

In the Matter of SEBASTIAN S. KRESGE, INDIVIDUALLY AND DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF KRESGE DEPARTMENT STORE AND KRESGE-NEWARK AND KRESGE-NEWARK, INC. *and* NORTHERN NEW JERSEY DEPARTMENT STORE EMPLOYEES LOCAL 950, AFL, AND LOCAL JOINT EXECUTIVE BOARD OF ESSEX COUNTY, A. F. L. *and* KRESGE DEPARTMENT STORE CO-WORKERS' MUTUAL AID ASSOCIATION (ALSO KNOWN AS KRESGE-NEWARK CO-WORKERS' ASSOCIATION, INC., AND FORMERLY KNOWN AS L. S. PLAUT AND COMPANY, EMPLOYEES MUTUAL AID ASSOCIATION), PARTY TO THE CONTRACT

In the Matter of SEBASTIAN S. KRESGE, INDIVIDUALLY AND DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF KRESGE DEPARTMENT STORE AND KRESGE-NEWARK AND KRESGE-NEWARK, INC. *and* UNITED RETAIL AND DEPARTMENT STORE EMPLOYEES OF NEW JERSEY, LOCAL 108, AFFILIATED WITH UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, CIO *and* KRESGE DEPARTMENT STORE CO-WORKERS' MUTUAL AID ASSOCIATION (ALSO KNOWN AS KRESGE-NEWARK CO-WORKERS' ASSOCIATION, INC., AND FORMERLY KNOWN AS L. S. PLAUT AND COMPANY, EMPLOYEES MUTUAL AID ASSOCIATION), PARTY TO THE CONTRACT

*Cases Nos. 2-C-5990 and 2-C-6015, respectively*

## SUPPLEMENTAL DECISION

AND

## ORDER

*November 17, 1948*

On July 1, 1948, the Board served upon the Respondents, the Association, the AFL, and the CIO, an Order to Show Cause on or before July 12, 1948, why the Board should or should not enter an Order amending its Decision and Order, entered herein on April 21, 1948, by inserting certain provisions in said Order and also by deleting other matter therefrom. The Respondent, Kresge-Newark, Inc., alone responded, filing a memorandum and a letter setting forth its views. The Board has considered the proposed amendments set forth in the

Order to Show Cause and the said memorandum and letter, and it concludes that modification of its Order of April 21, 1948, is warranted in the respects hereinafter set forth.

1. Paragraph A. 1. (b) of the Order of April 21, 1948, directs both Respondents to cease and desist from interfering "in any other manner" with the right of their employees to form, join, or assist labor organizations, to bargain collectively through their chosen representatives, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act. However, after issuance of the complaint herein, Section 7 was amended so as to provide that employees, in addition, shall "have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3)." A majority of the Board believe that paragraph A. 1. (b) of the Order of April 21, 1948 should be amended to include a reference to the right to refrain from union membership or activities and thus to reflect in full the rights now guaranteed by Section 7 of the Act. The Respondent Kresge-Newark, Inc., has stated that it has no objection to such amendment. Paragraph A. 1. (b) of the Order, and the corresponding portions of the Notice referred to in paragraph B. 2 (b), will be ordered amended accordingly.

2. Paragraph B. 1. (a) of the Order of April 21, 1948, directed the Respondent Kresge-Newark, Inc. to cease and desist from recognizing the Association as collective bargaining representative of its employees, provided that the withdrawal of such recognition shall not require the interruption of the relationship between the respondent and the Association relating to the accident, health and benevolent program sponsored by the Association.

The Board now concludes that paragraph B. 1. (a) is adequate for its intended remedial purpose without inclusion of the aforesaid proviso. In addition, the Board believes that deletion of the proviso will eliminate possible confusion as to the effect of its Order requiring disestablishment of the Association as the collective bargaining representative of employees of Kresge-Newark Inc. Any substantial question concerning the effect of that requirement, in the light of the Board's decision in *Matter of Inland Steel Company*, 77 N. L. R. B. 1, enforced, *Inland Steel Company v. N. L. R. B.*, September 23, 1948 170 F. (2d) 247 (C. A. 7), and *Matter of W. W. Cross Company*, 77 N. L. R. B. 1162, will be considered in the future if it is duly presented, on the basis of the specific factual situation then existing. It does not

now appear that any such question will necessarily arise. The proviso will therefore be ordered deleted.<sup>1</sup> In so disposing of the proviso, the Board does not pass upon the suggestion, contained in its Order to Show Cause of July 1, 1948, as to the legal effect in this proceeding of its decisions in the *Inland Steel* and *Cross* cases, cited above, finding it unnecessary to do so on the present state of the record.

### ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Order entered herein on April 21, 1948, be amended in the following respects:

A. Paragraph A. 1. (b) thereof shall be, and it hereby is, amended so as to provide as follows:

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Northern New Jersey Department Store Employees Local 950, AFL, and Local Joint Executive Board of Essex County, A. F. L., or United Retail and Department Store Employees of New Jersey, Local 108, affiliated with United Retail, Wholesale and Department Store Employees of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed by Section 7 thereof.

B. Paragraph B. 1. (a) thereof shall be, and it hereby is, amended so as to provide as follows:

(a) Recognizing the Association as the representative of any of its employees for the purposes of collective bargaining with respect to grievances, labor disputes, wages, rates of pay, hours of work, or other conditions of employment.

C. The Notice attached hereto, marked "Appendix I," shall be substituted for the Notice, marked "Appendix A," which was attached to the Order of April 21, 1948, and referred to in Paragraph B. 2. (b) thereof.

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<sup>1</sup> The Respondent, Kresge-Newark, Inc., has requested that the order not be changed in this respect.

CHAIRMAN HERZOG and MEMBER MURDOCK, dissenting in part:

On the facts in this case, we would not modify the original Order by adding the negative language of Section 7 to that Order and the required Notice, any more than we would include its affirmative language in an order against a respondent union in the ordinary case arising under Section 8 (b). These Respondents have not been found to have interfered with their employees' right to "refrain" from engaging in concerted activities, but only with their right to engage in them.

The remedy directed under Section 10 (c), if it is to "effectuate the policies of the Act," should direct a respondent to cease and desist from continuing wrongful acts which it has committed, not those which it has not committed. An order that lacks reasonable particularity because it directs a remedy that is irrelevant, seems to us to be subject to the same basic vice as the order found by the Supreme Court to be too broad in the *Express Publishing* case.<sup>2</sup>

## APPENDIX I

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE HEREBY DISESTABLISH the Kresge Department Store Co-Workers' Mutual Aid Association (also known as Kresge-Newark Co-Workers' Association, Inc.) as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, hours of work, or other conditions of employment, and we will not recognize it or any successor thereto for any of the above purposes.

WE WILL NOT dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Northern New Jersey Department Store Employees Local 950, AFL, and Local Joint Executive Board of Essex County, A. F. L., or United Retail and Department Store Employees of New Jersey, Local 108, affiliated with United Retail, Wholesale and Department Store Employees of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choos-

<sup>2</sup> *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426.

ing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

All our employees are free to become, remain, or refrain from becoming members of these unions or any other labor organization except to the extent that the right to refrain may be affected by a lawful agreement requiring membership in a labor organization as a condition of employment.

KRESGE-NEWARK, INC.,

*Employer.*

By \_\_\_\_\_  
 (Representative) (Title)

Dated \_\_\_\_\_

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.