

Allied Supermarkets, Inc. and Luther Clark

Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. and Luther Clark. Cases 7-CA-12420 and 7-CB-3411

November 16, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

On April 12, 1976, Administrative Law Judge Eugene George Goslee issued the attached Decision in this proceeding. Thereafter, Respondent Union and Respondent Employer filed exceptions to the Administrative Law Judge's Decision and Respondent Union filed a brief in support of exceptions.

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, and conclusions of the Administrative Law Judge and to adopt his recommended Order.¹

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 Employer, Allied Supermarkets, Inc., Livonia, Michigan, its officers, agents, successors, and assigns, and the Respondent Union, Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

CHAIRMAN FANNING, dissenting:

Again the Board finds that the maintenance and enforcement of a contract clause granting shop stewards superseniority with respect to job bidding is inherently destructive of employee rights under the Act because it rewards stewards for being "good" union members. As in *Dairyalea Cooperative, Inc.*, 219 NLRB 656 (1975), the clause in question was negotiated in good faith by the parties and approved by the employees, all of whom are required under a valid union-security clause to become and remain members in good standing with the Union. Additionally, the employees here have the right to elect their

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stewards² and the only prerequisites for election are that prospective stewards must have worked for the company and maintained good-standing membership in the Union for a period of 2 years. Thus, the opportunity to be elected steward is not conditioned on any prior union activity other than the periodic payment of dues required of every employee. Moreover, the requirement that stewards attend membership and stewards' meetings after election is entirely proper if stewards are to adequately perform their collective-bargaining duties and act as liaisons between rank-and-file employees and the Union. In these circumstances, there is no reasonable basis for inferring that the grant of superseniority to stewards is predicated on membership considerations rather than a desire to encourage or reward service as a steward, a clearly lawful purpose under the Act.

For these reasons, and for the reasons stated in my dissent in *Dairyalea Cooperative, supra*, I would be unwilling to overturn the bargaining agreement and I would dismiss the complaint.

¹ In his dissent the Chairman refers to the fact that stewards have been elected and that employees have approved the superseniority clause in question. In our opinion, however, these factors do not serve to justify an otherwise unlawful superseniority clause. Instead they serve, at most, to show that a lawful superseniority clause has not been made unlawful by abuses of union officials in administering the clause to the detriment of employees. If stewards are not elected and may instead be removed and appointed by whim of union officials, the clauses are subject to abuse, such as a union president replacing a steward with the president's brother-in-law prior to a massive layoff. Such an abuse of superseniority, even that which is limited to layoff and recall, would be unlawful.

² I do not, contrary to my colleagues' suggestion, point to the process by which members become stewards as "justify[ing] an otherwise unlawful superseniority clause" but, rather, as further indication that the clause in question is not "otherwise unlawful" to begin with.

DECISION

STATEMENT OF THE CASE

EUGENE GEORGE GOSLEE, Administrative Law Judge: These consolidated cases came on to be heard before me at Detroit, Michigan, on March 8, 1976, upon a complaint¹ issued by the General Counsel of the National Labor Relations Board, and answers filed by Allied Supermarkets, Inc., and Local 337, International Brotherhood of Teamsters. The issues raised by the pleadings relate to whether or not the Respondent Employer violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, and whether or not the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act, by acts and conduct hereinafter described. Briefs have been received from the General Counsel and the Respondent Union, and have been duly considered.

¹ The consolidated complaint was issued on December 9, 1975, upon a charge filed in Case 7-CA-12420 on October 23, 1975, and duly served on the Respondent Employer on October 28, 1975, and a charge filed in Case 7-CA-3410 on October 23, 1975, and duly served on the Respondent Union on the same date.

