices of the Company in New York, New York; St. Louis, Missouri; and San Francisco, California. Approximately 3 weeks' supply of Lucky Strike cigarettes is stored by the Company in warehouses at about 12 distribution points throughout the United States. In general, however, orders for the Company's other products are filled directly from its various plants, so that the greatest portion of its business is represented by products shipped directly from the factories to customers situated in every State of the United States.

Ninety-nine per cent of the Lucky Strike cigarettes and 98 per cent of the little cigars manufactured at the Reidsville plant are sold in and shipped to States other than North Carolina.

Railroads, trucks and steamships are utilized by the Company in the transportation of its raw materials and the distribution of its finished products. A railroad siding at the Reidsville plant facilitates the loading and unloading of railroad cars. Normally, seven employees of the Company unload supplies from the railroad cars, and 12 employees load finished containers of cigarettes from platforms into the cars. The Company pays the ocean freight and insurance on shipments of Turkish tobacco from the Orient to the United States, and its subsidiary, American Suppliers, Inc., pays the

freight on tobacco purchased in various domestic markets and shipped to its Reidsville branch. The American Tobacco Company pays the freight on the products shipped from its factories to the points of delivery.

Thus we see that the Company from New York, New York, is operating a huge planned enterprise, which spreads out, and, in one phase or another, reaches into every State of the United States and into several foreign countries. Without a regular and continuous flow of commerce to and from its various plants, including the Reidsville plant, it could not continue to exist. The Reidsville plant itself is but one point in this very vital stream, and the tasks of its employees range almost imperceptibly from the duties of the employees in the receiving room who usher the flow in, to those of the employees in the shipping room, who send it on its way to all the States of the United States.

We find that the operations of the Company at the Reidsville plant constitute a continuous flow of trade, traffic and commerce among the several States which would be burdened and obstructed by a strike or industrial unrest in the Reidsville plant, and that such strike or unrest would not be confined to cessation of production alone.

II. THE EXISTENCE OF A QUESTION CONCERNING THE REPRESENTATION OF EMPLOYEES IN THE REIDSVILLE PLANT

Beginning with June 14, 1935, and continuing intermittently until the latter part of March, 1936, the Union, a labor organization, has without success endeavored to persuade the Company to enter into an agreement with it concerning the wages, hours and working conditions of the employees engaged in the receiving, preparation of leaf, cigarette making, packing and shipping departments of the Reidsville plant. Throughout that period the Union claimed and now claims that a majority of such employees were and are members of its organization. The Company in that same period maintained that a written agreement was unnecessary, since it had already posted a statement of the labor policies of the Company on its bulletin board, and had stated that it would continue to deal with the Union, with individuals, and with other groups of employees.

On August 28, 1935, the members of the Union, in protest against the attitude of the Company, voted to strike, the effective date of such strike being left for further determination. A Commissioner of Conciliation of the United States Department of Labor intervened. No strike has yet taken place, but the strike resolution is still effective.

We will not discuss in detail the negotiations between the Union and the Company, or the differences between the provisions of the

agreement suggested by the Union and the policy stated by the Company, as these questions are not now before us. The issue at this point is simply whether a question concerning the representation of the employees above described has arisen.

That the Union claims to represent a majority of such employees is undisputed. That the Company does not recognize the Union as the exclusive representative of these employees is equally clear. We are satisfied that it represents a substantial number of these employees. Only an election by secret ballot can determine whether it represents a majority of such employees. Such a determination will go far towards defining the rights and duties of the respective parties under the terms of the Act. In the present state of uncertainty no effective, collective bargaining is possible.

We find that a question concerning the representation of the employees engaged in the receiving, preparation of leaf, cigarette making, packing and shipping departments of the Reidsville plant, has arisen.

III. THE EFFECT ON COMMERCE OF THE QUESTION CONCERNING REPRESENTATION

The question concerning their representation has created a state of confusion, uncertainty and unrest among the employees of the Company, as exemplified by the strike vote taken by the members of the Union. The failure of the Company to enter into an agreement with the Union has aggravated the situation. The Company took cognizance of this condition when, on October 3, 1935, it addressed a letter to all of its employees, the letter reading in part as follows:

"It is, therefore, not necessary for employees to cease work to receive their rights. The closing down of the plant, either temporarily or indefinitely, which would possibly be necessary by such action, would mean, as you well know, hardship and heavy losses to the workers. The Company would deplore having its employees led into taking extreme measures until peaceful agencies of settlement have been tried."

