

Winn-Dixie Stores, Inc. and Meat Cutters, Packing House Workers & Food Handlers, District Union No. 657, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. Case 12-CA-7704

July 14, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On October 14, 1977, Administrative Law Judge Herbert Silberman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge, to modify his remedy,² and to adopt his recommended Order.³

We agree with the Administrative Law Judge that Respondent's asserted reason for discharging employee James Altman (i.e., his intentional and admitted falsification of his employment application) was pretextual and that Altman was discharged because of his prior affiliation with the Union. Consequently, the nature of the information falsified is immaterial.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd, 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

² In his remedy, the Administrative Law Judge inadvertently specified interest on backpay "at the rate of 7 percent per annum," citing *Florida Steel Corporation*, 231 NLRB 651 (1977). In *Florida Steel*, however, the Board stated that interest on backpay shall be computed at the adjusted prime interest rate used by the U.S. Internal Revenue Service for interest on tax payments.

³ Member Murphy, contrary to her colleagues, concludes that regionwide posting of the notice to employees at all the Miami division facilities, in addition to the Board's usual requirements that Respondent cease and desist from engaging in unfair labor practices and offer the discriminatee reinstatement with backpay, will suffice to remedy the unfair labor practices found herein. She therefore disagrees with the majority's adoption of that portion of the Administrative Law Judge's recommended Order requiring Respondent to place in Miami newspapers a notice that it will not discriminate in the hire of employees on the basis of union membership or support. Although one of the violations of Sec. 8(a)(1) of the Act committed by Respondent involved one statement that Winn-Dixie had discriminated in its hiring practices, this was made by a low-level supervisor to one employee in response to a question. No unlawful hiring was alleged or found. Under these circumstances, Member Murphy concludes that the newspaper advertising requirement is not warranted.

Accordingly, the undisputed evidence that 18 other employees had been discharged for falsifying their applications is irrelevant.

Respondent argues that Altman was validly discharged under its policy of terminating employees for such falsifications of applications. The Administrative Law Judge found, and the record establishes, that the 18 employees discharged pursuant to this policy had made such misrepresentations as falsely stating that they were high school graduates, falsely denying ever filing a workmen's compensation claim, or failing to disclose a criminal record. Educational background, criminal record, and history of compensation claims are all factors which a potential employer may lawfully take into account in deciding whether to hire an applicant, and hence a discharge for falsification of information on such matters does not itself violate Section 8(a)(1) or (3) of the Act. However, an applicant's prior union activity is not a legitimate basis for hiring or refusing to hire an individual; in fact, it is well settled that requiring an applicant to reveal information about such activity is prohibited by the Act. Accordingly, an employee's failure to make such disclosure is not analogous to false statements on other subjects such as education or criminal convictions. We therefore conclude that the evidence of Respondent's policy and practice of terminating other employees for falsifying their employment applications does not justify a finding that if it were found that Respondent had discharged Altman for not disclosing his union employment such termination would have been lawful.

In this connection, the comments made to Altman by Supervisor Spradley to the effect that Respondent would not have hired Altman had it been aware of his employment with the Union and that Respondent would close rather than "have anything to do with unions"⁴ graphically illustrate Altman's dilemma at the time he applied to Winn-Dixie for employment. For, being aware of Respondent's hostility toward unions, Altman knew that he must either falsify the information as to his employment background or face the probability that Respondent would (unlawfully) refuse to hire him. Certainly the purposes of the Act would not be effectuated by finding lawful a discharge for failure to disclose information which, were it the basis for a refusal to hire, would render such an initial refusal to employ a clear violation of the statute. Thus, we cannot find that the purposes of the Act would be served by finding that, after hiring him, Respondent could lawfully discharge Altman for failing to disclose his union employment, but if

⁴ The Administrative Law Judge found, and we agree for the reasons stated by him, that these comments independently violated Sec. 8(a)(1) of the Act.

Respondent had refused to hire him in the first place for that reason it would have violated the Act. Accordingly, even if Altman were discharged for the reason asserted by Respondent, we would find it thereby acted unlawfully.

On the basis of these considerations, as well as for the reasons set forth by the Administrative Law Judge,⁵ we adopt his conclusion that Respondent's discharge of Altman violated Section 8(a)(3) and (1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Winn-Dixie Stores, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

⁵ Respondent has excepted to the Administrative Law Judge's failure to discuss in his Decision *Fiberfil, Division of Dart Industries*, 210 NLRB 1086 (1974), to which he directed the attention of counsel at the hearing and which Respondent contends is controlling in the instant case. In *Fiberfil*, the Board found that an employee was discharged for violating a company rule regarding absences and not, as found by the Administrative Law Judge, because of his union activity. In concluding, contrary to the Administrative Law Judge, that the asserted reason for the discharge was not pretextual, the Board relied on its affirmative finding that the rule had not been disparately applied to the alleged discriminatee. In the instant case, however, as demonstrated above, no such finding is warranted. Accordingly, we conclude that *Fiberfil* is inapposite here.