Upon the entire record² in this proceeding, and having observed the testimony and demeanor of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. PRELIMINARY MATTERS (COMMERCE, JURISDICTION, AND LABOR ORGANIZATION)

The complaint alleges, the answers admit, and I find that Allied Supermarkets, Inc., hereinafter called the Respondent Employer, is (1) engaged in the wholesale and retail sale and distribution of groceries at its place of business at Livonia, Michigan; (2) that during the fiscal year ending June 30, 1975, the Respondent Employer purchased goods and materials in interstate commerce in an amount valued in excess of \$50,000; and (3) that the Respondent Employer is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The complaint also alleges, the answers admit, and I find that Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., hereinafter called the Respondent Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES ALLEGED

All parties to this proceeding agree that at all times material the Respondent Union and the Respondent Employer have maintained a collective-bargaining agreement covering a unit of the Employer's drivers and warehousemen at its Livonia operations. It is similarly agreed that the collective-bargaining agreement contains section 4 of article XI, and the provision recites as follows:

The employer agrees to grant all Stewards super seniority for all purposes including lay-off, rehire and job preference if such is required by Local Union. Super seniority cannot be used for any open bids, drivers stewards will be excluded from this clause.

Concededly, the provision in section 4 of article XI is somewhat less than artfully drafted, particularly as it refers in the second sentence to open bids and the exclusion of drivers stewards. In explanation, however, the record reflects that superseniority for the warehouse employees is limited to layoff and rehire, while the provision applies to drivers stewards for purposes of job preference, as well as for purposes of layoff and recall. The record further reveals that the warehouse employees voted to limit application of the superseniority provision to layoff and recall, while the drivers voted to apply the provision to the additional condition of job preference.

The General Counsel alleges that, by maintaining the provision in section 4 of article XI in full force and effect and by enforcing the provision in the manner hereinafter described, the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act. The General Counsel also

² At the outset of the hearing the Respondent Employer amended its answer to admit that Edward Gesek, its transportation manager, is a supervisor within the meaning of Sec. 2(11) of the Act. The Respondent Employer also amended its answer to admit that Charles Wilson, Harry

alleges that, by maintaining the provision in section 4 of article XI in full force and effect and by enforcing the provision in the manner hereinafter described, the Respondent Employer violated Section 8(a)(1) and (3) of the Act. The Respondents, although admitting to the maintenance of the superseniority provision, and its enforcement, deny any violation of the Act.

Luther Clark has been employed by the Respondent Employer since November 17, 1951. His first employment was in the warehouse, but for a period of approximately the past 3 years Clark was employed as a local truckdriver. It is clear from the record that, except as structured by the superseniority provision, an employee's total tenure of employment with the Respondent Employer is counted for the purposes of bidding and job preference. It is also clear from the record that job assignments under the bidding system are made according to the time the workday begins, the product to be trucked, and the days of the workweek. The Union runs the bidding system through the process of maintaining open jobs in a book and the employees exercise their right to bid by placing their name after the job described.

Early in October 1975,³ Clark was told by Harry Brooks, a drivers steward, "Luther, it's your turn to bid." This occurred at starting time, 6:30 in the morning, and Stewards Joe Sobczek and Jim Gray were present during the conversation. Clark replied that he wanted 6:30 meat delivery, Monday through Friday. Clark was told, however, that he could not have the job because Sobczek wanted it, and Sobczek had superseniority. Clark protested on grounds that he had greater overall seniority, stated that he would not bid, and the bidding process could stop right there.

Later in the day, when out on his delivery run, Clark received a telephone call from Brooks. Brooks stated that he had been told by Charlie Wilson, the Respondent Union's business agent, that, according to Secretary-Treasurer Schuler, Clark was right and was entitled to bid on the job of his preference. However, Brooks added that a more senior employee, John Kush, wanted 6:30 meat, Monday through Friday, and Clark could not have the job. Clark replied that he did not care who got the job, so long as the bidding was right.

Within approximately 10 minutes Brooks again called Clark and told him that on further consultation Wilson and Schuler said that the superseniority provision had to be applied. Clark called Wilson and was told that he could not hold up the bid, and the matter would have to be straightened out later.

As a consequence Clark bid the next position, 6:30 meat, Monday through Saturday with Tuesday as a day off. However, because of a decline in the Respondent Employer's operations, over-the-road drivers bumped into local drivers jobs, and the bidding of early October was aborted.