Thus the Company itself recognizes that a strike resulting from the above described unrest may cause the plant to be shut down temporarily or indefinitely. Such an event would necessarily embrace employees in the shipping and receiving departments as well as those engaged in production. The flow of goods in commerce to and from the Reidsville plant would inevitably be curtailed or entirely discontinued, with consequent effect upon other plants of the Company situated in and outside of the State of North Carolina.

We conclude that the question concerning representation which has arisen is a question affecting commerce, among the several States and tends to lead to labor disputes burdening and obstructing such commerce, and the free flow thereof.

IV. THE UNIT APPROPRIATE FOR THE PURPOSES OF COLLECTIVE BARGAINING

The petition filed in this matter sets forth that the unit appropriate for purposes of collective bargaining should consist of approximately 750 workers employed in the cigarette department of the Reidsville plant. At the hearing the Union defined the cigarette department to include employees engaged in the following work: receiving of supplies; preparation of leaf, cigarette; cigarette making; cigarette packing; supply handling; box making; sewing; cancelling and cutting revenue stamps; waste paper baling; miscellaneous; and shipping. Counsel for the Company at the hearing of July 29 contended that the unit should consist of all employees of the Reidsville plant, with the exception of those in supervisory positions. We shall consider only those employees as to whom the Company and the Union disagree. They are the employees of the following departments in the Reidsville plant: office, medical, power plant, machine shop, little cigars, cafeteria and watchmen.

Office employees obviously have qualifications and duties different from those of the bulk of the employees in the Reidsville plant. In addition, while most of the employees are paid on an hourly basis, office workers are paid on a weekly or monthly basis.

The medical department consists of one nurse who is on duty at all times while the factory is in operation, and a doctor who is on part time duty in the Reidsville plant, and on call when needed.

The power plant employs turbine operators, boiler operators, oilers and coal handlers.

The machine shop consists of machinists, electricians, carpenters, painters, steam-fitters, plumbers, a tinsmith and a millwright. The machinists and helpers make parts for all machines in the Reidsville plant which are not purchased elsewhere. They are also responsible for the general maintenance of the machinery in the plant. The pipe-fitters and electricians are responsible, respectively, for the maintenance of pipe-lines and electrical equipment in the plant. The carpenters and painters have the duties usually connected with their occupations.

The employees in the little cigar department constitute a group separate and apart from employees engaged in the manufacture of cigarettes. The little cigar department has its own stemmers, adjusters, feeders, operators, examiners, packers and finishers.

Cooks, dishwashers and cleaners are employed in the cafeteria department of the Reidsville plant.

It is thus apparent that the qualifications, responsibilities and duties of the employees in the categories in question differ substantially from those engaged in the cigarette department described above. Employees in the office, the medical department, the power plant, the machine shop and the cafeteria are merely adjuncts to the primary group engaged in the receipt of tobacco and the manufacture and shipment of cigarettes. The little cigar department is really a factory within a factory. It could as well be operated entirely independent of the rest of the Reidsville plant.

In determining the appropriate unit we take into consideration the fact that the employees have themselves organized the Union along lines which exclude from membership employees in the adjunct and little cigar departments described above. It is also significant that employees engaged in the power plant, machine shop, cafeteria and little cigar departments are eligible to membership in established labor organizations other than the Union.

In these circumstances and in the absence of proof of a present desire on the part of the employees engaged in the Reidsville plant to be bracketed in a single unit for the purposes of collective bargaining, we are of the opinion that the policy of the Act would be best served in this case by not including the employees in the office, medical, cafeteria, machine shop, power plant and little cigar departments and the watchmen in the same bargaining unit with the employees in the cigarette department.

The Company alleged that Tobacco Workers' International Union, Local No. 191, as well as the petitioning Union, Local No. 192, claims to represent some of the employees in the unit suggested in the petition filed. Local 191 and Local 192 are branches of one and the same labor organization, the Tobacco Workers' International Union. The membership of Local 192 consists of white persons, while that of Local 191 is made up of colored persons. Resolutions adopted by each of the Locals, and made part of the record herein, express the desire that white and colored workers, engaged in the appropriate departments of the Reidsville plant, be included in a single unit for the purposes of collective bargaining. In its resolution, Local 191 authorized Local 192 to act as its representative for the purposes of collective bargaining with the Company at the Reidsville plant. The resolution adopted by Local 192 expresses the consent of that Local to act as such representative for Local 191. It appears, therefore, that not only is there no jurisdictional conflict between the two labor organizations, but that they are operating in complete harmony with each other. We conclude that both the white and colored

employees engaged in the appropriate departments of the Reidsville plant should be included in a single unit for the purposes of collective bargaining.