DECISION

STATEMENT OF THE CASE

HERBERT SILBERMAN, Administrative Law Judge: Upon a charge filed by Meat Cutters, Packing House Workers & Food Handlers, District Union No. 657, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, on May 11, 1977, a complaint dated June 21, 1977, was issued alleging that Winn-Dixie Stores, Inc., herein called the Company or Respondent, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. In substance, the complaint, as amended at the hearing, alleges that Respondent, on February 4, 1977, unlawfully discharged its employee, James Altman, and, by reason thereof and other conduct set forth in the complaint, Respondent also has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act. Respondent's answer to the complaint denies that it has engaged in the alleged unfair labor practices. A hearing in this proceeding was held in Coral Gables, Florida, on September 8, 1977. Posttrial briefs were filed with the Administrative Law Judge by the General Counsel and Respondent.

Upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, a Florida corporation, is engaged in the operation of a multistate chain of retail grocery stores and supporting facilities, including the warehouse and distribution center in Hialeah, Florida, which is the location involved in this proceeding. During the 12 months preceding the issuance of the complaint, the volume of business of the Company was in excess of \$10,000,000, and it shipped products valued in excess of \$50,000 through channels of interstate commerce from its warehouses located in the State of Florida to points outside the State of Florida. Respondent admits, and I find, that it is an employer within the meaning of Section 2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Meat Cutters, Packing House Workers & Food Handlers, District Union No. 657, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

James Altman began work on December 12, 1976, at the Company's Hialeah facility as a meatcutter at the rate of \$5 per hour. His performance was considered good. On January 10, 1977, he received what the Company refers to as a 30-day progression increase of 10 cents per hour, and then on January 21, 1977, he received an additional merit increase of 65 cents per hour.

Altman had been interviewed for employment on December 11, 1976, by the fabricating room supervisor, Julian Spradley. In connection with the interview, Altman filled out and submitted to Spradley a written employment application. Among other things, the applicant was asked to list the names and addresses of his last five employers. In response to this question, Altman stated that he had worked for Allied Supermarkets of Hollywood, Florida, from June 1969 until December 1976. On the last page of the application immediately above the line calling for the applicant's signature, in relevant part, is printed the following:

I understand and agree that my employment with this company shall be probationary for a period of ninety days, during which period I may be discharged with or without cause. I also understand that the probationary period is in no way a guarantee of employment for 90 days. I also agree that any misstatement or omission [sic] of any information requested in this application shall be valid reason for rejection of this application or discharged [sic] after employment.

Although Altman indicated on his application for em-

ployment that he had worked continuously for Allied Supermarkets from June 1969 until December 1976, in fact, he had worked as a business representative for the Union from May 1969 to December 1972.

On Thursday, February 3, 1977, the fabricating room supervisor, Spradley, received information that Altman had been an organizer for the Union. Spradley thereupon obtained Altman's employment application from the personnel department, which he reviewed in the light of the information he had just received. Spradley then discussed Altman's alleged prior union employment and the fact that such prior employment was not listed on his application with Max Justice, Spradley's immediate superior. Justice instructed Spradley to speak with Altman and ascertain whether or not the application was truthfully or falsely filled out.

About 3 p.m., Thursday, February 3, Spradley sent for Altman. The two had a conversation in Spradley's office. Present also was Robin Foster, the fabricating room foreman and Altman's immediate supervisor.¹ Following some introductory remarks, Spradley asked Altman whether he had worked for the Meat Cutter's Union. Altman responded that he had worked for the Union for approximately 3-1/2 years. Spradley then asked why he had not stated that fact on his application. Altman responded, "I needed a job, and if I put that on my application, I didn't think you'd hire me."² Spradley replied, "Well, you're right. If you [had] put that on [the application], you probably wouldn't be here."³ After several other comments, Spradley said, "Winn-Dixie will have nothing to do with unions and we're not going to have any union here. We'll close this place up before we have anything to do with unions."⁴ Altman then remonstrated, "I did not try to organize your plant. I did not talk to any of your employees about unions." During the further conversation, Spradley said that years ago a union might have been all right, but today there are laws which protect the people, they do not any longer need unions, and "we're not having anything to do with unions here in Winn-Dixie." Altman sought to justify himself by saying that when he was with the Union he did the best job he could but now that he's with the Company he's doing the best job he can for the Company. Spradley remarked that he knew that, that Altman's work was fine, and that Altman was doing a good job. After some further conversation, Spradley inquired of Foster what Foster

thought, and Foster replied that if Spradley thought he could do something Foster would like to keep Altman because he was a good worker. Spradley said that he would talk to Mr. Justice and see if he could retain Altman.

