established in the Western Electric case,[1] we find that the negotiation of modifications in the existing agreement did not "open up" the contract to the Petitioners' prematurely filed petition.

The Petitioners' last contention, that the contract was breached by the illegal strike, is also without merit. Whatever the Employer's right to rescind the contract for the Union's breach of the no-strike clause, we are satisfied that there was no rescission in this case.[2] The attorney's statement that he considered the contract no longer in effect because of the strike appears to have been an assertion of his client's rights rather than a clear and unambiguous expression of termination. This is evidenced by the fact that immediately upon the cessation of the strike, both parties resumed negotiations for modification of the existing agreement without questioning the continued validity of that agreement. Nor has the Employer contended in this proceeding that it rescinded the contract because of the employees' strike.

For the foregoing reasons, we find that the 1950 contract as automatically renewed to June 30, 1954, is a bar to this proceeding. We shall therefore dismiss the petition without prejudice to the filing of a new petition a reasonable time before the automatic renewal date of the existing contract.

[The Board dismissed the petition.]

[1] Western Electric Company, Inc., 94 NLRB 54.
[2] See 12 American Jurisprudence 1028.

FISHER GROCERY COMPANY *and* RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL NO. 536, AFL. Case No. 13-RM-171. February 18, 1954

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election issued by the Board on September 25, 1953,[1] an election by secret ballot was conducted on October 21, 1953, under the supervision of the Regional Director for the Thirteenth Region, among employees in the unit found appropriate by the Board. Upon completion of the election, the parties were furnished with a tally of ballots which showed that of approximately 108 eligible voters, 105 cast valid ballots, of which 41 were for and 64 against the Union. There were 4 challenged ballots which are not sufficient in number to affect the results of the election.

On October 24, 1953, the Union filed timely objections to conduct allegedly affecting the results of the election. In

[1] Not reported in printed volumes of Board Decisions and Orders.

337593 O - 55 - 77

accordance with the Board's Rules and Regulations, the Regional Director found that the Union's objection #2 raised substantial and material issues, and recommended that this objection be sustained and the election be set aside. He also found that the remaining objections were without merit and recommended that they be dismissed. Thereafter, the Employer filed timely exceptions to the Regional Director's report. No exceptions were filed by the Union.

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

After working hours on October 19, 1953, which was 2 days before the election, the Employer made an antiunion, noncoercive speech[2] to employees at one of its stores. The speech was made upon the request of employees, and attendance at the meeting was voluntary. The Regional Director, relying on cases which applied the Bonwit Teller doctrine,[3] found that the Employer interfered with its employees' free choice in the election because the Employer denied the Union's request for permission to address these employees on the Employer's premises.

In the recent Livingston Shirt decision,[4] the Board abandoned the Bonwit Teller doctrine. In the companion Peerless Plywood Company case,[5] the Board ruled that during the 24-hour period before the time scheduled for an election there should be no election speeches on company time to massed assemblies of employees. Explaining the Peerless Plywood rule, the Board pointed out that a noncoercive speech made prior to the 24-hour period will not be held to interfere with an election, and said: "the rule does not prohibit employees or unions from making campaign speeches on or off company premises during the 24-hour period if employee attendance is voluntary and on the employees' own time."

It follows from these pronouncements that the Employer's noncoercive speech of October 19 did not interfere with the election herein. The speech was on the employees' own time, and attendance at the gathering was voluntary. Accordingly, even had the speech been made during the 24-hour period preceding the time scheduled for the election, it would have been unobjectionable; but here, indeed, the speech was made even before the beginning of the critical 24-hour period. Accordingly, we find that the Union's objections do not raise substantial and material issues with respect to the conduct of the election and we do not adopt the Regional Director's recommendation that the election be set aside.[6]

---

[2] In view of our disposition of this case, we find it unnecessary to rule upon the Employer's several contentions, one of which is that there was no speech, but a mere question and answer period.

[3] Bonwit Teller, Inc., 96 NLRB 608, remanded 197 F. 2d 640 (C. A. 2), employer's petition for certiorari denied 345 U S 905.

[4] 107 NLRB 400.

[5] 107 NLRB 470.

[6] Although Member Murdock dissented in part from the majority decision in the two foregoing cited cases, he now deems himself bound and accordingly has signed this decision.

As the Union failed to receive a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for Retail Clerks International Association, Local No. 536, AFL, and that the said labor organization is not the exclusive representative of the employees of the Employer in the appropriate unit.]

COLUMBIA BAKING COMPANY *and* LOCAL NO. 759, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, Petitioner. Cases Nos. 10-RC-2473 and 10-RC-2474. February 19, 1954

DECISION AND ORDER

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before John S. Patton, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in these cases, the Board finds:

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

2. The labor organizations[2] involved claim to represent employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Petitioner seeks to represent separate units of (1) all maintenance employees including utility employees; and (2) all garage mechanics and their helpers at the Employer's Jacksonville, Florida, plant. Alternately, the Petitioner would represent the two groups of employees in a single unit. The Employer and the Intervenor contend that the employees sought by the Petitioner should remain with the production employees in the overall plantwide unit presently represented by the Intervenor.

The Intervenor, as the result of a consent election,[3] was certified on August 26, 1949, as bargaining representative for a unit of all employees of the Employer.[4] On September 6,

[1] Although Chairman Farmer and Member Rodgers join in this decision, they are not to be deemed thereby as agreeing with the Board's past jurisdictional standards.

[2] Local 482, Bakery & Confectionery Workers International Union of America, AFL, herein called the Intervenor, was permitted to intervene in Case No. 10-RC-2473 upon the submission of an adequate showing of interest, and in Case No. 10-RC-2474 on the basis of a current contract.

[3] Case No. 10-RC-693.

[4] The unit was described as "All employees of the company at its Jacksonville, Florida, plant, excluding office employees, executives, professional employees, guards, sales employees and all supervisory employees as defined in the Act."