We find that all employees engaged in the following cigarette departments of the Reidsville plant of the Company constitute a unit appropriate for the purpose of collective bargaining: receiving; preparation of leaf, cigarette; cigarette making; cigarette packing and cellophane wrapping; shipping and miscellaneous. A detailed functional list of all employees included in the above unit is set forth in the Appendix, attached hereto and made a part hereof.

CONCLUSIONS OF LAW

1. The employees engaged in the following cigarette departments of the Reidsville plant of the American Tobacco Company, as more fully set forth in the Appendix, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act: receiving; preparation of leaf, cigarette; cigarette making; cigarette packing and cellophane wrapping; shipping and miscellaneous.

2. A question affecting commerce has arisen concerning the representation of the employees in the above unit in the Reidsville plant of the Company, 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 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, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction of Election under the direction and supervision of Bennet F. Schauffer, Regional Director for the Fifth Region, acting in the matter as the agent of the National Labor Relations Board and subject to Article III, Section 9, of the said Rules and Regulations—Series 1, as amended, among the employees in the Reidsville plant of the American Tobacco Company on the payroll of the Company as of the date of this Direction of Election, engaged in the following cigarette departments: receiving; preparation of leaf, cigarette; cigarette making; cigarette packing and cellophane wrapping; shipping and miscellaneous, to determine whether or not they desire to be represented by Tobacco Workers' International Union, Local No. 192.

APPENDIX

Receiving.

Preparation of Leaf, Cigarette.—Feeding Strips; Textile Machine; Textile Department; Bright Ordering Machine; Turkish Ordering Machine; Weighers—Turkish Department; Bale Openers—Turkish Department; Cooking Department; Wringer Operator; Cylinder; Bulkens and Forkers; Cutting Machine Feeders; Grinding Knives for Cutting Machines; Changing Knives on Cutting Machines; Dryer Operators; Catching and Storing Tobaccos; Dressing Department; Adjusters and Oilers—Cutting Department; Cleaning and Rehandling Scrap Tobaccos; Elevator Operators and Helpers; Nicotine Extractor Operators; Floor Labor—Cutting Department; Floor Labor—Casing Department; Cleaner and Sweeper—Turkish Department; Cleaner and Sweeper—Casing Department; Cleaners and Sweepers—Cutting Department.

Cigarette Making Department.—Adjusters on Making Machines; Making Machine Operators; Catchers; Examiners; Floor Labor; Cleaners and Sweepers.

Cigarette Packing Department and Cellophane Wrapping.—Adjusters; Adjuster—Carton Sealing Machine; Adjusters—Cellophane Machines; Packing, Sealing and Weighing Containers and Miscellaneous Labor; Operators on Packing Machines; Cellophane Boxing Girls; Examiners; Banding Machine Feeders; Rehandling Packages; Floor Labor; Cleaners—Packing Department; Cleaning Medical Department, Lavatories, Dressing Room.

Shipping Department.

Miscellaneous.—Supply men; Box Making; Adjuster; Cleaner and Sweeper; Cancelling and Counting Revenue Stamps; Seamstress; Conveyor Maintenance; Operating and Cleaning Cooling Systems; Tag Meter Operator; Pastemaker; Yardmen; Wastepaper Balers; Incinerator Keeper; Laundress.

[SAME TITLE]

DECISION ON PETITION FOR INTERVENTION
AND
CERTIFICATION OF REPRESENTATIVES

October 31, 1936

On September 1, 1936, after a hearing, the Board issued a decision in which it directed that an election by secret ballot be conducted among the employees in the Reidsville plant of the American Tobacco Company, Reidsville, North Carolina, hereinafter called the Company, engaged in the following cigarette departments: receiv-

ing; preparation of leaf, cigarette; cigarette making; cigarette packing and cellophane wrapping; shipping and miscellaneous, to determine whether or not they desire to be represented by Tobacco Workers' International Union, Local No. 192, hereinafter called the Union.