On October 29 or 30, while he was on vacation, Clark was called by Brooks about bidding. Clark replied that he wanted 6:30 meat, Monday through Friday, but Brooks

Brooks, and Joe Sobczek are agents of the Union within the meaning of Sec. 2(13) of the Act.

³ All dates hereinafter are in 1975, except as specifically designated to the contrary.

answered that Sobczek had that job. Brooks added that John Kush had changed his bid from 5:30 meat, Monday through Friday, to 6:30 Monday through Saturday, with Tuesday off. Brooks added that Clark could have 5:30, Monday through Friday. Again, however, the bidding came to naught because of bumping by over-the-road drivers, and the process had to be repeated.

The bidding was resumed about November 12, and Clark asked Edward Gesek, the Respondent Employer's transportation manager, why 6:30 meat, Monday through Friday, had been removed from the book list of jobs to be bid. Gesek replied that the Company put the jobs up for bid. Clark repeated his question as to why the Union had removed the job from the book. Gesek replied that he did not know, but he would get to the bottom of the matter. Gesek called Superintendent Bill Mercer, who contacted Steward Harry Brooks. The job was restored to the book, but Sobczek was allowed to bid the job and received it. During the course of this controversy Brooks told Clark that Charlie Wilson had ordered the job removed from the book. Clark subsequently bid 6:30 meat, Monday through Saturday, with Tuesday off, but because of bids by more senior employees, Clark ended up with a 5:30 assignment.

Clark's testimony, as reviewed above, was not rebutted in any relevant respect. It is clear that in the first two abortive bids Clark was denied the right to bid a job to which his seniority might have entitled him because Union Steward Sobczek chose to exercise his superseniority. In the final bidding process Clark expressed his preference, but Sobczek, with the approval of the Respondent Union and the Respondent Employer, was allowed to exercise superseniority and he received the job. Clark was permitted to bid only on a less desirable job below the level to which he would have been entitled in view of his overall seniority.

The Board has held that steward superseniority is proper if limited to layoff and recall because it furthers the effective administration of bargaining agreements at the plant level by encouraging the continued presence of a steward on the job, to the benefit of all employees in the bargaining unit.⁴ As the Board held in the *Dairylea Cooperative*⁵ case, where the superseniority is limited to layoff and recall, "such discrimination as it may create is simply an incidental side effect of a more general benefit accorded to all employees." However, in *Dairylea Cooperative* the Board also held that "steward superseniority provisions which go beyond layoff and recall are presumptively invalid as tending to discriminate against employees for union-related reasons," and thereby restrain and coerce employees with respect to the exercise of their rights protected by Section 7 of the Act.⁶ Accordingly, where superseniority clauses are not limited on their face to layoff and recall, the burden of rebutting presumptive illegality rests with the party asserting their legality.

The Respondent Union asserts that it is the General Counsel's contention that all superseniority clauses are

illegal. This assertion is contrary to the allegations of the complaint, as well as contrary to the contents of the General Counsel's opening statement and brief. What the General Counsel contends is that, under the rule of *Dairylea Cooperative*, the superseniority provision in this case is presumptively illegal because it extends beyond layoff and recall, and that the provision was further illegally enforced to deprive Luther Clark of his right to bid on a job in accordance with his overall seniority. Of course the General Counsel also contends that the Respondents have failed to rebut the presumptive illegality of the superseniority provision.

The Respondent next urges that the rule of *Dairylea Cooperative* is too broad, as it fails to distinguish between elected and appointed steward, and also ignores the reasoning of the United States Supreme Court in the *Campbell* case.⁷ I am bound by the rule of *Dairylea Cooperative*, as that case has been enforced by the Circuit Court of Appeals.⁸ As to the *Campbell* case, the Board considered the Supreme Court's decision in *Dairylea Cooperative*, and found it not controlling. Moreover, a pertinent portion of the Supreme Court's rationale in *Campbell* was the desirability that union chairmen [stewards] have the authority and skill derived from continuity in office. That rationale applies very well in the context of superseniority for purposes of layoff and recall, but I fail to see its application where superseniority is extended to job preference. There is certainly no showing here that the Respondent Union would have lost the services of Sobczek, or would have suffered from discontinuity of his stewardship, if the contractual provision had omitted superseniority for job preference.

