Acme Markets, Inc. *and* United Steelworkers of America, AFL–CIO–CLC, and its Locals 14057, 14309 and 13912. Case 5–CA–7735

September 21, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On March 25, 1977, Administrative Law Judge James T. Youngblood issued the attached Decision in this proceeding. Thereafter, the 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[1] and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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, Acme Markets, Inc., Tazewell, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] The 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), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge: The complaint which issued on June 28, 1976, alleges, in substance, that Acme Markets, Inc. (herein Respondent or Employer), since on or about November 1, 1975, engaged in a course of conduct designed to undermine the Union's status as collective-bargaining representative of the employees at the Acme Markets stores and facilities, and on about January 15, 1976, Respondent refused, and continues to refuse, to bargain in good faith with United Steelworkers of America, AFL–CIO–CLC, and its Locals 14057, 14309 and 13912 (herein collectively called the Union), in violation of Section 8(a)(1) and (5) of the Act. Respondent filed an answer to the complaint denying the commission of any unfair labor practices and requesting that the complaint be dismissed in its entirety. A hearing in this matter was held in Princeton, West Virginia, on July 22, 23, 28, and 29, 1976. All parties were represented by counsel at the hearing, and the General Counsel and the Respondent filed posttrial briefs which have been duly considered.

Upon the entire record, and my observation of the witnesses and their demeanor, and the briefs filed herein, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a West Virginia corporation, is engaged in the operation of a chain of retail grocery and variety stores in various cities in the States of Virginia and West Virginia. During the 12 months prior to the issuance of the complaint on June 28, 1976, a representative period, Respondent had gross revenues which exceeded $500,000. During the same period, Respondent purchased and received, in interstate commerce, products and supplies valued in excess of $50,000, from points located outside the State of West Virginia.

Upon these admitted facts, I find that the Respondent has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the United Steelworkers of America, AFL–CIO–CLC, and its Locals 14057, 14309 and 13912, are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

Respondent is engaged in the operation of a chain of retail grocery stores known as Acme Markets at locations in the States of Virginia and West Virginia, with its corporate headquarters in Tazewell, Virginia. At the present time, there are six retail markets, three in Virginia and three in West Virginia, and a warehouse located in Tazewell, Virginia. The stores are named Virginia Westgate Acme, Bluefield, Virginia; Tazewell Acme, Tazewell, Virginia; Richlands Acme, Doran, Virginia; Acme Plaza, Beckley, West Virginia; Princeton Acme, Princeton, West Virginia; and Blue Prince Acme, Bluefield, West Virginia. An additional Acme market was formerly operated in Beckley, West Virginia, known as the "Valley Drive Store" until it was closed on November 15, 1975. The employees

of the six retail stores (formerly seven) and the warehouse have been represented by the Union[1] pursuant to a longstanding collective-bargaining relationship of some 20 years. The most recent contract covering these employees was effective from February 9, 1973, through February 8, 1976.

Respondent also operates a chain of grocery and variety stores known as "A-Marts" at Beckley and Princeton, West Virginia, and at Tazewell, Richland, and Bluefield, Virginia. The employees at the Princeton and Beckley "A-Mart" stores were represented by the Union and were covered by a separate collective-bargaining agreement effective from February 9, 1972, until February 8, 1975. On January 1, 1975, Respondent closed the Beckley "A-Mart" store and on February 8, 1975, the contract terminated. Shortly thereafter, the nine employees in the Princeton "A-Mart" wrote Cauthen, the president of "A-Mart," asking to get out of the Union. Cauthen sent this letter to the Union, and the Union acquiesced and disclaimed interest in the Princeton store. The Union has made no attempt to organize the employees at the other "A-Mart" stores and, at the present time, none of the "A-Mart" employees are represented by any labor organization. The employees at the "A-Mart" stores are not involved in this proceeding.

During April and May 1975, at the request of the Union, the Respondent and the Union engaged in limited negotiations concerning a cost-of-living increase to the Acme Markets bargaining unit employees, a management-rights clause, and a no-lockout–no-strike provision. These negotiations proved fruitless and were discontinued.

Around July 3, 1975, the employees at the Princeton Acme store engaged in a work stoppage and began picketing at the store. This unauthorized strike arose over a grievance which had been filed on June 10, 1975. The employees returned to work about July 10, 1975. This grievance, which precipitated the strike, had not been resolved as late as January 14, 1976, as reflected in a letter from James K. Travis, Respondent's personnel manager, to Mr. Boothe, the Union's international representative. Following the strike, Respondent discharged five employees who had served as union officers of the Local Union representing the employees at the Princeton Acme store. As the result of an arbitrator's award, all of the discharged employees were reinstated with backpay by the end of October 1975.