On September 14, 1936, before the election was held, the International Association of Machinists (hereinafter called the I. A. M.), by A. O. Wharton, International president, filed with the Board a Petition for Intervention, alleging in substance that it is a labor organization affiliated with the American Federation of Labor; that it had no knowledge that the Petition for Investigation and Certification of Representatives in this case was before the Board prior to the release of the Decision dated September 1, 1936; that machinists and machine adjusters are eligible to membership in its organization; that machine adjusters are employed in some of the departments of the Company enumerated above; and that since it has jurisdiction over machine adjusters, and the Tobacco Workers' International Union does not, the machine adjusters should be excluded from the unit eligible to vote in the election.

Pursuant to the Direction of Election, the Regional Director for the Fifth Region conducted the election on September 17, 1936. Upon being informed by the Board that a Petition for Intervention had been filed by the I. A. M., the Regional Director segregated, unopened, the ballots cast by the machine adjusters, with the exception of one ballot which had already been mingled with other votes cast.

On September 19, 1936, pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Regional Director prepared an Intermediate Report upon the secret ballot, which he caused to be served upon the parties, and which included the following findings: 964 employees were eligible to vote, but only 487 ballots were cast, of which 471 were in favor of and seven against representation by the Union. The ballots cast by nine of the ten machine adjusters who participated in the election were listed as "challenged ballots". The Regional Director recommended that the Union should be certified as the exclusive representative of all the employees in the designated unit for purposes of collective bargaining.

Objections of the Company to the secret ballot and to the Intermediate Report thereon, filed with the Board on September 29, 1936, alleged in substance that the finding that a total of 964 employees were eligible to vote was incorrect; that the correct figure was 986; and that the Regional Director's recommendation that the Union be certified as the representative of all employees in the appropriate unit was unjustified for the reason that less than a ma-

jority of the employees in the unit voted for representation by the Union, and for the additional reason that less than a majority of the employees in the unit participated in the secret ballot.

On October 6, 1936, a hearing was held before the Board at Washington, D. C., for the purpose of oral argument on two matters: (1) the Petition for Intervention filed by the I. A. M.; and (2) the objections to the secret ballot and to the Intermediate Report filed by the Company. The Petition for Intervention is hereby allowed.

At the hearing on October 6, 1936, the Company for the first time offered in evidence a list containing the names of the employees in the appropriate unit engaged at the Reidsville plant of the company as of September 1, 1936,¹ which list was admitted in evidence by a subsequent order of the Board, dated October 8, 1936. Prior to the holding of the election the Company had refused to submit such a list to the Regional Director or the Board, although it had been requested to do so.

After causing that list to be checked with William H. Boyd, branch manager of the Reidsville plant of the Company, who had prepared it, with representatives of the Union, and with the register of those who voted in the election of September 17, 1936, the Regional Director prepared a Supplemental Intermediate Report, which he caused to be served upon the parties. This report, in addition to restating the number of ballots cast for and against representation by the Union, found that a total of 983 employees, including 47 machine adjusters, had been eligible to vote in the election, rather than 964, as had been stated in the Intermediate Report, and that all who had cast ballots in the election of September 17, 1936, were named on the list submitted by the Company. The Supplemental Intermediate Report also found that of the 986 employees named on the list submitted by the Company, three employees, Louise Alderson, Josephine Donevant and J. S. Taylor, had been ineligible to vote in the election of September 17, 1936. The former two, although listed as examiners, were in fact employed part time as clerks and part time as testers. J. S. Taylor, although listed as being in the operating and cooling system department, was in fact a night machinist. Since clerks, testers and machinists were not included in the appropriate unit in this case, the Supplemental Intermediate Report concluded that they were ineligible to vote in the election of September 17, 1936. No objections were filed to the Supplemental Intermediate Report, and we affirm its findings.

