

secretary to department head, labor distribution clerk, the employee who handles the plant salary ledger, and the other departmental clerks), but excluding plant manager or superintendent, confidential secretary to the plant manager, auditor-office manager, confidential clerk or secretary to the auditor-office manager, assistant office manager, chief clerk, plant sales head, city sales head, assistant sales heads in the sales departments, all salesmen, department heads in the beef, lamb, veal, provision, table-ready meats, byproducts, advertising, credit, purchasing, transportation, industrial relations, and departmental departments, section heads in the veal, lamb, primal cut, boneless beef cutting, fresh and frozen pork and variety meats, smoked meats and sliced bacon, sweet pickle, and dry salt and lard sections, head cashier, invoice discrepancy investigator, beef, lamb, veal, and the smoked meat promotion men, all buyers, graders, and nurses, plant superintendent and assistant plant superintendent, confidential clerk and confidential secretary to the plant superintendent, chairman of the suggestion committee, safety director, plant protection and cafeteria supervisor, division superintendents, employment manager—head timekeeper, head and assistant head of the standards department, head of the statistical control and analysis department, head of the training department, pickle making foreman, all technical employees not specifically mentioned herein, production and maintenance employees, guards, foremen and assistant foremen, all other supervisors as defined in the Act, confidential secretary to the plant sales head, confidential secretary to the city sales head, head of the special cutting room, head of the dairy and poultry department, assistant head of the purchasing department, head of the voucher department, head of the cost figuring for cattle, calves, and lamb department, head of the cost figuring for hogs department, assistant head of the credit department, assistant head of the transportation department, chauffeur, pickle maker, Charles Jones, credit union employees, time-study engineers, draftsman-estimator, and statistical quality control inspectors, constitute and at all times material herein, constituted an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. The above-named labor organization was on March 6, 1957, and at all times thereafter has been, the exclusive representative of all the employees in the unit above described for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on April 5, 1957, to bargain collectively with the above-named labor organization, as the exclusive representative of all the employees in the unit above described, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By discriminating with regard to the hire and tenure of employment of Thomas E. Powers, thereby discouraging membership in the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

6. By (a) threatening an employee that union activities would be harmful; (b) advising an employee that he was passed over for other employment because of his union activities; (c) threatening an employee that he would not get a recommendation if he talked about the Union; (d) interrogating an employee as to her union activities; (e) engaging in discrimination; and (f) refusing to bargain, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

Pyramid Electric Company and International Union of Electrical, Radio & Machine Workers, AFL-CIO, Petitioner. Case No. 22-RC-5. May 20, 1958

SUPPLEMENTAL DECISION, DIRECTION, AND ORDER

Pursuant to a Decision and Direction of Election of the Board dated June 24, 1957,¹ an election was held in the above-named case on

¹ Not published.

July 12, 16, and 23, 1957, under the direction and supervision of the Regional Director for the Second Region. Thereafter, a tally of ballots was furnished the parties which showed that of approximately 611 eligible voters, 158 cast ballots for the Petitioner, 195 cast ballots against the Petitioner, and 48 ballots were challenged. The challenged ballots were sufficient to affect the results of the election.

On July 24, 1957, the Petitioner filed timely objections to conduct affecting the results of the election. In accordance with the Rules and Regulations of the Board the Regional Director conducted an investigation of the objections and challenges and on January 21, 1958, issued and served on the parties his report on objections and challenges in which he found that the Petitioner's objections did not raise any substantial or material issues with respect to the election and recommended that the objections be overruled. He also recommended that 2 challenges be sustained and the remaining 46 challenges should be overruled and the ballots counted.² Both the Employer and the Petitioner timely filed exceptions to the Regional Director's report.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

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

The Objections

1. In its first objection the Petitioner alleged that the Employer manipulated the eligibility list of employees thereby preventing a substantial number of eligible employees from voting in the election. Prior to the hearing herein, the Employer furloughed approximately 293 employees. At the hearing the Employer and Petitioner stipulated that these employees should be included in the unit and eligible to vote.³ Thereafter, on May 16, 1957, the Employer notified 259 of the furloughed employees that they were permanently discharged and notified the Board of this alleged change in their status. On June 24, 1957, the Board's Decision and Direction of Election issued finding that those of the laid-off employees with reasonable expectation of employment in the near future were eligible to vote and those having no such expectation were not eligible to vote, without identifying the employees in the two groups. At the preelection conference between the Employer and Petitioner, the Employer submitted a list of 235

² A typographical error in this portion of the Regional Director's report was corrected by the Regional Director's amendment to report on objections and challenges issued January 23, 1958.

