

the boilers, or make other changes; and he supervises certain of the Employer's shipping operations, referred to in the record as the "loading rack," where loaders are employed. As already noted, the chemist is paid by monthly salary. In these circumstances, we find that the chemist responsibly directs employees within the meaning of the Act, and we shall therefore exclude him.<sup>8</sup>

*The office manager*<sup>9</sup> and a clerk share the clerical work in the plant office. The evidence shows that both the office manager and the clerk perform the same type of work and, in connection therewith, are under the direct supervision of the plant superintendent. However, each of them is sufficiently experienced regularly to do the work without specific instruction or direction. It was testified that the classification of office manager was established in this instance as a means of rewarding the present incumbent for length of service without, at the same time, effecting any change in his duties. While it does appear that the office manager may in certain circumstances give instructions to the clerk, it is clear that such instructions would be routine in character. Both these individuals are hourly paid. On these facts, we are of the opinion that the office manager is not a supervisor, as contended, and we shall include him.<sup>10</sup>

We find that all employees employed at the Employer's gasoline plant near Hawkins, Texas, including the office manager, but excluding the plant superintendent, the chief engineer, the schedule supervisor, the chemist, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

<sup>8</sup> As we shall exclude the chemist as a supervisor, we find it unnecessary to pass upon the Union's further contention that the chemist is a professional employee under the Act.

<sup>9</sup> T. B. Alford.

<sup>10</sup> See e. g., *The Connecticut Electric Manufacturing Co.*, 94 NLRB 1449; *J. P. Stevens & Co., Inc.*, *supra*.

NATIONAL ASSOCIATION OF BROADCAST ENGINEERS AND TECHNICIANS,  
INDEPENDENT and TELEPROMPTER SERVICE CORP. AND TELEPROMPTER  
EQUIPMENT CORP. *Case No. 2-CD-40. August 30, 1951*

## Decision and Determination of Dispute

### STATEMENT OF THE CASE

This proceeding arises under Section 10 (k) of the Act, as amended, which provides that "whenever it is charged that any person has

engaged in an unfair labor practice within the meaning of paragraph 4 (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practices shall have arisen, . . .”

On February 15, 1951, Teleprompter Service Corp. and Teleprompter Equipment Corp., herein jointly called Teleprompter, filed with the Regional Director for the Second Region a charge against the National Association of Broadcast Engineers and Technicians, Independent, herein sometimes called the Respondent, or NABET, alleging in substance that the said labor organization and its agents violated Section 8 (b) (4) (D) of the Act, in that since on or about February 13, 1951, the Respondent has engaged in a strike and has induced and encouraged, and continues to induce and encourage, the employees of the National Broadcasting Company, herein sometimes called NBC, to engage in a strike or concerted refusal in the course of their employment to use or otherwise handle or work on equipment or to perform any services for the purpose of forcing or requiring Teleprompter to assign particular work to members of NABET, rather than to Teleprompter's own employees, who are members of Theatrical Protective Union No. 1, IATSE, herein sometimes called Local No. 1.

Thereafter, pursuant to Sections 102.74 and 102.75 of Board Rules and Regulations, the Regional Director investigated the charge and provided for an appropriate hearing upon due notice to all parties. In accordance therewith, a hearing was held on April 16, 17, 18, and 19, 1951, before James V. Constantine, hearing officer of the Board. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup> All parties were afforded an opportunity to file briefs with the Board. Local No. 1 filed a brief with the Board.

Upon the entire record in the case, the Board<sup>2</sup> makes the following:

<sup>1</sup> Pursuant to a motion of Local No. 1, the hearing officer excluded all witnesses other than parties to the hearing, and under this ruling, over the objection of the Respondent, there were excluded three witnesses who had been subpoenaed by the General Counsel and had refused to testify on the advice of the Respondent's counsel, although the Respondent's counsel did not preclude the possibility of their testifying at a later stage in the proceeding. During the hearing the Respondent requested leave to appeal this exclusion ruling. The Board denied the request for leave to appeal on the ground that the request offered insufficient reason for the Board to inquire into the merits of the ruling at that stage of the proceeding. Thereafter the Respondent did not renew its objection or make any further showing of actual prejudice as a result of the hearing officer's ruling. Under all the circumstances of the case, we find that the exclusion was not an abuse of the hearing officer's discretion.