The Respondent offered the testimony of several store managers and several employees to the effect that the employees became very dissatisfied with the Union following the strike at the Princeton store. While a limited number of employees testified to this dissatisfaction of employees, they did relate that other employees had expressed to them their feelings that they would like to get rid of the Union. These sentiments were apparently conveyed by these employees to the managers, to which the managers replied that they could do nothing about this problem. The record reflects that there was some dissatisfaction with the Union among the employees in the several stores in the States of Virginia and West Virginia.

Around September 15, 1975, James K. Travis was hired by the Respondent as its new personnel manager. Travis had no previous labor relations experience. Travis testified that one of the first problems that he encountered was the poor communications that existed between the several stores. This was apparently because of their geographical seperation. Another problem which was brought immediately to his attention by the various store managers was the employees' concern and unrest in the area of labor relations. He testified that many of the employees were asking the store managers questions which had to be answered sensibly and consistently. Thus, he sought to remedy these problems by implementing a new communication program and by accepting invitations from the store managers to attend and speak at their regularly scheduled store meetings.

On October 28, 1975, Mr. Travis attended his first employee meeting at Blue Prince Acme store. At this meeting, Travis explained that he intended to implement a new communication system and described the various forms to be used in this system. This was to be called "Hotline." The hotline concept involved the installation of bulletin boards in the various stores and the use of certain standardized colored forms for communication between the various representatives of management and the employees. This hotline concept also permitted employees to present questions to management on these bulletin boards concerning any problems they might have. Questions could be signed by the employee or they could be submitted anonymously. There is no record evidence to establish that, at the time of this October 28 meeting, Respondent was aware of any employee petitions being circulated in any of the stores in either Virginia or West Virginia.

Following the inauguration of the hotline, a letter dated October 28, 1975, from Respondent's president, Cauthen, addressed to "All A-Mart Employees" appeared at some of the Acme Market stores. This letter, which was addressed to the nonbargaining unit employees at the "A-Mart" stores, read as follows:

ACME MARKETS, INC.

A - MART STORES

October 28, 1975

To: All A-Mart Employees

From: Charles E. Cauthen, President

Subject: A-Mart Policies, 1976

This is a letter of appreciation to each of you and the part you played in making your store a success this year. We still have most of the Christmas season ahead of us and we know we can count on you as we attempt for record sales this season.

[1] Initially, the employees were represented by District 50 of the United Mine Workers of America. In 1971, District 50 merged with the United Steelworkers of America and three locals were set up to represent the stores in Virginia and West Virginia. The four facilities in Virginia, including the Tazewell warehouse, are represented by Local 13912; the stores at Beckley, West Virginia, are represented by local 14309; and the stores at Princeton and Bluefield, West Virginia, are represented by Local 14057.

With the unsolicited spontaneous petition by the Princeton store employees to disassociate themselves from the union last November, we have now had almost a year of operation as one family and we hope you share our pleasure with this relationship.

To show our appreciation, I have attached a copy of our A-Mart policies for the coming year. Due to your loyalty and due to the freedom we have by not being restricted by an outside organization, we are in a position to offer you substantial improvements in wages, benefits and opportunities. Let me point out some of these to you:

1. Wage increases averaging over 10% per employee
2. Wage increases 3 months sooner than would have been possible under a contract
3. Improved vacation policy including 3 weeks' vacation after 10 years
4. Improved sick leave policy
5. Continued improvement in insurance coverage at *no* additional cost to the employees. The company is doubling your life insurance coverage beginning January, 1976 and is paying the full premium increase. (The company previously absorbed a 1.60 premium increase per employee per month in 1974 and an additional $5.27 increase a few months ago.)
6. Improved *individual* recognition, consideration, and promotional opportunities for the deserving employee as opposed to *group* treatment imposed by labor contracts.

In addition to these improvements for the *coming year, you can expect a special gift of our appreciation in December.*

Last, but far from least, we are currently finalizing a new profit sharing plan for our A-Mart employees that would have been extremely difficult to do before in a union situation. Basically, this plan will allow us to give you a supplement to your regular salary in direct proportion to the profit in your particular store. It is our intent to have this plan in effect for the first quarter of 1976.

Thank you again for your loyalty, and we look forward to continued growth together.