³ The Employer also took the position that the furloughed employees would be called back in the main within 6 weeks after the date of the hearing, April 22, 1957, and that no election should be held until the call back was completed.

permanently laid-off employees⁴ and a list of 10 employees labeled as the only possible recalls in the near future. The latter 10 employees as well as the others had received permanent layoff letters, but the 10, unlike the others, were contacted by the Employer's personnel manager before election and told of their eligibility to vote and of the election arrangements. Of the laid-off employees not so notified, approximately 40 appeared at the election held during July and voted subject to challenge.

After the election the Employer continued to recall employees and by October 16, 1957, all but 76 of the laid-off employees had been offered reemployment.

In its first objection the Petitioner contended that the election should be set aside because (a) the employees were furloughed because they engaged in concerted activities on behalf of the Petitioner; (b) the permanent termination notices were sent only to those employees who favored the Petitioner; (c) during May, June, and July the Employer held back on production for which it had outstanding orders to discourage union membership and to disenfranchise furloughed employees from voting; (d) the Employer called to vote only those furloughed employees who opposed the Petitioner; and (e) the Employer coerced employees to refrain from voting by its May 16 letter.

The Regional Director found that (a), (b), and (e) occurred prior to the Board's Decision and Direction of Election on July 24, 1957, and therefore could not be considered as a basis for setting aside the election under the Board's *Woolworth* doctrine.⁵ As for (c) the Regional Director found no evidence to support the Petitioner's allegations, and as for (d), he found that while the Employer called only 10 laid-off employees to come and vote, there was no evidence to show that these calls were related to union sympathies. Accordingly, he recommended that the objection be overruled.

In its exceptions, the Petitioner contends that the *Woolworth* rule should not apply in this case because the Petitioner did not know of the Employer's May 16 letter until after the date of issuance of the Decision and Direction of Election and the full import of the Employer's conduct was not revealed until after the date of the election when the Employer began to recall furloughed employees.

While the Petitioner may not have had knowledge of the letter prior to the date of the Direction, it had such knowledge prior to the holding of the election itself. Yet the Petitioner permitted the election to be held, without in any way suggesting to Board representatives that it felt the letter precluded the holding of a fair election.

⁴ Between the time the permanent layoff letter was sent and the date of the election, some employees to whom the letter was sent were recalled. Those who accepted reemployment were listed as eligible voters.

⁵ *F. W. Woolworth Co.*, 109 NLRB 1446

Moreover, the Petitioner raised this predirection conduct in its original objections, filed before the commencement of the postelection recalls, which the Petitioner now claims revealed the full import of the Employer's conduct. In these circumstances we are satisfied that the Regional Director properly applied the *Woolworth* rule in this case.

In addition, we note that a representative complement of employees, including approximately 40 furloughed employees, voted in the election. While a number of furloughed employees did not vote, this case is not essentially different from any case in which there is a dispute between the parties as to the identity of eligible employees. Accordingly, in the absence of any evidence in support of the Petitioner's contentions (c) and (d), we shall overrule the first objection.

2. In its second objection, the Petitioner contended that an agent of the Employer offered a bribe to an employee to urge employees to vote against the Petitioner. The Regional Director found a single witness in support of this objection who testified to two instances on which he was allegedly offered bribes. The first occurred approximately 2 months before the Board's Decision and Direction of Election and accordingly cannot be considered as a basis for setting aside the election. As for the second, the witness' statements failed to support the allegations of the objection and the alleged briber denied offering a bribe or attempting to dissuade the witness from supporting the Petitioner. The Regional Director accordingly found no merit in this objection. In its exceptions, the Petitioner alleges no further evidence but contends that an objection of such gravity warrants a hearing. In the absence of any issue of fact, we do not agree, and we overrule the second objection.