<sup>2</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

## FINDINGS OF FACT

## 1. Teleprompter's business

Teleprompter Service Corp. and Teleprompter Equipment Corp., together with Teleprompter Corp., not herein otherwise involved, are New York corporations organized in January 1951 for the purpose of developing and exploiting a device known as a teleprompter.<sup>3</sup> The three corporations have identical officers, directors, and stockholders, and maintain a common office in the City of New York. Teleprompter Corp. holds the patent applications on the device and manufactures and owns the equipment.<sup>4</sup> Through exclusive intercorporate arrangements, Teleprompter Equipment Corp. leases such equipment to producers and sponsors of television shows, and Teleprompter Service Corp., in conjunction therewith, contracts with the producer or sponsor for the operation and servicing of the equipment, furnishing the necessary personnel in connection therewith.

During the first 3½ months of Teleprompter's operations, it had contracted with the following firms to supply teleprompter equipment and services in connection with the televising of certain programs over the networks of NBC and the Columbia Broadcasting System, herein sometimes called CBS:

(a) Benton & Bowles, an advertising agency, as agents for the Procter and Gamble Manufacturing Company. This agreement is for 1 year, is cancelable at the end of any 13-week period, and calls for the payment of between \$25,000 to \$30,000 in fees for the full year.

(b) Calkins & Holden, an advertising agency, as agents for Stokely-Van Camp, Inc., sponsors and producers of the Little Show. This agreement as at present drawn appears to be for an indefinite term and is cancelable upon 1 week's notice. The agreement will provide approximately \$10,000 in fees for a full year.

(c) CBS, directly, for two television shows a week at an annual fee of \$30,000. This agreement is oral and apparently commits neither party beyond the initial performance of the two shows selected.

<sup>3</sup> A teleprompter is an electrical device which furnishes visual aid to actors performing on television shows by displaying the lines of the script. The device is approximately 30 x 18 x 6 inches in dimension and contains an electrically rotated script with letters about an inch high. One or more such units are placed in strategic positions about a studio set and are regulated by a master control unit located off stage. Although one or more of such units are in a fixed position on the set, it is often necessary to provide an additional mobile unit or units, in which event the mobile unit is moved about the set by a worker referred to as a "pusher." The person who operates the master control is known as the "operator."

<sup>4</sup> The unit is manufactured in the States of New York and New Jersey by independent firms under contract with Teleprompter Corp. At the time of the hearing, Teleprompter Corp. had only 13 units, but an additional 100 units were on order, 25 of which were scheduled to be delivered within 90 days.

(d) Arthur Godfrey for his television show on the CBS network. This agreement is an oral agreement for 1 year beginning April 18, 1951; is cancelable at the end of any 13-week period, and provides for annual fees of approximately \$20,000.

In addition Teleprompter has contracted with sponsors and producers of other television shows on an experimental or one-show basis. The income derived from such contracts has amounted to \$1,000.

Notwithstanding the fact that the CBS contract did not commit either party beyond the initial performance of the two shows selected, and the remaining contracts are cancelable at the end of any 13-week or shorter period, we are satisfied by the record as a whole that there is a reasonable expectancy that these contracts will be continued at least for a period of a year. In any event we consider the weekly charges under those agreements as indicative of Teleprompter's minimum earning capacity,<sup>5</sup> and sufficient to warrant the expectation that it will continue to do business at least at the rate established by its weekly charges during the first few months of its existence.<sup>6</sup>

It was stipulated that the Procter and Gamble Manufacturing Company, and Stokely-Van Camp, Inc., are concerns, each of which ship goods in interstate commerce valued at more than \$25,000 annually, and it was further conceded that the National Broadcasting Company and the Columbia Broadcasting System, Inc., are instrumentalities and channels of interstate and foreign commerce, over which the Board has asserted jurisdiction.<sup>7</sup> The record shows that the revenue received by NBC from the 57 affiliated stations in 35 States for the air time purchased for the Little Show amounts to \$18,300 per week, and that an additional unspecified amount is received by NBC for the use of the facilities of Studio 3A, in which the Little Show originates.

