good-faith bargaining required by Section 8 (d) of the Act and constituted a refusal to bargain in violation of Section 8 (a) (5) and 8 (a) (1) of the Act.

ULTIMATE FINDINGS AND CONCLUSIONS

In view of the foregoing, and upon consideration of the entire record, the undersigned finds and concludes that:

(1) Royal Cotton Mill Company, Inc., is engaged in commerce within the meaning of the Act.[7]

(2) Textile Workers Union of America, CIO, is a labor organization within the meaning of the Act.

(3) The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act: All production and maintenance employees at Respondent's Wake Forest, North Carolina, plant, including yardmen, the leadman in the yard, watchmen, the overhauler, the yarn sizer, section men, and factory clerical employees, but excluding office clerical employees, professional employees, and supervisors as defined in the Act.

(4) On September 21, 1950, a majority of the employees in the aforementioned unit designated the CIO as their representative for the purpose of collective bargaining and on that date and at all times material herein the CIO has been the exclusive bargaining representative of all the employees in the aforementioned appropriate unit.

(5) On or about August 12, 1952, and at all times thereafter, Respondent unlawfully refused and has continued to refuse to bargain collectively with the CIO as the representative of the employees in the unit heretofore found appropriate.

(6) By the aforesaid refusal to bargain Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) Section 2 (6) and (7) of the Act.

(7) The aforesaid unfair labor practices occurring in connection with the operations of Respondent's business, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Since it has been found that Respondent has engaged in unfair labor practices, it will be recommended that Respondent take the action hereinafter specified in order to effectuate the policies of the Act.

[Recommendations omitted from publication.]

[7] Respondent engages in the manufacture, sales, and distr bution of textile yarns and related products. Its principal place of business is located at Wake Forest, North Carolina, and in the course and conduct of its operations Respondent causes equipment, supplies, and raw materials, of a value of more than $500,000 annually, and finished products, of a value of more than $25,000 annually, to be transported and delivered in interstate commerce.

SHIRLINGTON SUPERMARKET, INC., AND ITS SUBSIDIARIES, SHIRLEY FOOD STORE NO. 1, INC., SHIRLEY FOOD STORE NO. 2, INC., SHIRLEY FOOD STORE NO. 5, INC., SHIRLEY FOOD STORE NO. 6, INC., AND WESTMONT SUPERMARKET, INC., *and* LOCAL 1501, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL. *Case No. 5–CA–775. July 19, 1954*

Order Denying Motion for Reconsideration

On April 29, 1954, the Board issued its Decision and Order herein,[1] in which it found that the first representation election among the Respondent's employees was validly set aside, and consequently that

[1] 108 NLRB 579.

the certification of the Union resulting from the second election was also valid.[2] The Board, therefore, found that the Respondent's admitted refusal to bargain with the Union following the certification was a violation of Section 8 (a) (5) and Section 8 (a) (1) of the Act.

On May 10, 1954, the Respondent filed a motion for reconsideration of the Board's Decision and Order and a supporting memorandum.

1. The Respondent contends first that because the Board established a new rule for preelection speeches [3] after the first election was set aside on the basis of a different rule for preelection speeches,[4] and because the new rule was established prior to the Decision and Order herein, the Board could not apply the old rule to this case. The *Bonwit Teller* rule, which was the rule in effect at the time of the first election, was a valid exercise at that time of the Board's administrative discretion in establishing election rules. It was not invalidated retroactively merely by the subsequent establishment of a new election rule, which the Board in its administrative discretion felt would more effectively provide the proper atmosphere under which Board elections should be conducted.[5] Accordingly, we find no merit in the Respondent's first contention.

2. The Respondent's next contention is that the Board could not apply the new rule on preelection speeches to this case either, because it was not in being at the time of the first election, and is inapplicable retroactively. This contention is based on the erroneous assumption that the Board applied the new rule to this case. As the new rule was not involved, it was not applied. The Board said only: "Therefore, even *if* our new election rule *were to be* applied to the election here, it too would require that the election be set aside, in view of the fact that the Respondent's speeches were made on company time to massed assemblies of employees only 2½ hours before the election." (Emphasis supplied.) Clearly, this was not an application of the new rule to the election, but only a showing that the election would also be set aside under the new rule *if* the new rule were applied, and therefore that the Respondent had in no way been prejudiced by a change in the rule. Accordingly, we find no merit in the Respondent's second contention.

3. The Respondent contends next that the record is devoid of evidence of speeches to any assembly, massed or otherwise, before the first election. That factual issue was fully considered, and disposed of, in

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[2] See Case No. 5–RC–1095, which is part of the record herein.

[3] See *Peerless Plywood Company*, 107 NLRB 427

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

[5] Cf. *N. L. R. B.* v *Red Rock Co., et al.*, 187 F 2d 76 (C. A. 5), cert. denied, 341 U. S 950, where having found that the interstate commerce affected by an employer's operations was sufficient to support the Board's jurisdiction, the Court rejected the employer's contention that it could avail itself of a newly promulgated Board policy under which the Board would not have asserted jurisdiction over the Respondent.

the representation case, and therefore requires no further consideration here. Accordingly, we find no merit in this contention.

