

Collier's Superfood, Inc. d/b/a Willow Street IGA and Retail Store Employees Union Local No. 550, affiliated with United Food and Commercial Workers, AFL-CIO. Cases 25-CA-10758, 25-CA-11661, 25-CA-11433, 25-CA-11058, and 25-CA-11936

September 10, 1980

DECISION AND ORDER

Upon a charge in Case 25-CA-10758 filed on March 21, 1979, by Retail Store Employees Union Local No. 550, affiliated with United Food and Commercial Workers, AFL-CIO, hereinafter referred to as the Union, which charge was duly served on Collier's Superfood, Inc. d/b/a Willow Street IGA, hereinafter referred to as Respondent; an amended charge filed on May 7, 1979, by the Union and also duly served on Respondent; and a charge in Case 25-CA-11661 filed on December 17, 1979, also duly served on Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a consolidated complaint in Cases 25-CA-10758 and 25-CA-11661 on January 23, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges, consolidated complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Thereafter, Respondent timely filed an answer to the consolidated complaint. Subsequently, the Regional Director issued an amendment to the consolidated complaint in Cases 25-CA-10758 and 25-CA-11661, to which Respondent filed timely answers.

Upon a charge in Case 25-CA-11433 filed on October 11, 1979, by the Union, and duly served on Respondent, the Regional Director issued a complaint on November 16, 1979, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Thereafter, Respondent timely filed an answer to this complaint.

Upon a charge in Case 25-CA-11058 filed on June 22, 1979, by the Union, and duly served on Respondent, the Regional Director issued a complaint in Case 25-CA-11058 on March 17, 1980, against Respondent and an order consolidating

Cases 25-CA-11058, 25-CA-11433, 25-CA-10758, and 25-CA-11661. The complaint in Case 25-CA-11058 alleges that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act. Copies of the charge, complaint, order consolidating cases, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent timely filed an answer to this complaint.

Finally, upon a charge in Case 25-CA-11936 filed on March 4, 1980, by the Union, and duly served on Respondent, the Regional Director issued a complaint on April 4, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (4) and Section 2(6) and (7) of the Act. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Thereafter, Respondent timely filed an answer to this complaint.

Subsequently, on May 15, 1980, the Regional Director issued an order consolidating Cases 25-CA-10758, 25-CA-11661, 25-CA-11058, 25-CA-11433, and 25-CA-11936 for hearing.

Thereafter, on May 28, 1980, Respondent withdrew each of the answers and amended answers it had theretofore filed in each of the instant cases.

Subsequently, on June 11, 1980, the General Counsel filed with the Board a Motion for Summary Judgment. Thereafter, on June 24, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has failed to respond to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides in pertinent part that:

All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

Respondent having withdrawn its answers to the complaints herein, all allegations contained in the

complaints are deemed to be admitted to be true, and we therefore find all such allegations to be true, no good cause to the contrary having been shown. Thus, Respondent having also failed to respond to the Board's Notice To Show Cause, we hereby grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Respondent, Collier's Superfood, Inc. d/b/a Willow Street IGA, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana, with its principal office and place of business at Vincennes, Indiana, where it is engaged in the sale and distribution of grocery and related products.

Respondent, during the 12-month period April 1979 through March 1980, which period is representative of all times material herein, in the course and conduct of its business operations, purchased, transferred, and delivered to its Vincennes, Indiana, facility goods and materials valued in excess of \$50,000, which were transported to said facility directly from States other than the State of Indiana. Also during the same 12-month period, Respondent, in the course and conduct of its business operations, sold and distributed products, the gross value of which exceeded \$500,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Retail Store Employees Union Local No. 550, affiliated with United Food and Commercial Workers, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNION'S REPRESENTATIVE STATUS

All grocery department employees employed by Respondent at its retail store located in Knox County; but excluding the store manager, the assistant store manager, all meat department employees, all delicatessen employees, all professional employees, all guards and all supervisors as defined in the Act, constitute a unit appropriate for the pur-

pose of collective bargaining within the meaning of Section 9(b) of the Act.