Yours truly,

/s/ Charles E. Cauthen

Charles E. Cauthen
President

Enclosure

Employees Ronald Reeves and Liz Davidson credibly testified that this October 28 letter (herein called the "A-Mart" letter) was first seen on a table in the employee break area at the Blue Prince Acme store and later appeared on the bulletin board at their store around the first of November. Davidson brought this letter to the attention of Charles Hampton, manager of the Blue Prince store, who told her that he had been told to post the letter. While Hampton admits that he told Davidson that he had been instructed to post the letter, he attempted to make it appear as if he posted it by mistake. He stated that he received this letter with several other pieces of mail from the Respondent's main office, with a notation to post them on the bulletin board, and, in compliance, he posted the "A-Mart" letter on the board. He later learned from Travis that that "A-Mart" letter was not to be posted.

Margaret Rutherford, Irene McNeal, David Fuller, and Karen Allen, all employees of the Beckley, West Virginia, Acme store which remained in operation, identified the "A-Mart" letter as having been posted at their store in early November. Employees Russell Meadows and Dreama Wright testified that this letter was also posted at their store in Princeton, West Virginia. Union Representative Boothe removed the letter from the bulletin board at the Princeton store on November 6, 1975, having learned of its posting several days before. Mr. Travis testified that on November 11, he posted this "A-Mart" letter at the Princeton store, along with a hotline bulletin, in answer to an employee question about the Christmas bonus. He explained that he put the "A-Mart" letter on the bulletin board to explain the Christmas bonus "which we underlined in red on the notice and then have the other part exposed if they wanted more clarification of what was going on at A-Mart."

Employees Marjorie Simpson and Helen Reynolds each testified that the "A-Mart" letter was left on the table in the break area of the Richland, Virginia, store. A former employee, Lillian Atkins, of the Beckley store on Valley Drive (which was closed on November 15, 1975), testified that prior to the closing she was shown the "A-Mart" letter by Store Manager Kenneth Smith who stated, "Sounds pretty good, doesn't it?"

The Company offered testimony through its store managers and several employees to the effect that the "A-Mart" letter was not posted at the Beckley Acme store. Specifically, Store Manager Blakenship testified that the "A-Mart" letter was not posted on the bulletin board in this store, and Assistant Manager Woods and several other store employees testified that the "A-Mart" letter was not posted on the bulletin board in the Beckley store. Notwithstanding these denials by the company officials and the employees, it is my conclusion that the "A-Mart" letter was posted, or in some manner exhibited at the Beckley Acme store. I make this finding because at least four employees testified that this "A-Mart" letter was posted in the Beckley Acme store and because one of the employee questions in the Beckley Acme hotline (J. Exh. 7, p. 2), among other things, refers to the new profit-sharing plan at "A-Mart." The question posed was, "In regard to the newly instructed program of profit sharing with A-Mart employees, would a similar program be initiated with Acme Markets employees? If so, would it be possible to outline such a program?" As there is no "A-Mart" store in Beckley, the fact that this employee knew of the profit-sharing plan at "A-Mart," as set forth in the "A-Mart" letter, indicates to me that this letter must have been

exhibited to the employees at the Beckley store. It is further my conclusion that the letter must have been circulated or exhibited at the other stores as testified to by the witnesses of the General Counsel.

It was shortly after posting of the "A-Mart" letter that the Employer learned that certain employee petitions to get rid of the Union were being circulated. The actual dates on which these petitions were initiated is not clear from the record but the record does reflect that at least one petition was circulated as early as October 1, 1975. This petition was started by an employee named Bob McCrea who left the employ of Acme Markets and his petition was never presented to management. Wanda Hager, who works at the Blue Prince Acme store, started another petition after she learned that McCrea would not present his petition to management. On November 12, 1975, Union Representative Boothe learned of this petition being circulated at the Blue Prince store, and he contacted Travis to discuss this problem. On November 13, 1975, Travis met with Hager and asked her if she had the petition. She gave him the first page of the petition as it was filed and kept the second page. Thereafter, she gave the second page of this petition to Steve Vance, the produce manager, not a member of the bargaining unit, to get a signature from an employee. Vance gave this second page of the petition to Store Manager Hampton, who subsequently gave it back to Hager, commenting that they could not get involved. Charles Snodgrass, an employee at the Beckley Acme store, testified that he circulated a petition in that store. He testified that management had no knowledge of his petition until he submitted it to them in mid-November 1975. On November 8, 1975, a petition consisting of several paper bags bearing signatures was given to Jennings Lockhart, the manager at the Tazewell Acme Market store. This so-called petition which was circulated by Norfolk Thompson, president of the Local Union, sought to dissolve the Local Union. On December 8, 1975, a petition was also presented to the store manager of the Richland store.