The controversy over the machine adjusters in this case is clearly a jurisdictional dispute between two unions, each of which is af-

¹ The Board's Direction of Election provided that eligibility should be determined as of September 1, 1936, the date of the Direction.

filiated with the American Federation of Labor, which is empowered to resolve such disputes. *In the Matter of The Axton-Fisher Tobacco Company and International Association of Machinists, Local No. 681, and Tobacco Workers' International Union, Local No. 16, Case No. R-5, and In the Matter of Brown and Williamson Tobacco Corporation and International Association of Machinists, Local No. 681, and Tobacco Workers' International Union, Local No. 185, Case No. R-6*, both of which cases were considered together and decided on April 23, 1936 (1 N. L. R. B. 604), we were concerned with a jurisdictional dispute over machine adjusters between the same unions involved in the instant case. In those matters we dismissed the petitions for certification of representatives and refused to pass upon the subsidiary issue of the appropriate unit, because it was perfectly clear that the machinists were represented by one union, the tobacco workers by another union, and that the only real issue was a jurisdictional dispute between the two labor organizations concerning the machine adjusters. We held, in those cases, that such disputes constitute internal problems, best solved by the labor organizations involved, and that they are not a proper concern of this Board.

Had the I. A. M. intervened in the instant matter prior to our determination of the appropriate unit, we undoubtedly would have followed the precedent set in *The Axton-Fisher* and *Brown and Williamson* cases, refused to pass upon the question whether the machine adjusters should be included in the appropriate unit, and had the Union desired it, directed that an election be held nevertheless among the tobacco workers other than machine adjusters. Since the I. A. M., through no fault of its own, was without knowledge of this proceeding until after the Direction of Election was issued, and did within a reasonable time thereafter file its Petition for Intervention, we shall treat its petition as if presented in time.

The Union has indicated that it would rather accept certification as representative of the employees in the appropriate unit exclusive of the machine adjusters, than have the petition dismissed at this time because of the jurisdictional dispute as to the machine adjusters.

We therefore amend our findings, conclusions of law, Direction of Election and Appendix of the Decision and Direction of Election in this matter, dated September 1, 1936, to exclude all machine adjusters from the unit therein held to be appropriate for purposes of collective bargaining. In excluding the machine adjusters now from the appropriate unit we are not passing upon the merits of the jurisdictional dispute between the two unions, nor are we deciding that the machine adjusters may not properly be included in the appropriate unit in question. We are merely declining to pass upon the

latter issue until such time as the jurisdictional dispute between the two labor organizations is resolved.²

The exclusion of the 47 machine adjusters leaves a total of 936 employees in the appropriate unit, 471 of whom voted in favor of representation by the Union. This constitutes a majority of all employees in the unit. It should be noted that the result would not be materially affected even though 939 employees were held eligible to vote (the figure submitted by the company in its list of employees engaged at its Reidsville plant as of September 1, 1936, minus the 47 machine adjusters), and even though the vote of the one machine adjuster, who cast his ballot before the Regional Director learned of the Petition for Intervention filed by the I. A. M., were subtracted from the total cast for representation by the Union.³

CERTIFICATION OF REPRESENTATIVES

A petition for certification of representatives having been duly filed, and an investigation and hearing having been duly authorized and conducted, and an election by secret ballot having been conducted on September 17, 1936, among the employees of the Reidsville plant of The American Tobacco Company, Reidsville, North Carolina, engaged in the following cigarette departments: receiving; preparation of leaf, cigarette; cigarette making; cigarette packing and cellophane wrapping, shipping and miscellaneous, pursuant to the National Labor Relations Board's Direction of Election dated September 1, 1936, and an Intermediate Report upon secret ballot and a Supplemental Intermediate Report upon secret ballot having been prepared by Bennet F. Schauffler, the agent of the Board designated to conduct the election, and duly served upon the parties, and objections to the Intermediate Report upon secret ballot having been filed with and considered by the Board, and no objections to the Supplemental Intermediate Report upon secret ballot having been filed with the Board by the parties pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

THEREFORE, 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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

² After the jurisdictional dispute has been resolved, we will of course have an additional fact upon which to determine the appropriate unit should a redefinition of the unit be desired by the employees concerned.

³ The remaining 470 employees who voted for representation by the Union would still constitute a majority of the 939 employees in the hypothetical appropriate unit.

IT IS HEREBY CERTIFIED THAT: Tobacco Workers' International Union, Local No. 192, has been selected by a majority of the employees engaged in the following departments of the Reidsville plant of The American Tobacco Company, Reidsville, North Carolina: receiving; preparation of leaf, cigarette; cigarette making; cigarette packing and cellophane wrapping, shipping and miscellaneous, exclusive of employees engaged in the following departments or capacities: office, supervisory, medical, power plant, machine shop, machine adjusters, little cigars, cafeteria and watchmen, as their representatives for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of said Act, Tobacco Workers' International Union, Local No. 192, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.