Under the circumstances of this case, we find that Teleprompter Service Corp. and Teleprompter Equipment Corp. constitute a unitary enterprise which is engaged in interstate commerce within the meaning of the Act. As such enterprise furnishes goods and services valued at the rate of more than \$50,000 annually to companies which function as instrumentalities and channels of interstate commerce, and to enterprises engaged in producing or handling goods destined for out-of-State shipment in the value of more than \$25,000 annually, over which we have jurisdiction; we find, apart from other commerce factors herein existing which could serve as an added basis for asserting juris-

<sup>5</sup> There was testimony in the record to the effect that Teleprompter with its present equipment can handle approximately \$150,000 in annual volume of business and that with the new equipment which is to be delivered it will be able to handle another \$750,000 to \$1,000,000 in annual volume of business.

<sup>6</sup> *General Seat and Back Mfg. Corporation*, 93 NLRB 1511.

<sup>7</sup> See *National Broadcasting Company*, 89 NLRB 1289; *Columbia Broadcasting System, Inc.*, 88 NLRB 343.

diction, that it will effectuate the policies of the Act to assert jurisdiction herein.<sup>8</sup>

## 2. The dispute

### a. *The facts*

The Little Show is a 15-minute program originating, as indicated, in NBC's Studio 3A in New York City. It is broadcast twice weekly over 57 of its affiliated stations located in 35 States. In accordance with the agreement, the equipment of Teleprompter was first used on February 6, 1951, in connection with the performance of the show in NBC Studio 3A. Teleprompter assigned the work of operating the master control to its permanent employee, one Greg Fisher, a member of Local No. 1, and assigned the work of moving the mobile unit, necessary for the proper performance of the show, to another Local No. 1 member. On February 8, when the equipment was again used on the same show, one Carl A. Cabasin, a member of NABET and a technical director for NBC assigned to Studio 3A for the performance of the show, told his supervisor, Reid Davis, that the engineering and technical staff, all members of NABET, could not operate with the teleprompter equipment in the studio. He indicated further that his instructions in that regard came from "the union." Notwithstanding this protest, rehearsal and performance of the show on that day went off without further incident.

As a result of this incident and the position ostensibly asserted by NABET, on February 12, Irving Kahn, one of the principal officers of the Teleprompter corporations, telephoned NABET's treasurer, George F. Maher, in Chicago in an effort to reach some working agreement with NABET. Kahn testified that Maher told him that as he (Maher) saw it, it had to be a NABET operation complete or it wouldn't work and that Maher also said during this conversation that "We will strike" unless Teleprompter agrees to hire NABET members. When Kahn proposed a temporary waiting period of 30 to 60 days during which operations in the studio could be studied in order to determine whether or not it was, in fact, a NABET operation, Maher seemed receptive to this suggestion and said that he would have to think it over. At Kahn's request he agreed to let Kahn know by telegram of his decision, one way or another. After this conversation with Maher, Kahn advised Calkins & Holden of the possibility of union trouble, and at their expressed willingness to carry on with Kahn, on his assurance that he would do everything to protect the

<sup>8</sup> *Hollow Tree Lumber Company*, 91 NLRB 635.

show from interruption, Kahn prepared cue cards<sup>9</sup> for the next day's performance of the show.