After learning of the employee petitions to oust the Union, and following the posting or the exhibiting of the "A-Mart" letter, the Employer followed that posting with numerous hotline news bulletins. Thus, on November 21, 1975, at the Westgate Acme store, it posted the Westgate hotline statement, November 19, 1975, which read as follows:

WESTGATE "HOTLINE" STATEMENT 11–19–75:

"At the next negotiation for wage determination, all employees should participate without fear. A fair wage should be decided with no penny pinching tactics by upper echelon."

Company Response:

First of all, employees should never work in an environment of "fear" — fear of management, fear of union pressure, fear of coworkers, etc. You have the right to express you opinions without reprisal. If any employee is presently afraid for their job security simply because of a stand they may have taken on an issue, I would very much like to alleviate those fears. Job performance and failure to do so is certainly cause for our superior to take corrective measures.

Employee wages are always of primary concern to both management and employees. Determination of these wages is an entirely different process depending on whether or not a union represents the employees. In Union labor negotiations, the wage scale is just one issue of a complex package of issues — seniority, vacations, holidays, grievance procedure, etc. Both parties will give in one area to gain in another area. This may mean high wages at the expense of giving up retirement benefits, holidays, time off policy, etc., or it may mean low wages to gain strong grievance rights, Company wide seniority, etc. In a non-union relationship such as the Company has with A-Mart, wages are determined as part of an overall compensation package to fit the individual employee's responsibility and performance. Wages at A-Mart (non-union) are reviewed continually by management and increases made regularly to reflect competition wages, cost of living increases, store performance, etc. Regarding "penny pinching tactics by upper echelon", you should be made aware of the extremely rewarding profit sharing plan just introduced in A-Marts in addition to the sizeable increase in basic wages. Also, it should be noted these wage increases were implemented only ten months after a previous increase and the Company was not limited to the normal yearly increase timetable in most union contracts.

It should also be noted that the Company did offer an unscheduled .10 cents per hour increase to Acme employees this past spring. The offer was not accepted by the international union representative because he stated he did not want to give up his right to strike the Company. It has come to our attention that very few of the rank and file employees were informed of this proposal by the Company and that the Union leadership made the decision to reject the offer on their own.

One other point you should remember — a "fair" wage may mean one thing to one employee and something entirely different to another. In labor contracts, not only are minimum wages established, but so are *maximum* wages. Everyone in the same classification is paid the same. The particular employee who wants to get ahead and displays initiative, works hard, and applies himself is limited to the same earnings as the poorer performer in the same classification. To the hard worker, this is not a "fair" wage.

The Company recognizes the need to pay respectable wages with or without collective bargaining pressure. Let me urge you to talk with your A-Mart employee neighbors as to how they feel about their compensation package, realizing their wages, etc. were determined strickly [sic] by management in analysis of employee contributions and without third party intervention.

/s/ Jim 11/21/75

James K. Travis
Director of Personnel

In the Westgate Hotline Questions (11–25–75), the Company responds to the question, "If the NLRB accepts the Company's application to not recognize the Union, will there be in fact no contract to be negotiated Feb.?" The Company's response was, "Assuming an election is held and the majority vote out the union, That is correct. The company would not negotiate a 'contract,' but would instead establish new wages, benefits, etc., on its own as was the case with the A-Marts recently." Similarly on December 1, 1975, in a document entitled "Beckley Plaza Hotline Questions," the Employer continued its antiunion campaign. This document read as follows:

BECKLEY PLAZA "HOTLINE" QUESTIONS

Question 1: "When our contract is up and Acme Plaza employees should vote to strike, if an employee crossed the picket line to work, could he be dismissed from the Union? How would this effect his job."

Response: Employees cannot be refused this right to earn a living. The Company cannot interfere with the internal affairs of a Union. The law, however, does protect an employee's right of employment and the Union cannot refuse this right.

Question 2: "If the employees withdraw from the United Steel Workers, what might be the long-range effects in terms of wages?"

Response: Under Federal labor relations regulations, the Company cannot "promise" wages, benefits, etc. that might influence an employee's decision regarding Union representation. Historically, the Company has not been in a position to set wages without third party intervention and consequently, there is no evidence to say the Company would be any less generous than with a Union.

Question 3: "Would withdrawal from the Union effect job security?"

Response: None whatsoever as far as the Company is concerned. Job security is based on performance — Union or no Union.