On the whole of the record, I find that the facts in the instant case equate in all relevant respects with those in *Dairylea Cooperative*, and the rule of that case must apply to the extent I find that the contractual provision in section 4 of article XI is presumptively invalid. There remains the necessity to determine whether the Respondent Union's evidence rebuts the presumptive illegality.⁹

There are four legs to the Respondents' case to rebut the presumptive illegality of the superseniority provision. The first is that stewards for Local 337 are elected, not appointed. In support of the argument, the Respondent Union relies on its bylaws, and asks that I take judicial notice of the constitution of the International Brotherhood of Teamsters. The Respondent Union argues that the only requirement for election and continuation in office as a steward is membership in good standing, meaning the payment of dues and fees. Respondent Union is less than specific as to how the election of its stewards and the minimal requirements for election rebut the presumption of illegality, but I surmise the argument is directed to the question of whether superseniority tends to encourage participation in union activities. On the facts it is clear that eligibility for election and continuation in office as a

⁴ *Bethlehem Steel Company (Shipbuilding Division)*, 136 NLRB 1500, 1503 (1962), citing the rationale of the United States Supreme Court in *Aeronautical Industrial District Lodge 727 v. Campbell et al.*, 337 U.S. 521 (1949).

⁵ *Dairylea Cooperative Inc.*, 219 NLRB 656 (1975).

⁶ *Dairylea Cooperative*, *supra*, 8-9.

⁷ *Aeronautical Industrial Lodge v. Campbell*, *supra*.

⁸ *N.L.R.B. v. Milk Drivers & Dairy Employees, Local 338*, 531 F.2d 1162 (C.A. 2, 1976).

⁹ I similarly reject the Respondents' argument that this case is controlled by the Supreme Court's decision in *Bowman Transportation Company*, 355 U.S. 453 (1958). The issue in this case is not remedying the effects of past discrimination, racial or otherwise, but turns on the proper application of the National Labor Relations Act.

steward does not hinge solely on the payment of dues. Subsection 5(B) of the bylaws provides that any steward not attending 50 percent of regularly called meetings is eligible for removal. It is also clear on the record that the Local Union has authority to appoint stewards when a vacancy occurs during the term of the contract. Furthermore, even if all stewards were elected under the single eligibility requirement relied on by the Respondent Union, I fail to see how this would negate the tendency inherent in the superseniority clause to encourage participation in union activities. A candidate for election must be a union member in good standing and must participate in union activities; his election depends on the votes of others who are members in good standing.

As a second contention to rebut the presumptive illegality of the superseniority provision, the Respondent argues that the contractual provision was ratified by the rank-and-file drivers on two separate occasions. The record evidence is that on March 6, 1974, the drivers held an election in which a majority voted to continue the policy of superseniority for stewards for all purposes. For reasons the record does not reveal, the same process was repeated on March 7, 1976.

I fail to perceive how approval of the membership of this contractual superseniority provision tends to rebut its presumptive illegality. A clause in a bargaining agreement requiring union membership as a condition of hire would be no less illegal because it was ratified by the employees in the bargaining unit. Moreover, essentially the same argument was presented in *Dairyalea Cooperative* [219 NLRB at 659] and disposed of by the Board as follows:

Because seniority affects conditions of employment there can be no real question that it must conform to the requirements of the Act—irrespective of its source in any agreement and even irrespective of the consent of those adversely affected.

The Respondent Union's third contention, which is largely a repetition of its first, is that neither the Union's bylaws nor unstated policy requires that stewards actively support, assist, participate, or otherwise promote the interests of the Union. Whatever the unstated policy, the contention is not supported by the content of the bylaws, as I have found above. Furthermore, the presumptive illegality of the superseniority clause in this case cannot be rebutted by evidence that, in fact, it has not encouraged participation in union activities. It is sufficient that the superseniority provision, on its face, has the tendency to restrain and coerce. Whatever the Union's unstated policy, or its source, the presumption of illegality is not rebutted.

