

entries on them when employees fail to punch in or out, enters time on job tickets, and tabulates not only in hours, but also in dollars and cents, the time spent on the job. These records he turns over to the cost clerk; payroll records are turned over to the clerk handling the factory payroll. He has never been considered within the scope of the bargaining unit, and is a salaried employee paid on a monthly basis. The Employer considers him a confidential employee as the information he compiles determines productive and nonproductive jobs.

In addition to the above duties, the timekeeper has the authority and responsibility of disposing of scrap material, and seeing that all rubbish and scrap is collected throughout the plant and put in its proper place. He negotiates for the sale of the scrap material, prices it, weighs it, and sees that it is properly loaded on trucks. His supervision is divided: for his scrap material activities, he is under the plant manager; he is under the auditor for his handling of the time-cards and job ticket computations.

The Petitioner and the Employer urge the exclusion of this job from the unit; the Intervenor, its inclusion. However, all parties stipulated that the present employee now filling this job should be excluded from the bargaining unit. We find this employee's interests are different from those of other employees in the unit. We shall therefore, exclude the timekeeper from the unit.

We find that all production and maintenance employees at the Employer's operation located at 1774 East 21st Street, Los Angeles, California, including all plant clericals, the shipping and receiving clerks, truckdrivers, and janitors, but excluding office clerical employees, working foremen, the timekeeper, salesmen, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. As indicated above, a strike was in progress at the time of the hearing. We shall permit all strikers to vote subject to challenge as the record is incomplete as to their eligibility to vote.

[Text of Direction of Election omitted from publication.]

OTTENHEIMER BROS. MFG. Co., INC. *and* INTERNATIONAL LADIES' GARMENT WORKERS' UNION AND LOCAL 386, ILGWU, AFL, PETITIONER.
Case No. 32-RC-352. July 16, 1954

Second Supplemental Decision, Order, and Direction of Third Election

On May 27, 1953, the Board issued a Supplemental Decision, Order, and Direction of Second Election in the above-entitled proceeding,

setting aside the election conducted on November 21, 1951, and directing a second election among employees in the appropriate unit. Pursuant to the Board's direction of second election, an election by secret ballot was conducted on December 4, 1953, among these employees under the direction and supervision of the Regional Director for the Fifteenth Region. The tally of ballots show that, of approximately 421 eligible voters, 398 cast ballots, of which 1 ballot was void and 156 ballots were cast for, and 242 against, the Petitioner; and that no ballots were challenged.

On December 11, 1953, the Petitioner filed timely objections to the election. On March 17, 1954, the Regional Director issued and served on the parties his report on objections, finding, *inter alia*, that a pre-election speech, delivered by the Employer to employees on company time and property within 24 hours of the election, constituted interference with the conduct of the election, and recommending that the election be set aside and that a new election be directed. Thereafter, the Employer filed exceptions to the report and a brief in support thereof.

The Board has reviewed the Petitioner's objections to the election, the Regional Director's report, and the Employer's exceptions thereto. Upon the entire record in the case, the Board makes the following findings:

The pertinent facts are not in dispute. In a letter dated December 2, 1953, addressed to all its employees, a copy of which was attached to the Regional Director's report, the Employer set forth its position concerning the coming election, then scheduled to be conducted on Friday, December 4, 1953. The Regional Director found that the contents of this letter did not exceed the boundaries of permissible pre-election propaganda on the part of the Employer, and concluded that the Petitioner's objection based on this letter was without merit. No exceptions were taken to his findings on this matter, and we adopt them.

On Thursday, December 3, 1953, beginning at 9 a. m. and concluding shortly after the noon hour, the Employer assembled groups of approximately 50 employees in a conference room on company property, where each group was addressed on company time by the Employer's president from a prepared statement, a copy of which was attached to the Regional Director's report. Called to attend these meetings were approximately 80 percent of the Employer's machine operators, and some 8 additional employees, totaling 284 employees eligible to vote in the election. Approximately 189 other eligible employees, including approximately 20 percent of the machine operators, were not called in and addressed at this time. The election was held as scheduled at the plant on Friday, December 4, 1953, between 8 a. m. and 11 a. m.

