April 10 and another dated May 7, 1953, were handed to employees on company property. In addition, the Employer, through its vice president, made several speeches to employees on company time and property, including speeches made over the public-address system on May 7, 1953, concerning union matters or the election. On April 17, 1953, the Employer received the Petitioner's request that it be permitted to distribute handbills in the plant, under the same circumstances as the Employer, and to address the employees on company time and property. These requests were denied.

The Regional Director found that the no-solicitation rule was illegal. As the rule applied to the employees' own time, we agree.[1] Here we are confronted not merely with the existence of such a rule but with the Employer's discriminatory enforcement of the rule which we find was reasonably calculated to, or tended to, interfere with the election.[2]

Accordingly, we find that the Employer's conduct interfered with the employees' freedom of choice in the selection of a bargaining representative, and we shall, therefore, order that the election be set aside.[3] When the Regional Director determines that the circumstances permit the free choice of a bargaining representative, we direct that a new election be held among the employees concerned.

[The Board set aside the election held on May 8, 1953.]

[Text of Direction of Election omitted from publication.]

Member Rodgers took no part in the consideration of the above Decision, Order, and Direction of Election.

[1] See Livingston Shirt Corporation, et al., 107 NLRB 400.

[2] See Bonwit Teller, Inc. v. N. L. R. B., 197 F. 2d 240 (C. A. 2), cert. denied 345 U. S. 905; N. L. R. B. v. American Tube Bending Co., 205 F. 2d 45 (C. A. 2). Such conduct is clearly apart from the Board's limitations in the recently promulgated 24-hour rule, which is applicable only to conduct which is otherwise within the privileges guaranteed by Section 8 (c). See Peerless Plywood Company, 107 NLRB 427, cf. Blue Bell, Inc., 107 NLRB 514.

[3] In view of our disposition herein, we need not, and do not, pass upon the other grounds which the Regional Director found warranted the setting aside of the election.

ACCURATE MOLDING CORPORATION *and* MAX SHERMAN, Petitioner *and* LOCAL 318, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL. Case No. 2-UD-16. February 5, 1954

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

On May 1, 1953, a petition was filed by Max Sherman pursuant to Section 9 (e) (1) of the National Labor Relations Act, to withdraw the union-shop authority of the Union. Thereafter, on

June 9, 1953, the Regional Director for the Second Region conducted an election among the production and maintenance employees of the Employer at its plant located in Long Island City, New York, to determine whether the employees in that unit desired to withdraw the authority of their bargaining representative to require, under its agreement with the Employer, that membership in the Union be a condition of employment.

Upon the completion of the election, the Regional Director duly issued and served on the parties a tally of ballots, which showed that of approximately 14 eligible voters, 9 voted in favor of the above proposition, 2 voted against the above proposition, and no ballots were challenged.

Thereafter, the Employer and the Union filed timely objections to the election. On July 17, 1953, the Regional Director issued his report on objections, overruling the objections and certifying the results of the election. The Employer and the Union filed timely exceptions[1] to the Regional Director's report.

The Employer and the Union reiterate their original objection to the election. They contend principally that the election should be set aside and the deauthorization petition should be dismissed because their contract barred this proceeding and because the petition was in fact sponsored and inspired by a rival union. Like the Regional Director, we find no merit in these contentions. In The Great Atlantic & Pacific Tea Company case,[2] which was recently reaffirmed in the F. W. Woolworth Company case,[3] the Board held that the normal contract-bar rule is inapplicable in deauthorization proceedings. With respect to the second contention, we, in agreement with the Regional Director, find, without deciding the factual question, that it is irrelevant whether a deauthorization petition, filed by an individual, was sponsored or inspired by a rival union.[4]

Accordingly, we hereby overrule the exceptions of the Employer and the Union. As a majority of the employees eligible to vote have voted in favor of the proposition, we shall certify the results of the election.

[The Board certified that a majority of employees eligible to vote have voted to withdraw the authority of Local 318, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL, to require, under its agreement with the Em-

[1] The Employer's and the Union's exceptions are designated "Request for Rescission of Direction of Election and Certification Thereof."

[2] 100 NLRB 1494.

[3] 107 NLRB 671.