Finally, the Respondent Union contends that there are genuine, nondiscriminatory, and pragmatic reasons why the Union's stewards should be accorded superseniority for all purposes. The contention hinges on record evidence of the duties performed by union stewards, particularly Sobczek, and the reasons he advanced in his testimony for exercising the superseniority accorded him by the bargaining agreement. Sobczek's description of his duties as a steward equate generally with the duties any steward would perform in policing and enforcing a collective-bargaining agreement. In the main, Sobczek's duties are to process

grievances at the first level, both on the job and in his free time. As to that portion of the evidence in support of the Respondent Union's contention, I find it unavailing. As found above, Sobczek's presence on the Company's premises could have been assured by a superseniority provision limited to layoff and recall, which would have adequately assured the continuity of his stewardship. Superseniority for job preference, however, becomes lawful only where it is shown to be necessary to the performance of the stewards' functions. The Respondents' argument on the pragmatic is not supported by the record.

The record facts are that, prior to November 12, Sobczek was assigned to 6:30 meat, Tuesday through Saturday. According to Sobczek's testimony he exercised his superseniority privilege for 6:30, Monday through Friday, because more employees worked on the latter shift and there was greater need for his services. However, the record also reflects that there were two stewards already assigned on the Monday through Friday shift. Furthermore, Sobczek's transfer left the employees who worked the daytime shift on Saturday without any union steward. Sobczek's initial election as a union steward was prompted, at least in part, by his assignment to work on Saturday, and his reassignment to the Monday through Friday shift defeated, rather than promoted, the continuity of his stewardship and the Union's need to enforce the bargaining agreement and to process grievances.

In summing up the Respondent's contentions, I recognize that in *Dairyalea Cooperative* the Board did not set down precise guidelines as to what facts or circumstances will rebut the presumptive illegality of a superseniority clause which stretches beyond layoff and recall. Nevertheless, the essential rationale of *Dairyalea Cooperative* is that limited superseniority provisions are lawful because they further effective administration of bargaining agreements on the plant level by encouraging the continued presence of the steward on the job. It follows, *a fortiori*, that the presumptive illegality of a superseniority provision extending to job preference can only be rebutted by evidence that the benefit is necessary to achieve the same goals. Here, Sobczek's exercise of superseniority was not required to achieve, or encourage the achievement, of his continued presence on the job as a steward. Neither can it be said that his exercise of superseniority contributed to the effective administration of the bargaining agreement because he transferred to a shift where two stewards were already available, leaving employees who worked on Saturday without the benefit of a steward's services.

In summary, I find and conclude that, by maintaining and enforcing the superseniority clause here in issue, the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act, and the Respondent Employer violated Section 8(a)(1) and (3) of the Act. I further find and conclude that by according Steward Sobczek superseniority under the illegal clause with respect to the bidding which occurred on or about November 12, 1975, thus depriving Luther Clark of the opportunity to bid the 6:30 Monday through Friday schedule, the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act, and the Respondent Employer violated Section 8(a)(1) and (3) of the Act.

III. THE REMEDY

Having found that the Respondents engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom, and take certain affirmative action to remedy the unfair labor practices and to effectuate the policies of the Act.

As I have found the steward superseniority clause here in dispute to be unlawful, I shall recommend that the Respondent Union cease and desist from maintaining and enforcing such clause in its bargaining agreement with the Respondent Employer. I shall also recommend that the Respondent Employer cease and desist from maintaining and enforcing such clause in its bargaining agreement with the Respondent Union.