Question 4: "Would paid vacation, sick pay, and paid holidays be continued or would they cease if employees withdraw from the Union?"

Response: It is upsetting to me that some employees feel the Company might withdraw some of the benefits the employees now enjoy. These are benefits the Company feels the employees deserve or the management would never have written them in the contract in the first place. Certainly these benefits will be retained and continually reviewed for improvement as has been the case in the past.

Question 5: "Would part-time employees continue to be thrown the "left-overs" as has been done in the past under Union leadership?"

Response: Wages, fringe benefits, job assignments, etc. for part-time employees would be evaluated on an individual basis considering experience, education, seniority, performance, hours available to work, etc. We want you to know that we highly value our part-time people, and they are an essential part of our business.

Question 6: "How often might an employee's wages be reviewed in terms of performance?"

Response: Historically in non-union relationships and in many comparative companies, reviews are conducted between one and two times per year.

Question 7: "In regard to the newly instructed program of profit sharing with A-Mart employees, would a similar program be initiated with Acme Markets employees? If so, would it be possible to outline such a program?"

Response: I cannot "lead" employees by saying the Company will implement profit sharing in Acme if the employees vote out the Union.

I can explain the policy that has been implemented at A-Mart. Individual store profits are calculated on a quarterly basis and a percentage of these profits are distributed back to the employees. Each employee receives a share in proportion to their regular earnings for the quarter (the higher paid employees consequently receiving higher "profit" checks than the lower paid employees). Last year an average full time employee in a typical A-Mart store would have received a supplemental profit sharing check of over $125.00 every quarter. (This is equivalent to almost .25¢ per hour.)

James K. Travis
Director of Personnel

Dec 1, 1975

In a bulletin entitled "Richland Hotline," 12–2–75, Travis refers to the "current contract" which dictates "who is paid what." He continues by telling the employees how they may get out of the Union if they so desire. He advised that an "employee should notify the Company in writing of their desire to withdraw and the Company will check the employee's membership records and notify the employee and the Union the earliest date the withdrawal will be permitted." In a news bulletin entitled "Blue Prince Hotline," 12–2–75, and dated December 4, 1975, Travis states: "Please remember your present wages are fixed by the union contract as agreed upon by employees. The Company is well aware of the sharp cost-of-living increases and has increased A-Mart salaries and is presently instituting new management salaries which are not determined by contract requirements."

On November 19, 1975, five RM petitions were filed by the Respondent with Region 5, covering the four Virginia locations and the Blue Prince store in Princeton, West Virginia. On December 4, 1975, the Regional Director of Region 5 issued a notice of representation hearing in the original five RM petitions filed by the Respondent in which he concluded that a question concerning representation existed. On December 9, 1975, Respondent filed an additional RM petition covering the Acme Plaza store in Beckley, West Virginia. Additionally, on December 9, the Respondent filed three more RM petitions, one covering all the Virginia locations, one covering all the West

Virginia locations, and one covering all locations in Virginia and West Virginia. About the same time, three employees filed decertification petitions with Region 5.

On December 10, 1975, the Union filed two separate unfair labor practice charges which alleged 8(a)(1) and (5) violations against the Respondent at the Beckley and Blue Prince stores.

On December 1, 1975, the Union notified the Respondent that the contract was to expire on February 8, 1976, and that it wished to open negotiations for a new contract. It does not appear from this record that the Respondent responded to this request. On December 30, 1975, Boothe wrote to Travis advising him that the members of Local Union 14309 were requesting him to attend a union meeting and explain to the members why Acme Markets, Inc., was taking a position against the Union as it had in their most recent attacks on the hotline bulletin board. Mr. Boothe gave several dates that would be acceptable. On January 9, 1976, Travis responded indicating that he would not attend a union meeting, but he would be glad to have a store meeting with the employees. On January 12, 1976, Boothe again wrote the Company requesting them to meet and negotiate a new agreement. On January 15, 1976, Cauthen, on behalf of the Respondent, informed the Union that the Company had a good-faith doubt that the Union represented a majority of the Acme employees and declined to meet with the Union. On January 26, 1976, the Union filed the instant charge. The earlier charges were withdrawn.[2] The current contract expired on February 8, 1976, and on February 9, 1976, following a strike vote taken among the union members of the three locals, a strike ensued.