3. In its objections numbers 6, 7, and 8, the Petitioner alleged that the Employer made speeches on company time and property which contained threats of reprisal in the event the employees supported the Petitioner and also violated the Board's *Peerless Plywood* rule.⁶ The Regional Director found that the speeches, delivered on July 11, 15, and 22, were made more than 24 hours before the polls opened on July 12, 16, and 23, and therefore did not violate the *Peerless Plywood* rule, which proscribes speeches on company time and property within 24 hours of an election. He also found the content of the speeches noncoercive and recommended that these objections be overruled. In its exceptions, the Petitioner contends that the election period extended from July 12 through July 23 so that the speeches on July 15 and 22 fell within the election period and were therefore proscribed. We find no merit in this construction of the *Peerless Plywood* rule. Where, as here, because of unusual conditions, an election is scheduled

⁶ *Peerless Plywood Company*, 107 NLRB 427.

to be held on several isolated days, the *Peerless Plywood* rule requires only that no speeches be given on company time or property within the 24-hour periods preceding each of the polling dates. Contrary to the Petitioner, nothing in the reasons leading to the adoption of the *Peerless Plywood* rule warrants the interpretation it would place on this rule. Likewise the fact that employees were eligible to vote on any one of the three dates does not alter this result, nor does the fact that the Employer may have had a no-solicitation rule in effect.⁷ Accordingly, we find no merit in these objections.

4. The Regional Director found no merit to the Petitioner's other objections. As no exceptions were filed to these findings, the remaining objections are overruled.

The Challenges

Forty-eight ballots were challenged at the election, of which 40 were challenged by the Employer because the employees who cast them were allegedly permanently laid off, 5 were challenged by the Petitioner because the employees who cast them were allegedly supervisors, and 3 were challenged by the Board agent because the names of the employees who cast them were not on the eligibility list. The Regional Director found that the 40 had reasonable expectancy of recall, that the 5 were not supervisors, and that 1 of the 3, Dorothy Miller, had reasonable expectancy of recall but the other 2, Peter Palmiere and Jean Jaroszewski, had either quit or refused reinstatement. He found all but the last two employees eligible to vote. The Petitioner excepts to the recommendation that the ballots of the five alleged supervisors be counted, contending that the evidence it submitted to the Regional Director supports a finding that these employees are supervisors. The Petitioner requested a hearing. However, in the absence of any specific allegations of fact contrary to the Regional Director's findings, we find the exceptions without merit and will overrule the Petitioner's challenges. The Employer excepts to the Regional Director's finding, that the 40 employees challenged by the Employer and Dorothy Miller were temporarily laid off and had reasonable expectancy of recall. The Employer does not allege any facts contrary to those on which the Regional Director based these findings. We find in agreement with the Regional Director that on the facts before him these employees were eligible to vote. Accordingly, we shall direct that the ballots of the 40 employees challenged by the Employer, the 5 challenged by the Petitioner, and Dorothy Miller be overruled and that these ballots be counted. As no exceptions were filed to the Regional Director's recommendations that the

⁷ *Goldblatt Bros., Inc.*, 119 NLRB 1711.

challenges to the ballots of Peter Palmieri and Jean Jaroszewski, be sustained, we shall adopt these recommendations.

[The Board directed that the Regional Director for the Twenty-second Region shall with ten (10) days from the date of the Direction, open and count the ballots of the employees whose names appear on Appendix A attached hereto, and serve upon the parties a revised tally of ballots. If the Petitioner receives a majority of the valid votes the Regional Director shall issue a certification of representatives; if the Union does not receive a majority of the valid votes, the Regional Director shall issue a certification of results of election.]

[The Board ordered the above-entitled matter referred to the Regional Director for the Twenty-second Region for disposition.]

APPENDIX A

C. Amato	E. Hackel	I. Prisco
Y. Angotti	M. Harris	L. Rosso
A. Asconi	E. Hundley	E. Sigro
D. Battaglino	N. Iosca	C. Ulrich
P. Bizelewicz	T. Kennedy	D. Corey
A. Buja	E. Knecht	V. Battaglino
L. DeAngelo	E. Stecz	M. Lusky
C. Danza	D. Villagomez	A. Magee
T. Darragh	M. LaPorte	M. Tosoloski
B. Doornbus	E. Tercheck	M. Van Blarcom
S. Skiados	A. Laviola	H. Wynne
L. Rivera	G. Lucci	D. Miller
E. Teitsma	A. Lusky	M. Gleason
P. Esposito	J. Mascarin	A. Merola
A. Fondacaro	M. Misciagna	J. Zeshonski
L. Greco		

Alexander Manufacturing Company and Employees Committee of Alexander Manufacturing Company, Petitioner. Case No. 15-RD-84. May 21, 1958

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John H. Immel, Jr., hearing officer. At the hearing, the Union moved to dismiss the petition on several grounds. For reasons stated *infra*, the motions are hereby denied. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.