Altman was discharged about 1 p.m. the next afternoon, February 4, by Spradley. Altman remarked to Spradley, "Well, I guess you couldn't do anything?" And Spradley answered, "No, I couldn't do anything." Spradley also said that he was sorry.

Spradley testified that on the morning of Friday, February 4, he spoke with his superior Max Justice about Altman. He informed Justice that Altman was a good employee and "[w]e talked about Mr. Altman falsifying his application and making exceptions, if we should try to make an exception and keep him, my feelings towards him. Then we decided to go ahead and not make a variation of Company policy and terminate him." Therefore, according to Spradley, Altman was discharged for having falsified his application for employment. In this regard, Spradley testified:

Q. (By Mr. Levitt) Is there a policy regarding discharging employees for falsification of an application?

A. Yes, there is.

Q. What is the policy?

A. Well, the policy is if you falsify your application that you can be terminated within 90 days.⁵

Q. Is this automatic?

A. No, its on our applications.

Q. Upon finding the falsification, would the termination be automatic?

A. Yes.

Q. Is there any discretion with the supervisor?

A. Not to my knowledge.⁶

Spradley further testified that the policy of the Company with regard to terminating employees for falsifying information as stated on the application for employment has not been amplified in writing. However, he testified that years ago the personnel director had explained to him what the Company's practices were under the policy, but he has no present recollection regarding the explanation. Further, Spradley testified that apart from Altman he has no recollection of previously having had any problem involving an employee who had falsified his application for employment.

Kenneth Smith, the Company's personnel training supervisor, was called as a witness by Respondent to explain the Company's practices and policies in regard to the action it takes when it discovers that an employee has falsified his application for employment. According to Smith, when the personnel director discovers that there is misinformation or false information on an application for employment, "[w]e pass it along to the immediate supervisor of the person involved, and the action taken is decided by

¹ Foster did not testify. Altman testified in detail concerning the conversation with Spradley on February 3. His testimony was unimpeached, straightforward, and convincing. I credit Altman's version of the conversation. Spradley's recollection of the conversation was fragmentary. In two particulars he contradicted Altman; in other respects he either corroborated Altman's testimony or testified that he had no recollection.

² Altman testified that the Company has the reputation that "[t]hey don't like unions." Altman learned of Winn-Dixie's reputation in this respect from his activity in the union movement, from employees of the Company, and from experience he had in connection with a Teamsters Union strike against the Company.

³ Spradley testified, "I think I asked Mr. Altman why he didn't put down his previous employment record on his application, and the best I remember, he says: 'Well, would you have hired me?', and I said: 'Probably not.'"

⁴ Spradley testified that he does not recall, but it is possible he said that Winn-Dixie would never have a union. Spradley denied that he said Winn-Dixie would have nothing to do with unions and that they would close the plant before they would deal with any union. I do not credit these denials.

⁵ According to Spradley and Respondent's witness, Kenneth Smith, the only expression of the Company's policy appears on the application for employment quoted above, and it is noted that there are no time limitations.

⁶ Although, as appears from the testimony of Kenneth Smith, there may not be discretion at lower supervisory levels, Spradley's superior Max Justice had authority to retain Altman in the Company's employ despite the incorrect statement on Altman's application for employment.

that supervisor. There are some policies we have that there is no variation on." Smith further explained that the immediate supervisor of the employee will "confront the employee with the problem . . . and see if we can get a verbal answer of the reason. Then the decision is made by the supervisor to terminate, or whatever."

Smith further testified that there are no written instructions describing how the policy quoted from the application for employment should be implemented. It does not invariably follow that an employee who has been discovered to have falsified his application for employment would be terminated. Discharge for such infraction is not automatic. "It's according to what the falsification is." However, it would appear that discretion in this regard is not vested in lower level supervisors. Thus, Smith testified:

JUDGE SILBERMAN: The question is: when you advise a supervisor that you've discovered false information on an application, does the supervisor have the authority to retain the employee and not discharge the employee?

THE WITNESS: Not without authorization from his superior.