As I have also found unlawful the application of the superseniority provision in the bidding procedure of November 12, 1975, I shall recommend that the Respondents take certain affirmative action. Insofar as the record reflects, neither Luther Clark, nor any other employee, suffered any loss of earnings by reason of Sobczek's exercise of superseniority and, accordingly, a make-whole remedy does not seem to be required. Nevertheless, a remedy is necessary to undo the effects of the application of the unlawful superseniority provision. The tailoring of an affirmative remedy here is complicated, however, by special factual circumstances. From the record as a whole it appears that one or more other employees were involved in the November 12 bidding procedure, who may have had greater overall seniority than Luther Clark, thus it cannot be said that Clark would have automatically achieved the bid of his choice even in the absence of application of the superseniority provision. Consequently, the effects of the unlawful conduct can be best remedied by ordering the Respondents to nullify and set aside the results of the November 12 bidding procedure, as well as all other bidding procedures since said date where the superseniority clause has been invoked, and to permit Luther Clark and other employees to rebid in accordance with their seniority and the otherwise lawful provisions of the bargaining agreement. To further implement this affirmative remedy, I shall require that both the Respondent Union and the Respondent Employer notify Luther Clark, in writing, that they have no objection to his bidding for assignment to the 6:30 Monday through Friday schedule, or to any other assignment to which he is entitled by virtue of his seniority. Finally, I shall order both Respondents to cease and desist from violating the Act in any like or related manner.

CONCLUSIONS OF LAW

1. The Respondent Employer, Allied Supermarkets, Inc., is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent Union, Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., is a labor organization within the meaning of Section 2(5) of the Act.

¹⁰ 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.

3. By maintaining and enforcing a seniority clause in its collective-bargaining agreement with the Respondent Employer according union stewards superseniority for terms and conditions of employment not limited to layoff and recall, the Respondent Union has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. By maintaining and enforcing a seniority clause in its collective-bargaining agreement with the Respondent Union according union stewards superseniority for terms and conditions of employment not limited to layoff and recall, the Respondent Employer has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. By instructing and refusing to permit Luther Clark to bid on a job assignment in accordance with his seniority because of the enforcement of the superseniority clause in their collective-bargaining agreement, the Respondent Union engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, and the Respondent Employer engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. By discriminating against Luther Clark in according superseniority to Union Steward Joseph Sobczek, the Respondent Union and the Respondent Employer have engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) and Section 8(a)(3) and (1), respectively.

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

ORDER¹⁰

A. The Respondent Employer, Allied Supermarkets, Inc., Livonia, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining and enforcing collective-bargaining provisions with Respondent Union according union stewards superseniority with respect to terms and conditions of employment other than layoff and recall.

(b) Instructing and refusing to permit Luther Clark, or any other employee, to bid on a job assignment in accordance with his seniority because of the enforcement of the superseniority clause in the collective-bargaining agreement with the Respondent Union.

(c) Discriminating against Luther Clark, or any other employee, in assigning work schedules or any other terms or condition of employment other than layoff or recall by according top seniority for job preference where union stewards do not in fact have top seniority in terms of length of service.

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.

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

2. Take the following affirmative action necessary to remedy the unfair labor practices and to effectuate the policies of the Act:

(a) Jointly and severally with the Respondent Union, nullify and set aside the results of the assignment bidding procedure which occurred on or about November 12, 1975, or any other job bidding procedures since said date, where the provisions of the superseniority clause of the collective-bargaining agreement have been invoked with respect to job preference for stewards, and permit Luther Clark and other employees to bid for job assignments in accordance with their seniority and the otherwise lawful provisions of the collective-bargaining agreement.

(b) Notify Luther Clark, in writing, that the Respondent Employer has no objection to his bidding for assignment to the 6:30 schedule Monday through Friday, or to any other assignment to which he is entitled by virtue of his seniority, and send a copy of said written notification to the Respondent Union.

(c) Post at its place of business at Livonia, Michigan, copies of the attached notice marked "Appendix A."¹¹ Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by the Respondent Employer's representatives, shall be posted by the Respondent Employer immediately on 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 the Respondent Employer to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps the Respondent Employer has taken to comply herewith.

B. The Respondent Union, Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Maintaining, enforcing, or otherwise giving effect to the clause in the collective-bargaining agreement with the Respondent Employer, Allied Supermarkets, Inc., according union stewards superseniority with respect to terms and conditions of employment other than layoff and recall.

(b) Instructing or refusing to permit Luther Clark, or any other employee, to bid on a job in accordance with his seniority because of the enforcement of the superseniority clause in the collective-bargaining agreement with the Respondent Employer.

(c) Causing or attempting to cause the Respondent Employer to discriminate against Luther Clark, or any other employee, in violation of Section 8(a)(3) of the Act.