[4] We also find untenable the Employer's and the Union's contention that the Regional Director erred by directing an election without holding a formal hearing (see Section 102.67 of the Board's Rules and Regulations). Nor do we find merit in the Employer's and Union's contention that the election was conducted when less than 50 percent of the usual number of employees was eligible to vote because of the slack season. The Regional Director found no basis for the factual assertion Although the Employer and the Union reassert this objection, they do not offer any evidence disputing the Regional Director's factual finding.

ployer, that membership in such labor organization be a condition of employment.]

Member Murdock, concurring:

But for the fact that I now deem myself bound by the decision of a majority of the Board in the Great Atlantic & Pacific Tea Company case, recently reaffirmed in the F. W. Woolworth Company case, I would dissent and sustain the objections of the Employer and Local 318 to the election on the ground that the Regional Director should not have held the election but should have dismissed the UD petition as untimely filed at the beginning of Local 318's union-security contract.

Although I concur in the disposition of the case because I deem myself bound by the former decisions, I am constrained to point out that this case presents a vivid illustration of the undesirable results which I predicted in the dissent in the A & P case would flow from the majority's determination that a deauthorization petition might be filed at any time during a union-security contract and that a favorable vote would result in immediate cancellation of the union-security clause. Apart from the inequity of permitting a temporary majority to encroach on the rights of a minority by revoking part of a valid contract while leaving the remainder in effect, I there pointed out that one of the evils which would flow from the majority decision would be the use by "dissident minorities" of the "tactical advantage of continuous vulnerability of such a contract to disrupt the bargaining unit and the bargaining representative." The complete facts in this case show that the UD petition filed herein is merely part of a campaign by District 65, Distributive, Processing and Office Workers of America, to harass the certified incumbent union which it obviously seeks to supplant. Nine months after the latter's certification, District 65 filed an RC petition, later withdrawn as untimely filed. Only 8 days after the Employer and the certified union made a 2-year contract, District 65 itself filed a UD petition. This was withdrawn because Section 9 (e) (1) only permits "employees" to file such petitions, and the present petition of an individual, Max Sherman, was substituted. The Regional Director and the Board hold as a matter of law (and I believe correctly) that it is irrelevant that Max Sherman's petition may have been sponsored or inspired by District 65 as contended.

We thus have presented in this case a graphic example of how a rival union (which has no right at this time to test the incumbent union's representative status) may nevertheless utilize the doctrine of the majority in the A & P and Woolworth cases to conduct guerrilla warfare against an incumbent union, depriving it at the very beginning of its contract of the benefit of a provision for which it unquestionably gave up other demands in the give-and-take of bargaining, and leaving it with a mutilated contract and no power to "compel further bargaining to again balance the interests of all parties, for Section 8 (d) precludes this." As I pointed out in the A & P dissent, if

the language of the statute is followed we avoid the inequitable results here portrayed which Congress could never have contemplated, but which are the necessary result of the interpretation of the statute made by the majority in the A & P and F. W. Woolworth cases.

AMERICAN CABLE & RADIO CORPORATION *and* COMMUNICATIONS WORKERS OF AMERICA, CIO, Petitioner. Case No. 2-RC-4670. February 5, 1954

SUPPLEMENTAL DECISION, ORDER, AND DIRECTION

Pursuant to a Decision and Direction of Election issued by the Board on December 31, 1952,[1] a mail-ballot election was conducted under the direction and supervision of the Regional Director for the Second Region among the employees of the Employer in the unit found appropriate in the Decision, to determine whether or not they desired to be represented for purposes of collective bargaining by Communications Workers of America, CIO, or by The Commercial Telegraphers Union, AFL, or by the American Communications Association, Independent, or by none. The tally of ballots served upon the parties on May 29, 1953, showed the following election results:

1. Approximate number of eligibles	1,200
2. Void ballots (including 4 ballots ruled void: ruling challenged)	24
3. Votes cast for ACA	258
4. Votes cast for CTU-AFL (including 2 votes challenged as void)	258
5. Votes cast for CWA-CIO (including 4 votes challenged as void)	337
6. Votes cast against participating labor organizations	41
7. Valid votes counted	894
8. Challenged ballots (not including 6 ballots counted as valid but challenged as void)	207
9. Valid votes counted plus challenged ballots	1,101

As the challenged ballots were sufficient to affect the results of the election, the Regional Director, pursuant to Section 102.61 of the Board's Rules and Regulations, conducted an investigation of the challenged ballots. On July 31, 1953, the Acting Regional Director issued his report on challenges. In his report, he stated that the Company and the unions

[1] 101 NLRB 1759; amended 102 NLRB 877.