For the February 13 performance of the Little Show, Kahn again assigned Fisher as control operator and a man from Local No. 1 as pusher. At about 4:45 p. m., shortly before rehearsals were to begin, Walter Mullaney, a member of NABET and an NBC technical director assigned to the show for that day, announced to Kahn on the floor of Studio 3A, in the presence of other members of the engineering and technical staff in the studio, that "I have been ordered by my union not to do the show unless NABET personnel operates the equipment," and further indicated that he had received such instructions from Cliff Gorsuch, national representative of NABET. Kahn informed Mullaney of his conversation with Maher of the previous day and suggested to Mullaney that possibly the matter might be straightened out if they could speak to Maher. Mullaney replied that if he were to receive word from Maher that it was all right to go ahead with the show he would do so.

Present in the studio at the time of this conversation with Mullaney were Harry L. Abbott, television representative of Local No. 1, and Davis, NBC technical supervisor. Kahn asked Abbott if he would be willing to make some concession, on a temporary basis, to NABET so as to avoid interruption to the rehearsal and the performance of the show. When Abbott agreed it was decided to call Maher in Chicago. In the ensuing telephone conversation with Maher, Maher repeated what he had told Kahn the previous day, that was, that "This has to be a NABET operation." Kahn protested his inability to make it a complete NABET operation but asked whether some compromise could not be reached and suggested Maher speak to Abbott in an effort to reach such compromise. Whereupon Abbott joined in the telephone conversation with Maher, and as a result thereof an arrangement was made between the two for a "man-for-man standby for 30 days."<sup>10</sup>

On being advised of the agreement reached between the two unions, Kahn hurried from Davis' office back to the studio to inform Mullaney thereof, and to get rehearsal started immediately. When he reached the studio, at about 5:15 p. m., Kahn observed that the entire engineering and technical staff, including the cameramen, microphone boom engineers, and dolly pushers, were sitting about the set and not performing any of their customary duties. Kahn told Mullaney of the

<sup>9</sup> These cards contain the text of the script for the show and are held up before the actors to prompt them on their lines. The employees who perform this task are not members of NABET.

<sup>10</sup> Abbott testified that in the course of his conversation with Maher, Maher told him that, if NABET men did not operate the teleprompter, it would not be used.

agreement just made and asked him to start rehearsal, but Mullaney refused saying that he was sorry but he could do nothing until he heard directly from Maher or Gorsuch.<sup>11</sup> At that moment Mullaney was called to the telephone to speak to Maher, and on his return to the studio Mullaney announced, "I just spoke to Maher. It is okay. We can go ahead, but you have to hire a NABET man on the spot, and we have a man-for-man deal." Kahn thereupon released the Local No. 1 man he had hired as pusher and requested Davis to assign a NABET member of his engineering and technical crew to serve as pusher during rehearsal. Davis assigned such an employee, whereupon NBC's engineering and technical staff assumed their customary posts, work started, and rehearsal went forward, approximately 15 minutes after its scheduled time of 5 p. m.

The next day, February 14, Abbott met with Gorsuch to work out the terms of the agreement made with Maher. Gorsuch insisted that the agreement must be reduced to writing and signed by Abbott and an officer of IATSE. Abbott refused to enter into a written agreement, claiming, among other things, that there was no such understanding reached with Maher. Gorsuch thereupon indicated that under the circumstances there could be no deal, and stated to Abbott that if teleprompter equipment were brought into the studio, he would have to advise his people not to have anything to do with the show unless such equipment was operated by NABET personnel.

On February 15, the scheduled date for another performance of the Little Show, Davis telephoned Kahn and told him not to bring his equipment on the set that day because he (Davis) had been warned by his engineering staff that they would strike if the equipment were brought in. The same information was also related to Kahn by Calkins & Holden. Later that day, at rehearsal time, Cabassin, who was on duty as technical director, told Kahn that "We will not work. I have been instructed by Mr. Gorsuch and my union not to work if the teleprompter is used on the set, IA operated." Asked by Kahn if it was a NABET work stoppage, he answered, "Yes." Although it was then 5 p. m. and time for rehearsal, none of the engineering and technical staff were at work. It was not until Kahn instructed his manager to withdraw the men assigned to the work, from the teleprompter equipment and resort to the use of cue cards, did rehearsal start—10 minutes after its scheduled time. Later that evening Gorsuch told Kahn in the presence of others that NABET's position

<sup>11</sup> The technical director is in charge of the engineering and technical staff throughout rehearsal and performance of the television show. He is the only one permitted to give instructions to the engineering staff and apparently also directs the pusher in his movements. The record indicates that a technical director is also often the spokesman on union matters for the engineering staff.

had not changed and that either NABET operated all of the equipment or it wouldn't operate. The regular televised performance of that evening was broadcast with the use of cue cards and not with teleprompter equipment.