On an unknown date in 1973, a majority of the employees in the above-described unit designated or selected the Union as their representative for the purpose of collective bargaining with Respondent. At all times since that unknown date in 1973, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the above-described unit, and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining with Respondent with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

IV. UNFAIR LABOR PRACTICES

In late January or early February 1979, Kevin Abel, assistant manager of Respondent's Vincennes store, threatened Respondent's employees with more onerous working conditions and unspecified reprisals because of the employees' support of and activities on behalf of the Union; in February 1979, Randy Truelock, manager of Respondent's Vincennes store, also threatened employees with more onerous working conditions and unspecified reprisals because of their support of and activities on behalf of the Union. We find that, by engaging in these acts and conduct, Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

In late January or early February 1979, Respondent assigned employee Crystal Cook more onerous and less desirable job tasks. Beginning in late February 1979 and continuing through the first half of April 1979, Respondent reduced the number of Cook's working hours and failed and refused to transfer her to work in the bakery. Subsequently, in late October or early November 1979, Respondent again reduced the number of Cook's working hours. Respondent took these actions because Cook joined or assisted the Union and engaged in union and concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also in order to discourage employees from engaging in such activities. We find that, by engaging in such conduct, Respondent has discriminated against Cook in regard to the terms or conditions of her employment, thereby discouraging her and other employees' membership in a union, and thus violating Section 8(a)(1) and (3) of the Act.

In February 1979, Store Manager Truelock threatened Respondent's employees with loss of benefits because of their support of and participation in the Union, and also threatened that Respondent would close the store because of the Union. Also in February 1979, Assistant Store Manager Abel told Respondent's employees that Respondent was trying to get rid of the Union. Subsequently, in late March or early April 1979, Assistant Store Manager Abel threatened Respondent's employees that Respondent would close the store in order to get rid of the Union, and that, if Respondent thereafter reopened the store, it would not be a union store. We find that, by engaging in this conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, and has thus violated Section 8(a)(1) of the Act.

Commencing on or about May 21, 1979, and continuing thereafter, the Union has requested Respondent to bargain with it as the exclusive collective-bargaining representative of the employees in the above-stated unit. On or about May 31, 1979, Respondent refused, and continues since then to refuse, to so bargain with the Union, and instead withdrew recognition from, and has since then refused to recognize, the Union, as the exclusive collective-bargaining representative of the employees in the above-stated unit. Additionally, in October 1979, without prior notice to the Union, and without having afforded the Union an opportunity to negotiate and bargain, Respondent ceased making health and welfare contributions on behalf of its employees to the Retail Clerks Union and Retail Food Employees Health and Welfare Trust Fund, and unilaterally instituted a new insurance plan on behalf of its employees, and also ceased making pension contributions on behalf of its employees to the Indiana Area Retail Clerks Union and Retail Food Employees Joint Pension Trust. Also, commencing on or about January 8, 1980, and continuing thereafter, Respondent has refused to accept, discuss, or bargain with the Union with respect to certain grievances concerning rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the above-stated unit. We find that by engaging in the above conduct, Respondent did, and is continuing to, refuse to bargain with the Union as the exclusive representative of its employees in the above-specified unit, in violation of Section 8(a)(5) and (1) of the Act.

On or about January 9, 1980, Store Manager Truelock threatened Respondent's employees that they would lose their raises, that they would be discharged, and that the store would close, because

of the employees' support of and activities on behalf of the Union, and also because unfair labor practice charges had been filed on behalf of the employees. We find that, by engaging in such conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act.

Lastly, on or about February 22, 1980, Respondent refused to grant Crystal Cook a transfer to which she was entitled and which had previously been authorized, and instead imposed more onerous and rigorous terms and conditions of employment on Cook, by assigning her to stock work. Respondent took these actions against Cook because she joined, supported, or assisted the Union, because she engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and because she gave testimony to the Board in the form of affidavits and because Respondent believed she had done so. As the result of the above actions which Respondent took against Cook, she suffered a back injury, which caused her thereafter to be absent from work. We find that by engaging in this conduct, Respondent has discriminated against Cook in order to discourage her membership in the Union, and also because she gave testimony under the Act, in violation of Section 8(a)(3), (4), and (1) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section IV, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship 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.