The record reflects that 141 union members voted to strike and 49 members voted not to strike. There is much testimony in the record concerning the Union's majority status during the crucial period between October 1975 and February 9, 1976. The checkoff records for January 1976, covering all locations, indicate that 191 employees were paying union dues. Also, the strike vote shows that there were 190 members who participated in the strike vote. The RM petition filed by the Company on December 9, 1975, covering all locations in both Virginia and West Virginia, lists the number of employees in the unit as 310. Therefore, if 190 union members voted in the strike vote, and 191 were on checkoff, it would appear that the Union had a substantial majority in January 1976.

IV. DISCUSSION AND CONCLUSIONS

A. *The Appropriate Unit*

The complaint, as amended at the hearing, alleges that at all times material herein, Respondent has recognized and executed a series of collective-bargaining agreements with the Union as exclusive bargaining representative of a unit consisting of all general store labor, inexperienced helpers, stock clerks, floor salesmen or saleswomen, apprentice salesperson, second butcher, apprentice butcher, delivery persons, shipping clerk, warehousemen, checkers, truckdrivers, tractor-trailer drivers, bag and carryout persons, and any workers or combination workers employed full or part-time; except supervisors, buyers, office clerical, and store manager, assistant managers, produce manager, meat manager (head butcher), deli-bake shop manager and office manager. The most recent collective-bargaining agreement between Respondent and the Union was effective from February 9, 1973, through February 8, 1976. This most recent agreement covered all eight locations in both Virginia and West Virginia. In November 1975, one of the stores was closed in Beckley, leaving three stores in West Virginia and three stores in Virginia, and the warehouse in Tazewell, Virginia. The Respondent admitted the allegations of the complaint, as amended. Because of the 20-year bargaining history between the Union, its predecessor, and Acme Markets, I find that this bargaining unit is certainly an appropriate unit.

B. *The Alleged Refusal To Bargain*

On January 12, 1976, the Union submitted its last request to the Company for negotiations and bargaining. On January 15, 1976, by telegram, the Company responded to the Union's bargaining request stating that at the time they could not bargain with the Union because they had a good-faith doubt as to the Union's majority status within the bargaining unit. There has been no bargaining. On February 8, 1976, a strike vote was taken and on February 9, 1976, a strike began against the Acme Markets.

In response to the General Counsel's charge of a refusal to bargain on and after January 15, 1976, the Respondent contends that its refusal to bargain was based on a good-faith doubt of the Union's majority status which was based on objective considerations. The General Counsel does not concede the loss of majority by the Union, or the fact that Respondent had any good-faith doubt as to the Union's majority status, but on the other hand contends that if such factors existed, they were tainted by the Employer's independent unfair labor practices which were designed to undermine the Union's majority status.

The law seems to be settled that to justify the withdrawal of recognition from, or the refusal to bargain with, an incumbent union, the employer must have a good-faith doubt of the union's majority status at the time of the withdrawal of recognition or refusal to bargain, based on objective grounds affording a rational basis for doubting the union's majority status. See *Terrell Machine Company* v. *N.L.R.B.*, 427 F.2d 1088 (C.A. 4, 1970), and *Taft Broadcasting, WDAF–TV, AM–FM,* 201 NLRB 801 (1973). It is also well settled that if the employer engages in independent unfair labor practices in the context of the objective considerations, this taints the objective considerations and removes any good-faith doubt which the employer might otherwise have had. *Idaho Fresh Pak-Inc.*, 215 NLRB 676 (1974).

It is my conclusion that the Employer engaged in independent unfair labor practices beginning in early November 1975, prior to its learning of any employee petitions, and its reliance on any alleged objective consid-

[2] All of the representation petitions were either withdrawn or dismissed upon the issuance of the instant complaint.

erations is misplaced. Therefore, it is my conclusion that the Respondent has violated Section 8(a)(5) of the Act.

In this connection, it is noted that in mid-September 1975, the Respondent obtained the services of a new personnel director. Travis was new to labor relations, and although not employed by Acme Markets at the time he did sit through the arbitration proceedings involving the employees at the store where the strike occurred in July 1975. Almost immediately upon taking over as personnel manager, Travis instituted the so-called hotline. This was accomplished by November 4, 1975. One of the first items that appeared in the stores after this was the letter to the "A-Mart" employees. This letter was addressed to the "A-Mart" employees and dealt with their "unsolicited spontaneous" petition to disaffiliate with the Union, and the results therefrom, which the Employer stated was due to freedom it now had by not being restricted by an outside organization, and, therefore, "It is in a position to offer substantial improvement in wages, benefits and opportunities." When the Employer disseminated, posted on the bulletin board, or otherwise circulated or exhibited this letter to the Acme Market employees, it could foresee the natural consequences that would flow from the contents of this letter. The showing of this "A-Mart" letter to the Acme employees clearly was for the purpose of planting in the minds of the Acme employees that they would be better off without a union. This was designed to undercut the Union and to diminish employee support for the Union.