(d) In any like or related manner restraining or coercing employees in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action necessary to remedy the unfair labor practices and to effectuate the policies of the Act.

(a) Jointly and severally with the Respondent Employer, nullify and set aside the results of the assignment bidding procedure which occurred on or about November 12, 1975, or any other job bidding procedures since said date, where the provisions of the superseniority clause of the collective-bargaining agreement have been invoked with respect to job preference for stewards, and permit Luther Clark and other employees to bid for job assignments in accordance with their seniority and the otherwise lawful provisions of the collective-bargaining agreement.

(b) Notify Luther Clark, in writing, that the Respondent Union has no objection to his bidding for assignment to the 6:30 schedule Monday through Friday, or to any other assignment to which he is entitled by virtue of his seniority, and send a copy of said written notification to the Respondent Employer.

(c) Post at its office and meeting halls used by or frequented by its members and employees it represents at the Respondent Employer's Livonia, Michigan, facilities copies of the attached notice marked "Appendix B."¹² Copies of said notices, on forms provided by the Regional Director for Region 7, after being duly signed by the Respondent Union's representatives, shall be posted by the Respondent Union immediately on receipt thereof, and be maintained by the Respondent Union for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps the Respondent Union has taken to comply herewith.

¹¹ 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."

¹² See fn. 11.

APPENDIX A

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

WE WILL NOT maintain and enforce any agreement with Local 337, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., giving union stewards top seniority no matter what the length of their employment, with respect to their selection for and the assignment to them of contract benefits or other terms and conditions of employment except for layoff and recall.

WE WILL NOT instruct or refuse to permit Luther Clark, or any other employee, to bid on a job assignment in accordance with his seniority because of the enforcement of any superseniority provision in our collective-bargaining agreement with Local 337, International Brotherhood of Teamsters.

WE WILL NOT discriminate against Luther Clark, or any other employee, in assigning work schedules or any other term or condition of employment by according top seniority for job preference where union stewards do not in fact have top seniority in terms of length of service.

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

WE WILL, jointly and severally with Local 337, International Brotherhood of Teamsters, nullify and set aside the results of the bidding procedure which occurred on or about November 12, 1975, or any other job bidding procedures since said date, where the provisions of the superseniority clause of the collective-bargaining agreement have been invoked with respect to job preference for stewards, and WE WILL permit Luther Clark and other employees to bid for job assignments in accordance with their seniority and the otherwise lawful provisions of the collective-bargaining agreement.

WE WILL notify Luther Clark, in writing, that we have no objection to his bidding for assignment to the 6:30 work schedule Monday through Friday, or to any other assignment to which he is entitled by reason of his seniority.

ALLIED SUPERMARKETS, INC.

APPENDIX B

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

WE WILL NOT maintain and enforce any agreement with Allied Supermarkets, Inc., according union stew-

ards superseniority with respect to terms and conditions of employment other than layoff and recall.

WE WILL NOT instruct or refuse to permit Luther Clark, or any other employee, to bid on a job in accordance with his seniority because of the enforcement of the superseniority clause in our collective-bargaining agreement with Allied Supermarkets, Inc.

WE WILL NOT cause or attempt to cause Allied Supermarkets, Inc., to discriminate against Luther Clark, or any other employee, in violation of Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights protected by Section 7 of the Act.

WE WILL, jointly and severally with Allied Supermarkets, Inc., nullify and set aside the results of the assignment bidding procedure which occurred on or about November 12, 1975, or any other assignment bidding procedure since said date, where the provisions of the superseniority clause in our collective-bargaining agreement have been invoked with respect to job preference for stewards, and WE WILL permit Luther Clark and other employees to bid for job assignments in accordance with their seniority and the otherwise lawful provisions of the collective-bargaining agreement.

WE WILL notify Luther Clark, in writing, that we have no objection to his bidding for assignment to the 6:30 work schedule Monday through Friday, or to any other assignment to which he is entitled by reason of his seniority.

LOCAL 337, INTERNATIONAL
BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND
HELPERS OF AMERICA, IND.