

of the Act, to discriminate in regard to the hire and tenure of employment or any term or condition of employment of Lee E. Parker or of any other employee because he is not a member of this labor organization.

WE WILL NOT in any other manner restrain or coerce employees of Teller Construction Co. in the exercise of their right to engage in or to refrain from engaging in concerted activities as guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL make Lee E. Parker whole for any loss of pay he may have suffered as a result of the discrimination against him.

OPERATIVE PLASTERERS' AND CEMENT FINISHERS'
INTERNATIONAL ASSOCIATION, LOCAL 555, AFL,
Labor Organization.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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. October 25, 1954*

Order Denying Motion for Review

On July 19, 1954, the Board issued an Order herein denying the Respondent's motion for reconsideration of the Board's Decision and Order dated April 29, 1954. On August 6, 1954, the Respondent filed a motion for review of the Board's Order denying the motion for reconsideration.

In its motion for reconsideration, the Respondent contended, *inter alia*, that the second election held among the Respondent's employees¹ 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 that election should be set aside under the *Peerless Plywood* rule.² In its Order denying the motion for reconsideration, the Board found that this contention was a newly raised objection to conduct affecting the results of the second election, and as it had not been filed within 5 days of that election as required by the Board's Rules and Regulations, it was untimely. Accordingly, the Board did not pass upon the merits of this contention. The Respondent now contends that, despite the fact that this objection was not timely filed, the Board should nevertheless consider such objection on the merits, because the *Peerless Plywood* rule was not then available as the basis for an objection to that election. In support of this contention, the Respondent points to cases in which it alleges that

¹ Case No 5-RC-1095.

² See *Peerless Plywood Company*, 107 NLRB 427.

the Board has applied the *Peerless Plywood* rule retroactively to preelection speeches which antedated the establishment of that rule.³

In the *Cross Company* and *Banner Die Fixture* cases, the Board did apply the *Peerless Plywood* rule retroactively to preelection speeches which antedated the establishment of that rule. However, the issue as to whether the speeches in those cases interfered with the elections was raised by timely objections to such conduct, and thus was properly before the Board. In the instant case, the issue as to whether the alleged speeches before the second election interfered with that election was raised by an untimely objection, and therefore is not properly before the Board. Moreover, we find no justification for considering this objection on the merits, despite its untimeliness, on the ground that the *Peerless Plywood* rule was not in existence at the time of the second election to be raised as the basis of an objection to the election. The second election was held on February 7, 1953, and the objection in question was not raised until May 10, 1954, over a year later. In our opinion, this represents too great a lapse of time to permit the retroactive application of the *Peerless Plywood* rule which the Respondent seeks. That rule was not intended to, and should not be applied to elections which were held so long ago, and which are now objected to for the first time on that basis. To hold otherwise would be to permit parties to now raise the *Peerless Plywood* rule as a basis for setting aside elections which have long since decided questions of representation and in some cases have established collective-bargaining representatives.

In view of the foregoing, we find no merit in the Respondent's motion for review, and we shall therefore order that the motion be denied.

[The Board denied the motion.]

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

³ *The Cross Company*, 107 NLRB 1267; *Banner Die Fixture Co.*, 107 NLRB 1332.

NEWPORT NEWS FORMS COMPANY, INCORPORATED and INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, AFL, PETITIONER

NEWPORT NEWS FORMS COMPANY, INCORPORATED and NEWPORT NEWS FORMS COMPANY, INCORPORATED, EMPLOYEES' COUNCIL, INDEPENDENT, PETITIONER. *Cases Nos. 5-RC-1507 and 5-RC-1513. October 25, 1954*

Decision, Order, and Direction of Election

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before 110 NLRB No. 71.