As a result of the bargaining negotiations in the spring of 1975 when the Union attempted to get a cost-of-living increase for the Acme employees, the Employer necessarily was acutely aware of the fact that the employees were vitally interested in increased wages. Additionally, the Employer was aware of the wage scales as set forth in the contract and that these wages were locked in for the duration of the contract. Therefore, when the Employer sent out its letter of appreciation to the "A-Mart" employees, and made sure that this letter was seen by the Acme Market employees, it knew this would have a detrimental effect on their association with the Union. I have concluded that this letter was posted or exhibited at several of the Acme stores and, in my view, this was not a mistake, but a calculated risk on the Employer's part, and was certainly done in an attempt to interfere with the Acme employees' rights guaranteed under Section 7 of the Act, and, therefore, violative of Section 8(a)(1) of the Act.

The Respondent did not stop at this point, but continued to bombard the Acme employees with similar material. Thus, the Westgate hotline statement of November 11, 1975, which is alleged in the complaint as also being violative of Section 8(a)(1), instills in the minds of the employees a lack of leadership on the part of their Union, in that it states that the Employer offered a 10-cent wage increase, but the Union rejected this offer, and inferred that very few of the rank-and-file employees were ever informed of this proposal by the Company and its rejection by the Union. This notice was silent on the concessions the Respondent wanted in return for the 10-cent increase. This notice also refers to collective-bargaining agreements as setting wages, and that any employee who wants to get ahead cannot, because he is limited to the same earnings as the poorer performer. This notice ends with urging Acme employees to talk to their "A-Mart" neighbors about how they feel about their compensation packages which "were arrived at without third party intervention." There is no question that this message was designed to undermine employee support for the Union by suggesting that without the intervention of the Union, the employees can do better with their Employer; that because of the union contract, their wage levels and other benefits are kept at a minimum. Similarly, the news bulletin, "Blue Prince Hotline," dated December 2, 1975, carries a similar statement advising the employees that their present wages are fixed by union contract. Mr. Travis goes on to state in this bulletin that the salaries for "A-Mart" employees and management salaries have been increased, while noting that these are not determined by contract requirements. In a document entitled "Beckley Plaza Hotline Questions," dated December 1, 1975, Mr. Travis again implicitly promised future benefits, including wages, and also described how the recently implemented profit-sharing plan at the nonunion "A-Mart" stores has resulted in profit-sharing checks of $125 per quarter. Additionally, in the "Westgate Hotline Questions," November 25, 1975, dated November 20, 1975, Travis notes that should a majority vote out the Union, Respondent would establish new wages and benefits as was the case with "A-Mart" stores. In a notice entitled "Richlands Hotline," December 2, 1975, dated December 4, 1975, Mr. Travis again refers to the current contract "which dictates who gets paid what." He goes on to advise employees who wish to get out of the Union to notify the Company in writing of their desires and the Company will check the employee's membership record and notify the employee and the Union the earliest date withdrawal will be permitted.

This bombardment of hotline bulletins, advising the employees of the various benefits which had been given to the nonunion "A-Mart" employees, who recently dethroned the Union, clearly, at least in my view, shows that this Employer was engaging in obvious interference with the Acme employees' rights guaranteed under Section 7. In my view, in posting the "A-Mart" letter, and the various hotline bulletins, which I have made reference to, the Company has openly and flagrantly interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act.

In view of my findings of independent 8(a)(1) violations, I deem it unnecessary to evaluate the objective considerations as alleged by the Employer, for any loss of majority would necessarily be attributable to the Employer's unfair labor practices. Moreover, it is my conclusion that at no time did the Union have a loss of majority, as the petitions which were circulated in the four stores have only 132 employees' signatures, and this is less than 50 percent in the overall unit of 310 people. Additionally, the checkoff in January 1976, which was readily available to the Employer, indicates that 191 unit employees were union members. Also this figure of 191 union members is drastically similar to the number of union members who voted in the February 8, 1976, strike vote.

It is also my conclusion that any good-faith doubt of the Union's majority that the Respondent might have had was

tainted by the 8(a)(1) conduct engaged in between the period October 28, 1975, and January 15, 1976, and therefore, its reliance thereon is misplaced.