JUDGE SILBERMAN: What's the basis for that statement? Well, first of all, what do you mean by "from his superior?"

THE WITNESS: He's a supervisor, and he works under several other district managers, regional directors. Then they would make that decision.

JUDGE SILBERMAN: Well, let's take this case. Who is Mr. Justice?

THE WITNESS: He's the meat merchandiser. He is in charge of the meat operation.

JUDGE SILBERMAN: Is he Mr. Spradley's supervisor?

THE WITNESS: Yes, he is.

JUDGE SILBERMAN: Did Mr. Justice have the authority to retain Mr. Altman, had Mr. Justice, for whatever reason, decided to do so?

THE WITNESS: I believe he does; yes, sir.

Respondent introduced in evidence an exhibit which lists all the employees in the Company's Miami division who were discharged for falsifying their applications for employment during the period January 1, 1976, to February 12, 1977. Omitting Altman, 18 employees, all of whom worked in retail stores, were terminated for such reason.⁷ Of the 18, 15 were terminated because they falsely had indicated on their applications for employment that they were high school graduates. Kenneth Smith explained that the Company has a firm policy that employees who work in the retail stores must have a high school education. One employee was terminated for failing to reveal information concerning a criminal record, another employee was terminated for denying that he had ever filed a workmen's compensation claim when an investigation revealed otherwise, and one employee was discharged for having falsified his application in two respects—one with respect to his level of education and the other with respect to his statement that

he had not filed any workmen's compensation claim. In all instances where employees were discharged when it was discovered that their applications for employment had been incorrectly filled out, the employees furnished false or incorrect information in respect to matters which rendered them ineligible for employment under the Company's general hiring practices.

The essential facts regarding the discharge of James Altman are not in dispute. He once had worked for the Union. Had the Company known this at the time he applied for employment he would not have been hired. Of course, to have refused to hire him for such reason is itself a serious violation of the Act. When the Company later discovered that Altman had worked for the Union, it discharged him. The discharge, as the facts reveal, was an implementation of the Company's unlawful policy, simply expressed by the fabricating room supervisor, Spradley, that the Company would not hire an employee who had worked for the Union.

The Company contends that Altman was discharged because he had falsified his application for employment. However, the evidence is that that alone was not the reason for his discharge. Supervisor Spradley desired to retain Altman and addressed such request to his superior, Max Justice, who had authority to retain Altman. Justice refused to accommodate Spradley and Altman was discharged. The reason for Altman's discharge is clear. The Company was vehemently opposed to the organization of its employees, and, having learned that Altman at one time had been a union organizer, the Company's representative, Max Justice, would not retain Altman in the Company's employ. Certainly, if Justice was otherwise motivated, the Company would have called Justice as a witness in this proceeding which it did not do.

I find that James Altman was discharged by the Company because it learned that he had once worked for the Union. Such discriminatory discharge discourages membership in the Union and therefore constitutes a violation of Section 8(a)(3). Furthermore, such discharge coerces, restrains, and interferes with employees' rights to engage in self-organizational activities and other concerted activities guaranteed in Section 7 and thereby violates Section 8(a)(1) of the Act.

Further violations of Section 8(a)(1) occurred (1) by reason of Supervisor Spradley's statements to James Altman on February 3 that the Company would not have hired Altman had it known in the first instance that he had worked for the Union, and (2) by the threats Spradley delivered to Altman in the same conversation that "Winn-Dixie will have nothing to do with unions and we're not going to have any union here. We'll close this place before we have anything to do with unions."

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company set forth in section III, 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 bur-

⁷ The Company does not keep any usable records from which it can be determined whether any employees during this period had been discovered to have falsified their applications for employment but were not terminated.

dening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully discharged its employee, James Altman, on February 4, 1977, I shall recommend that Respondent offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned from the aforesaid date of his termination to the date of Respondent's offer of reinstatement, less his net earnings during such period. The backpay provided for herein shall be computed on the basis of calendar quarters, in accordance with the method prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950). Interest at the rate of 7 percent per annum shall be added to such net backpay. *Florida Steel Corporation*, 231 NLRB 651 (1977).