VI. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, we shall order Respondent to cease and desist therefrom and to take certain affirmative action which we find to be necessary to remedy the unfair labor practices and to effectuate the policies of the Act.

Respondent will be required to make Crystal Cook whole for any loss of earnings she may have suffered by reason of Respondent's unlawful assignment of her to more onerous and less desirable job tasks, reduction in the number of her working hours, refusal to transfer her to the bakery, and, since February 22, 1980, assignment of her to stock work, as a result of which assignment to stock

work she suffered a back injury which caused her thereafter to be absent from work; Cook's backpay and interest thereon are to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1952), and *Florida Steel Corporation*, 231 NLRB 651 (1977).¹ With respect to the injury sustained by Cook on or about February 22, 1980, as a result of which she was rendered unable to work, Respondent shall be required to make her whole, in the manner prescribed above, until a reasonable period after she is deemed physically able to resume her former or a substantially equivalent job with Respondent, or any other employer.

Additionally, we shall order that Respondent, upon Cook's request, transfer her from stock work, and, upon her further request, transfer her to the bakery.

Also, we shall order that, upon request by the Union, Respondent bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit. Additionally, Respondent shall be ordered, upon request of the Union, to reinstate and make up any arrears in health and welfare contributions on behalf of its employees to the Retail Clerks Union and Retail Food Employees Health and Welfare Trust Fund, and in pension contributions on behalf of its employees to the Indiana Area Retail Clerks Union and Retail Food Employees Joint Pension Trust. Finally, we shall order that Respondent, upon the Union's request, rescind the unilaterally instituted new insurance plan on behalf of its employees. However, nothing in our Order shall be construed as requiring Respondent to vary or abandon any economic benefit which has heretofore been established.

CONCLUSIONS OF LAW

1. Respondent Collier's Superfood, Inc. d/b/a Willow Street IGA, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Retail Store Employees Union Local No. 550, affiliated with United Food and Commercial Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All grocery department employees employed by Respondent at its retail store located in Knox County; but excluding the store manager, the assistant store manager, all meat department employees, all delicatessen employees, all professional employees, all guards and all supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. The above-named labor organization has been and is now the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By threatening employees with more onerous working conditions and other unspecified reprisals and by threatening employees with loss of benefits, discharge, and closure of the store in order to get rid of the Union, because of the employees' support of and activities on behalf of the Union, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. By assigning Crystal Cook more onerous and less desirable job tasks, by reducing the number of her working hours, and by failing and refusing to transfer her to work in the bakery, because Cook joined, supported, or assisted the Union and engaged in union and concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also in order to discourage employees from engaging in such activities, Respondent has discriminated and is discriminating against Cook in regard to the terms or conditions of her employment, thereby discouraging her and other employees' membership in a union, and has thus engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

7. By refusing to grant Crystal Cook a transfer to which she was entitled and which had previously been authorized; by imposing more onerous and rigorous terms and conditions of employment on her, and by assigning her to stock work, because she joined, supported, or assisted the Union, because she engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and because she gave testimony to the Board in the form of affidavits, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the Act.

8. By refusing to bargain with and by withdrawing recognition from the Union as the exclusive collective-bargaining representative of the employees in the above-stated unit; by ceasing to make pension and health and welfare contributions on behalf of its employees, without prior notice and without giving the Union an opportunity to bargain and negotiate; and by unilaterally instituting a new insurance plan on behalf of its employees; and by refusing to accept, discuss, or bargain with the

¹ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Union with respect to certain grievances concerning rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the above-stated unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Collier's Superfood, Inc. d/b/a Willow Street IGA, Vincennes, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with more onerous working conditions, loss of benefits, discharge, closure of the store, and other unspecified reprisals because of the employees' support of and activities on behalf of the Union.

(b) Assigning employees more onerous and less desirable job tasks, reducing the number of their working hours, and failing and refusing to transfer employees because they join, support, or assist a union or engage in union or concerted activities, or in order to discourage employees from engaging in such activities.

(c) Refusing to grant employees transfers to which they are entitled and which have previously been authorized, imposing more onerous and rigorous terms and conditions of employment, and assigning employees to particular duties, because they join, support, or assist unions, or engage in protected concerted activity, or because they give testimony to the Board.