It is further my conclusion that by its refusal on January 15, 1976, to bargain with the Union, the designated majority representative of its employees, Respondent has engaged in conduct violative of Section 8(a)(5) and (1) of the Act.

V. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the 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 a free flow of commerce.

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

CONCLUSIONS OF LAW

1. Acme Markets, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. United Steelworkers of America, AFL–CIO–CLC, and its Locals 14057, 14309, and 13912, are labor organizations within the meaning of Section 2(5) of the Act.
3. By posting notices which promise benefits to its employees should they reject the Union as their collective-bargaining representative; by posting notices which solicit its employees to withdraw their membership from the Union; and by posting notices which disparaged the Union by asserting that Respondent could not agree to increased remuneration for its employees because of the Union's intervention and the collective-bargaining agreement with the Union which created fixed or maximum wages above which raises could not be granted, Respondent has attempted to undermine the Union's majority status and has interfered with its employees' rights guaranteed under Section 7 of the Act, and has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. All general store labor, inexperienced helpers, stock clerks, floor salesmen, floor saleswomen, apprentice salesperson, second butcher, apprentice butcher, delivery persons, shipping clerk, warehousemen, checkers, truckdrivers, tractor-trailer drivers, bag and carryout persons, and any workers or combination workers employed full- or part-time; except supervisors, buyers, office clerical, and store manager, assistant managers, produce manager, meat manager (head butcher), deli-bake shop manager, and office manager, employed by Acme Markets, Inc., at its six retail grocery stores in Virginia and West Virginia and its warehouse in Tazewell, Virginia, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.
5. At all times material herein, the United Steelworkers of America, AFL–CIO–CLC, has been, and is now, the exclusive representative of all employees in the aforesaid bargaining unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
6. Since January 15, 1976, by refusing to meet with the United Steelworkers of America, AFL–CIO–CLC, for the purpose of negotiating a collective-bargaining agreement covering the bargaining unit employees, Respondent has violated Section 8(a)(5) and (1) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

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

Having found that Respondent has refused to meet and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and, upon request, bargain collectively in good gaith with the Union as the exclusive representative of all employees in the appropriate unit and, in the event that an understanding is reached, embody such understanding in a signed agreement.

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

ORDER[3]

The Respondent, Acme Markets, Inc., Tazewell, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Posting notices which promise benefits to its employees should they reject the United Steelworkers of America, AFL–CIO–CLC, or any other labor organization as their collective-bargaining representative.

(b) Posting notices which solicit its employees to withdraw their membership from the United Steelworkers of America, AFL–CIO–CLC, or any other labor organization.

(c) Posting notices which disparage the United Steelworkers of America, AFL–CIO–CLC, by asserting that Acme Markets could not agree to increased remuneration for its employees because of the Union's intervention and the collective-bargaining agreement with the Union which created fixed or maximum wages above which raises could not be granted.

(d) Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with the United Steelworkers of America, AFL–CIO–CLC, as the exclusive bargaining representative of its employees in the appropriate unit.

[3] 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.

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

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

(a) Upon request, bargain collectively with the United Steelworkers of America, AFL–CIO–CLC, as the exclusive representative of all of its employees in the appropriate unit concerning rates of pays, wages, hours of employment, and other conditions of employment and embody any agreement reached in a signed contract.

(b) Post at its seven Acme Markets locations in Virginia and West Virginia, including the Tazewell warehouse, copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by the Respondent's authorized representative, shall be posted 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 the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply therewith.

[4] In the event that this Order is enforced by a Judgment of the 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

As a result of a hearing before an Administrative Law Judge of the National Labor Relations Board, it was found that we violated the act in the respects set forth in its Decision, and to remedy this unfair labor practice, we will abide by the following:

WE WILL NOT post notices which promise benefits to our employees should they reject the United Steelworkers of America, AFL–CIO–CLC, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT post notices which solicit our employees to withdraw their membership from the United Steelworkers of America, AFL–CIO–CLC, or any other labor organization.

WE WILL NOT post notices which disparage the United Steelworkers of America, AFL–CIO–CLC, by asserting that Acme Markets, Inc., could not agree to increased remuneration for its employees because of the Union's intervention and the collective-bargaining agreement with the Union which created fixed or maximum wages above which raises could not be granted.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them under Section 7 of the Act.

WE WILL, upon request, bargain collectively with the United Steelworkers of America, AFL–CIO–CLC, as the exclusive representative of all our employees in the appropriate unit concerning rates of pay, wages, hours of employment, and other terms and conditions of employment, and WILL embody any agreement reached in a signed contract.

ACME MARKETS, INC.