Respondent specifically informed James Altman that he would not have been hired because he once worked for the Union. Respondent also informed James Altman that the Company will have nothing to do with unions, it was not going to have a union, and it would close before it had anything to do with unions. This conduct, aggravated by the discharge of James Altman, probably has had a restraining and coercive effect beyond the confines of Respondent's premises. Such inference is reinforced by the uncontradicted testimony of James Altman that the Company has a reputation in the community for being an anti-union employer. The validity of this reputation is supported by the Board's findings in the *Winn-Dixie* cases cited in the footnote below.⁸ In the circumstances, a notice posted only in the Company's Hialeah warehouse and distribution center would not be adequate to reach all the persons who may have been adversely affected by the Company's unlawful conduct found in this case. Accordingly, I shall direct that the notice attached hereto as an appendix shall be posted by Respondent in all the stores, warehouses, and distribution centers of its Miami division. Further, the Company's unlawful conduct probably has had an adverse impact upon persons who may have been or may become applicants for employment with the Company. In order to erase the effects of the Company's unlawful conduct upon such persons and in order to reassure applicants for employment that the Company will not dis-

criminate against them because of membership in, or support of, any labor organization, I shall recommend that the Company publish at its expense at least once per week for 3 successive weeks in the two newspapers with the largest general circulation in the metropolitan Miami, Florida, area the following notice:

Notice to the Public

Winn-Dixie Stores, Inc., does not and will not discriminate in the hire or in the employment of any person because of membership in, or support of, any labor organization.

Such notice shall be printed, if possible, in the help wanted sections of the newspapers and shall be composed so that it will be easily noticed.

Respondent's unlawful conduct, including the discharge of James Altman, goes to the very heart of the Act and indicates a purpose to defeat self-organization of its employees. The unfair labor practices committed by Respondent are potentially related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is to be anticipated from Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the recommended Order herein is coextensive with the threat. Accordingly, in order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act, an order requiring Respondent to cease and desist from in any manner infringing upon the rights of employees guaranteed in the Act is deemed necessary. *N.L.R.B. v. Express Publishing Company*, 312 U.S. 426 (1941); *N.L.R.B. v. Entwistle Manufacturing Company*, 120 F.2d 532 (C.A. 4, 1941).

Upon the foregoing findings of fact and the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. By discriminatorily discharging James Altman on February 4, 1977, thereby discouraging membership in the Union, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.
2. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

⁸ 128 NLRB 574 (1960); 138 NLRB 1355 (1962), enf. 324 F.2d 502 (C.A. 5, 1963); the Company was held in civil and criminal contempt, see 353 F.2d 76 (C.A. 5, 1965), and 386 F.2d 309 (C.A. 5, 1967); 143 NLRB 848 (1963), enf. 341 F.2d 750 (C.A. 6, 1965), cert. denied 382 U.S. 830; 157 NLRB 657

(1966), enf. 379 F.2d 958 (C.A. 4, 1967); 166 NLRB 227 (1967), enf. 414 F.2d 786 (C.A. 5, 1969); 181 NLRB 613 (1970), enf. in part 448 F.2d 8 (C.A. 4, 1971); 207 NLRB 290 (1973); 224 NLRB 1418 (1976).

ORDER ⁹

The Respondent, Winn-Dixie Stores, Inc., Hialeah, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees in regard to their hire, tenure of employment, or other terms or conditions of employment in order to discourage membership in Meat Cutters, Packing House Workers & Food Handlers, District Union No. 657, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, or any other labor organization.

(b) Threatening employees or applicants for employment that membership in, activity on behalf of, or sympathy for the above-named Union, or any other labor organization, will constitute a bar to their employment.

(c) Threatening employees that the Company will have nothing to do with unions, will not have any union on its premises, or will close its premises before it will have anything to do with unions.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer James Altman immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed.

(b) Make James Altman whole for any loss of earnings he may have suffered by reason of Respondent's unlawful discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(c) 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 recommended Order.

(d) Publish the notice described in the section of this Decision entitled "The Remedy."

(e) Post at all its places of business encompassed by its Miami division copies of the attached notice marked "Appendix."¹⁰ Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's representative, shall be posted by it 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.

(f) Notify the Regional Director for Region 12, in writ-

ing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁰ 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."

APPENDIX

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

WE WILL NOT discharge or otherwise discriminate against any employees in regard to their hire, tenure of employment, or any term or condition of employment in order to discourage membership in Meat Cutters, Packing House Workers & Food Handlers, District Union No. 657, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, or any other labor organization.

WE WILL NOT threaten any employees or any applicants for employment that membership in, activity on behalf of, or sympathy for any labor organization will constitute a bar to their employment.

WE WILL NOT threaten any employees that we will have nothing to do with unions, that we will not have a union in any of our places of business, or that we will close any place of business before we will have anything to do with a union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL offer James Altman immediate reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of earnings he may have suffered by reason of our unlawful discrimination against him.

WINN-DIXIE STORES, INC.