(d) Refusing to bargain with and withdrawing recognition from the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit set out below, ceasing to make pension and health and welfare contributions on behalf of employees, without prior notice and without giving the Union an opportunity to bargain and negotiate, unilaterally instituting a new insurance plan on behalf of its employees, or refusing to accept, discuss, or bargain with the Union with respect to grievances concerning rates of pay, wages, hours of employment, and other terms and conditions of employment in the following appropriate unit:

All grocery department employees employed by Collier's Superfood, Inc. d/b/a Willow Street IGA at its retail store located in Knox

County; but excluding the store manager, the assistant store manager, all meat department employees, all delicatessen employees, all professional employees, all guards and all supervisors as defined in the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make Crystal Cook whole, in the manner set forth in the section of this Decision entitled "The Remedy," for any loss of earnings she may have suffered due to the discrimination practiced against her.

(b) Upon her request, transfer Crystal Cook from stock work and, upon her request, transfer her to the bakery.

(c) Upon request, bargain with the Union as the exclusive representative of all the employees in the above-stated appropriate bargaining unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(d) Upon the Union's request, reinstate and make up any arrears in health and welfare contributions on behalf of Respondent's employees to the Retail Clerks Union and Retail Food Employees Health and Welfare Trust Fund, and in pension contributions on behalf of Respondent's employees to the Indiana Area Retail Clerks Union and Retail Food Employees Joint Pension Trust.

(e) Upon the Union's request, rescind the unilaterally instituted new insurance plan on behalf of its employees; provided, however, that nothing herein shall be construed as requiring Respondent to vary or abandon any economic benefit which has heretofore been established.

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its Vincennes, Indiana, facility copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Act gives employees the right:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT threaten employees with more onerous working conditions, loss of benefits, discharge, closure of the store, and other unspecified reprisals because of their support of and activities on behalf of a labor organization.

WE WILL NOT assign employees to more onerous and less desirable job tasks, reduce the number of their working hours, or fail or refuse to transfer employees because they join, support, or assist a labor organization or engage in union or concerted activities, or in order to discourage employees from engaging in such activities.

WE WILL NOT refuse to grant employees transfers to which they are entitled and which have previously been authorized, impose more onerous and rigorous terms and conditions of employment, or assign employees to particular duties because they join, support, or assist a labor organization, or engage in protected concerted activity, or give testimony to the Board.

WE WILL NOT refuse to bargain with or withdraw recognition from Retail Store Employees Union Local No. 550, affiliated with United Food and Commercial Workers, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the unit described below.

WE WILL NOT stop making pension and health and welfare contributions on behalf of employees, without prior notice and without giving the Union an opportunity to bargain and negotiate, WE WILL NOT unilaterally institute a new insurance plan on behalf of our employees, and WE WILL NOT refuse to accept, discuss, or bargain with the Union with respect to grievances concerning rates of pay, wages, hours of employment, and other terms and conditions of employment in the unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

WE WILL make Crystal Cook whole, with interest, for any loss of earnings she may have suffered due to our discrimination against her.

WE WILL, upon her request, transfer Crystal Cook from stock work, and

WE WILL, upon her further request, transfer her to the bakery.

WE WILL, upon request, bargain with Retail Store Employees Union Local No. 550, affiliated with United Food and Commercial Workers, AFL-CIO, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment. The bargaining unit is:

All grocery department employees employed in our retail store located in Knox County, but excluding the store manager, the assistant store manager, all meat department employees, all delicatessen employees, all professional employees, all guards and all supervisors as defined in the Act.

WE WILL, upon request of the Union, reinstate and make up any arrears in health and welfare contributions on behalf of our employees to the Retail Clerk's Union and Retail Food Employees Health and Welfare Trust Fund, and in pension contributions on behalf of our employees to the Indiana Area Retail Clerks Union and Retail Food Employees Joint Pension Trust.

WE WILL, upon request of the Union, rescind the unilaterally instituted new insurance

plan on behalf of our employees. However, we are not required to vary or abandon any eco-

nomie benefit which has heretofore been established.

COLLIER'S SUPERFOOD, INC. D/B/A
WILLOW STREET IGA