

mended that the Respondent cease and desist from in any manner interfering with, restraining, and coercing its employees in their right to self-organization.²¹

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

CONCLUSIONS OF LAW

1. Retail Clerks Union, Local 428, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees at Respondent's San Jose, California, store, excluding supervisors as defined by the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.

3. On January 25, 1950, Retail Clerks Union, Local 428, AFL was, at all times since has been and now is, the representative of a majority of Respondent's employees in the appropriate unit described above for purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on and after January 25, 1950, to bargain collectively with Retail Clerks Union, Local 428, AFL, as the exclusive representative of all its employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By said refusal, by conferring benefits on its employees for the purpose of inducing them to refrain from union affiliation and activities, by questioning employees concerning their union activities, and by threatening to close its San Jose store rather than assent to the union shop, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommended Order omitted from publication in this volume.]

²¹ *May Department Stores*, 326 U. S. 376.

STOR-ALL CORPORATION *and* NEW FURNITURE & APPLIANCE DRIVERS, WAREHOUSEMEN & HELPERS LOCAL UNION No. 196, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, A. F. OF L. *Cases Nos. 21-CA-867 and 21-RC-1188. June 7, 1951*

Decision and Order Remanding Case¹

On February 8 and 9, 1951, a hearing was held in the above-entitled consolidated proceeding before Trial Examiner James R. Hemingway, who issued his Intermediate Report on March 6, 1951, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) and (5) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action.

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Styles].

During the course of the hearing the Respondent sought to introduce testimony to show that the charging Union had obtained the signatures of the Respondent's employees on union-authorization cards through the use of coercion. On objection by counsel for the General Counsel, the Trial Examiner excluded the proffered testimony on the grounds that it was irrelevant and immaterial to the issues presented, inasmuch as the Respondent did not discover the alleged coercion until after the Board had conducted an election to determine whether the Union represented a majority of the employees in the unit involved. However, although the facts which the Respondent sought to prove with regard to the Union's use of coercion to obtain the employees' signatures may not have been relevant to the issue of the Respondent's violation of Section 8 (a) (1) of the Act, in view of the Board's decision in *Lerner Shops of Alabama, Inc., et al.*,² those facts were nevertheless relevant to a determination of the propriety of the Respondent's refusal to bargain with the Union after the Union had obtained union-authorization cards from a majority of the Respondent's employees in an appropriate unit.

We therefore find that although the specific testimony of the witness, Mirosav, which was excluded by the Trial Examiner, could have been properly excluded in view of its hearsay character, its rejection on the grounds of immateriality and irrelevancy may have unduly misled the Respondent into a failure to produce other witnesses³ who would have given competent testimony in support of the Respondent's contention. Accordingly, we have decided that the case should be remanded to the Trial Examiner for the purpose of providing the Respondent with an opportunity to prove, through competent testimony, that the Union obtained the signatures of the Respondent's employees through the use of coercion, and thus may not have represented an uncoerced majority of the employees in the unit involved on and after February 25, 1951.

Order

IT IS HEREBY ORDERED that the above-entitled Cases Nos. 21-CA-867 and 21-RC-1188 be, and they hereby are, remanded to the Trial Examiner for appropriate action, including the reopening of the proceedings for the purpose of taking testimony on the issue of whether the Union employed coercion in obtaining union-authorization cards from the Respondent's employees and the making of findings of fact, conclusions of law, and recommendations in a Supplemental Intermediate Report.

² 91 NLRB 151; see also *N. L. R. B. v. Dadourian Export Corporation*, 138 F. 2d 891 (C. A. 2).

³ The Respondent's counsel offered to prove the same facts through "other witnesses."