The Regional Director found that the Employer's December 3 address constituted a violation of the Board's recent election rule prohibiting campaign speeches on company time within 24 hours before an election.¹ The Employer takes exception to his finding.

The Employer urges that its address of December 3, 1953, to groups of machine operators should not be considered a "preelection" speech within the *Peerless Plywood* rule because it alleges that its business interests required a changeover in some production lines, resulting in lower piece-rate earnings for employees not experienced in the changed operations; that dissatisfaction among its machine operators resulted in more than twice the number of employment terminations in October and November 1953 than in the corresponding months in 1952; that, before the receipt of the notice of election, the employer had sought a price adjustment from its principal customer and that the Employer had obtained the price adjustment on the afternoon of Wednesday, December 2. The Employer further notes that the short address regarding price adjustments was read in a small room in a quiet atmosphere and only to employees affected by the price adjustments; and that the address made on Thursday was merely to offset further losses of employees over the coming weekend and that it was not delayed until Friday when it might disrupt the election day schedule of December 4. Under these circumstances, the Employer urges that the address does not come within the class of speeches prohibited under the *Peerless Plywood* rule.

We find, as did the Regional Director, contrary to the Employer's contention, that the Employer's address must fairly be characterized as a "preelection" speech in the light of all the circumstances of its delivery, including the earlier letter of December 2, the day before the address, of which we note that the address of December 3 is in part a recapitulation. The record does not disclose that the address could not have been more effectually delivered on the afternoon of Friday, December 4, after the close of the polls, in ample time to have warded off any weekend terminations due to lack of information with respect to the proposed betterment of piece rates on the new designs. Further, it cannot reasonably be urged that the address was either informal or nonpartisan.²

Under all of the circumstances, we find that the Employer's address violated the Board's rule against campaign speeches made to employees on company time within 24 hours of an election. We there-

¹ *Peerless Plywood Company*, 107 NLRB 427, issued December 17, 1953. The Regional Director found that the Employer's conduct in giving the address to its employees at this time would have been a violation of the earlier *Bonwit-Teller* rule in effect when this election was held. *Bonwit-Teller, Inc.*, 96 NLRB 608. Contrary to the Employer's contention, and for reasons stated in a recent decision, we agree with the Regional Director's finding. *The American Thermos Bottle Company*, 107 NLRB 1570, and cases cited therein.

² *General Motors Corporation, Buick Motor Division Parts Warehouse*, 108 NLRB 1207, and cases cited therein.

fore set aside the election of December 4, 1953, and direct that a new election be conducted.

[The Board set aside the election conducted on December 4, 1953.]

[Text of Direction of Third Election omitted from publication.]

ROYAL COTTON MILL COMPANY, INC. *and* TEXTILE WORKERS UNION
OF AMERICA, CIO. *Case No. 11-CA-536. July 19, 1954*

Decision and Order

On May 29, 1953, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of the National Labor Relations Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, and the entire record in the case and hereby adopts the Trial Examiner's findings, conclusions, and recommendations insofar as they are consistent with the findings and conclusions made below.

During the term of an exclusive bargaining contract with the Union, the Respondent admittedly ceased to recognize the Union as the statutory representative and refused to bargain with the Union under the contract with respect to certain grievances. The Respondent would justify its action on the ground that certain events established that the Respondent was acting in good faith, and that no violation of the Act may be found. We find no merit in that defense.

The record shows that the Respondent was confronted with a rival representation claim by the AFL¹ which represented that the employees of the Respondent voted to disaffiliate from the Union and to affiliate with the AFL. When this claim was relied upon by the Respondent in refusing to deal with the Union, the latter responded that although some of its members were "misled" into voting to secede at a "meeting" in May 1952, the members present at a meeting of the Union of August 2, 1952, voted unanimously to affirm their loyalty to the Union and requested it to process the grievances in question.

¹ United Textile Workers of America, AFL, herein called AFL.