4. The Respondent's next contention is that the second election was conducted after speeches by both the Respondent and the Union on company time to massed assemblies of employees within 24 hours of the election, and therefore that election should be set aside under the present *Peerless Plywood* rule on preelection speeches. This contention is a newly-raised objection to conduct affecting the results of the second election, and as it was not filed within 5 days of that election as required by the Board's Rules and Regulations,[6] it is untimely.

5. The Respondent contends next that the *Bonwit Teller* and *Peerless Plywood* doctrines are in contravention of its constitutional and statutory rights of free speech. The contention with respect to the *Bonwit Teller* doctrine was fully considered in the representation case and rejected by the Board at that time. The similar contention raised now with respect to the *Peerless Plywood* doctrine need not be considered here, because, as explained above, that doctrine has not been applied to this case. Accordingly, we find no merit in this contention.

6. The Respondent's last contention is that the Respondent should not now be required to bargain with the Union, because there has been a considerable lapse of time since certification of the Union, and because 70 percent of the employees in the appropriate unit at the time of the second election are no longer employed and the Union therefore no longer represents a majority of the employees. The union was certified on August 7, 1953. In our Decision and Order herein, we found that the Respondent unlawfully refused to bargain on and at all times after September 14, 1953. The lapse of time since certification is, therefore, primarily attributable to the Respondent's unlawful refusal to bargain. Under such circumstances, we do not believe the Respondent is in any position to now urge the lapse of time since certification as a ground for excusing it from its longstanding obligation to bargain with the Union. To accept such a contention would be to permit the Respondent to take advantage of its own unfair labor practices, and thereby defeat the purposes of the Act. Moreover, even assuming that there have been defections from the Union since September 14, 1953, they may be as much attributable to the Respondent's unlawful refusal to bargain on and after that date, as to other, unrelated causes, and therefore they could not serve to relieve the Respondent of its obligation to bargain with the Union.[7] In any event, less than a year has elapsed since the Union's certification, and a certified union's majority status, in the absence of unusual circumstances, is presumed to

[6] Series 6, as amended, Section 102 61.

[7] See *Medo Photo Supply Corp.* v. *N. L. R. B.*, 321 U. S. 678; *Franks Bros Co* v. *N. L. R. B.*, 321 U. S. 702.

continue for 1 year following certification.[8] We see no such unusual circumstances in this case. Accordingly, we find no merit in the Respondent's last contention.

As we have found no merit in the Respondent's contentions in support of its motion for reconsideration of the Board's Decision and Order herein, we shall order that the motion be denied.

[The Board denied the motion for reconsideration.]

MEMBERS RODGERS and BEESON took no part in the consideration of the above Order Denying Motion for Reconsideration.

[8] See *N. L. R. B.* v. *Ray Brooks*, 204 F. 2d 899 (C. A. 9), enforcing 98 NLRB 976. See also *The Century Oxford Manufacturing Corporation*, 47 NLRB 835, enfd. 140 F. 2d 541 (C. A. 2), where it was held that even a substantial turnover among the employees, such as alleged here, was insufficient to rebut this presumption.

DIXIE CHEMICAL CORPORATION *and* UNITED TRANSPORT SERVICE EMPLOYEES, CIO, PETITIONER. *Case No. 11–RC–503. July 20, 1954*

Supplemental Decision and Certification of Representatives

Pursuant to a Decision and Direction of Election issued herein on May 12, 1953, an election by secret ballot was conducted on May 28, 1953, under the direction and supervision of the Regional Director for the Eleventh Region among the employees in the unit found appropriate by the Board. Following the election, a tally of ballots was furnished to the parties. The tally showed that of 33 ballots cast, 11 were for and 3 against the Petitioner, and 19 ballots were challenged.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director investigated the challenges, and on September 2, 1953, issued and duly served upon the parties his report on challenged ballots. In it he recommended that the Petitioner's challenge to the ballot of Charles Smith be overruled, and that the Employer's challenge to the ballot of A. L. Johnson and the Petitioner's challenges to the ballots of Johnny Jackson, Leroy Freeman, Sam Suggs, Leroy Perry, Franklin Perry, Virgil M. Hill, Mark Chapman, Raymond Perry, James A. Dixon, Sam Cannon, Guy McLawhorn, E. R. Smith, Ransom Johnson, Arthur A. Sutton, Alfred Locust, and James L. Dixon be sustained. He made no recommendation as to the Petitioner's challenge to the ballot of Sellie Locust. As the ballots of Charles Smith and Sellie Locust could not affect the results of the election, the Regional Director further recommended that the Petitioner be certified. Thereafter, the Employer filed exceptions to the Regional Director's report and requested a hearing.