

As the Petitioner failed to secure a majority of the valid ballots cast in the election held herein, we shall certify the results of the election.

[The Board certified that a majority of the valid votes was not cast for Retail Clerks International Association, Local 782, AFL-CIO, in the election held herein, and that said labor organization is not the exclusive representative of any of the employees involved.]

Oregon Washington Telephone Company and Local 125, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case No. 36-RC-1343. March 24, 1959

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election¹ issued September 4, 1958, an election was conducted by mailed ballots, under the direction and supervision of the Regional Director for the Nineteenth Region among the employees in the unit found appropriate in the above-mentioned decision. On September 26, 1958, a tally of ballots was furnished the parties. The tally showed that of 82 votes cast in the election, 38 were for, and 40 were against, the Petitioner, with 4 ballots challenged.

On October 3, 1958, the Petitioner filed timely objections to conduct affecting the results of the election. In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation and, on October 30, 1958, issued and duly served upon the parties a report on challenged ballots and objections to election, in which he recommended that three challenges be sustained and the fourth overruled, and that the election be set aside and a new election ordered. Thereafter, the Employer filed timely exceptions to the Regional Director's report.

The Board has considered the objections, the Regional Director's report and the Employer's exceptions thereto, and upon the entire record this case finds:

The Regional Director's recommendations with respect to the challenged ballots were not excepted to and are hereby adopted. The ballot, concerning which we overrule the challenge, cannot affect the results of the election. Accordingly we shall not order its opening.

The Petitioner objected to the election upon the ground, *inter alia*,²

¹ Unpublished.

² The Petitioner filed other objections to the election. However, the Regional Director found that these objections were without merit and recommended that they be overruled. As no exceptions have been filed to the Regional Director's recommendations as to these objections, they are hereby adopted without comment.

that the Employer assembled groups of employees on company time and property during the 24-hour period preceding the election for the purpose of making campaign speeches. The facts relating to this objection are as follows:

Balloting in this proceeding was conducted by mail. The ballots were mailed to the employees on September 17, 1958, at about 4:30 p.m. On the evening of September 19, 1958, a meeting of the traffic employees of the Employer's Hood River, Oregon, exchange, was held at the Company's office and an election speech was delivered by the Employer. Although the tally of votes from this exchange would indicate a maximum of 16 employees were involved, the exact number of employees in attendance at the meeting was not reported. The preponderance of these employees were there on their own time. However, it is undisputed, that four employees, who were on duty at the time of the meeting, were told by the chief operator that she would relieve any of the employees desiring to attend the meeting; that all or most of these on-duty employees availed themselves of the offer and attended for all or at least part of the meeting; and that these employees suffered no loss of earnings for the time so spent.

The postmarks on the envelopes in which the Hood River exchange voters returned their marked ballots to the Region revealed that four ballots were mailed on September 19, the date of the meeting; four on September 20; one on September 21; three on September 22; two on September 23; and two on September 25. From this the Regional Director found it "logical to presume" that the election was in progress when the Hood River meeting was held;³ and, relying on the *Peerless Plywood* rule,⁴ the Regional Director recommended that the objections be sustained and the election set aside.

The *Peerless Plywood* rule prohibits employers and unions "from making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election." As noted by the Regional Director, the Board has not, prior to this case, had occasion to consider the applicability of this rule, or a similar rule, to a "mail in" election.

It is our considered view that the reasons for promulgating the *Peerless Plywood* rule are relevant to situations where balloting is conducted by mail. Briefly those reasons are that, "last-minute speeches by either employers or unions delivered to massed assemblies of employees on company time have an unwholesome and unsettling effect and tend to interfere with that sober and thoughtful

³ The Employer in his brief stated that he had been advised by the Regional Office that the ballots would not be mailed until September 19, 1958. The Regional Office has administratively advised the Board that no written notice was given the parties as to when the ballots would be set out.

⁴ *Peerless Plywood Company*, 107 NLRB 427.

choice which a free election is designed to reflect . . . that the real vice is in the last-minute character of the speech coupled with the fact that it is made on company time . . . such a speech, because of its timing, tends to create a mass psychology which overrides arguments made through other campaign media and gives an unfair advantage to the party, whether employer or union, who in this manner obtains the last most telling word.”⁵

Accordingly, we now establish an election rule which will be applied to “mail in” elections. Henceforth, the Regional Director will give the parties written notice setting forth the time and date on which “mail in” ballots will be dispatched to the voters, and also setting forth a terminal time and date by which the ballots must be returned to the Regional Office. Such notice will be given the parties at least 24 hours before the time and date on which the ballots will be dispatched by the Regional Office. Employers and unions alike will be prohibited from making election speeches on company time to massed assemblies of employees within the period set forth in the notice, i.e., from the time and date on which the “mail in” ballots are scheduled to be dispatched by the Regional Office until the terminal time and date prescribed for their return. Violations of this rule by employers or unions will cause an election to be set aside whenever valid objections are filed.

Like the rule promulgated in the *Peerless Plywood* case, and for the reasons stated therein, we institute the foregoing rule pursuant to our statutory authority and obligation to conduct elections in circumstances and under conditions which will insure employees a free and untrammelled choice.

We now turn to the applicability of this new rule to the instant case. The Employer herein delivered its speech to employees, among whom were several who were on company time, during the progress of the election—which was during the period proscribed by the rule. However, as no written notice was given the parties informing them as to the time and date when the ballots would be mailed by the Regional Office, we do not find that the new rule was violated. Accordingly, we overrule the Petitioner’s objections, and we do not adopt the Regional Director’s recommendation that the election be set aside.

As the Petitioner has failed to secure 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 Local 125, International Brotherhood of Electrical Workers, AFL-CIO, and that said organization is not the exclusive representative of the Employer’s employees in the appropriate unit.]

⁵ *Ibid.*, at page 429.