The next performance of the show on February 20, was given with the use of teleprompter equipment but without the employment of any NABET member by Teleprompter. Apparently there was no attempt by the engineering and technical staff to interfere with rehearsal or the broadcast performance. Moreover, no further incidents of the character occurring on February 13 and February 15 has since occurred. However, the Board has not been advised of any settlement of the dispute, and insofar as is known, NABET has not altered its position with respect to its demand that the work of operating teleprompter equipment be assigned to NABET members only.

However, as a result of the February 13 and 15 incidents Calkins & Holden, although completely satisfied with the performance of the device, declined to execute the standard form of agreement providing for a full year's use of the equipment. Instead Calkins & Holden entered into an agreement with Teleprompter which provided that until such time as Teleprompter shall have worked out a complete arrangement with "the union," their obligation to use the equipment would be cancelable upon 1 week's notice.

#### *b. Bargaining history*

Respondent concedes that it represents none of Teleprompter's employees and that it has no collective bargaining agreement with Teleprompter providing for the employment of NABET's members. On the other hand, the record shows that on February 8, 1951, Teleprompter entered into an agreement for a period of 90 days with Theatrical Protective Union No. 1 pursuant to which Teleprompter agreed to employ a member of this union as control operator and to employ floor operators when necessary.<sup>12</sup>

#### *c. The contention of the parties*

Both Teleprompter and Local No. 1 contend in substance that the Respondent violated Section 8 (b) (4) (D) by engaging in a strike and encouraging its members to engage in a work stoppage in order to compel Teleprompter to assign the work of operating its equipment to NABET members rather than to Teleprompter's employees, who were members of Local No. 1. Apparently the Respondent seeks to justify

<sup>12</sup> As we make no specific finding with respect to the right of Theatrical Protective Union No. 1 to an assignment of the work in question, we need not pass upon the legality of the agreement, particularly as, by its terms, it has since expired.

its action with respect to Teleprompter's employment of Local No. 1 members by reliance on its bargaining contract with NBC. The Respondent's apparent position is that the introduction of teleprompter equipment into the studio created impossible working conditions for its members employed by NBC and therefore that the Respondent had a right under its contract with NBC to take action to protect its members.

*d. Applicability of the statute*

As we have held, the power to proceed in a Section 10 (k) proceeding depends upon the existence of reasonable cause to believe that a violation of Section 8 (b) (4) (D) has been committed.<sup>13</sup> The record clearly establishes that on February 13 and 15 the Respondent induced and encouraged a work stoppage by employees of NBC who were assigned to work in Studio 3A. Whether or not the introduction of teleprompter equipment into Studio 3A in fact created hazardous or difficult working conditions for members of the Respondent employed in such studio is immaterial here, for the Respondent offered no evidence,<sup>14</sup> nor does the record otherwise show, that the purpose of such work stoppage was to correct those alleged hazardous working conditions. On the contrary, the record convinces us that there is reasonable cause to believe that the work stoppage at NBC was designed, in violation of Section 8 (b) (4) (D), solely to compel Teleprompter to assign work to NABET members rather than to their own employees who were members of another union. We find therefore that the dispute is properly before us.

*e. Merits of the dispute*

As indicated above, the Respondent concedes that it has no existing contract with Teleprompter upon which could be predicated any lawful claim to the work in dispute and that it represents none of Teleprompter's employees. Nor does it appear that the Respondent has any right to any outstanding Board certification or order affecting this work.<sup>15</sup> It is clear from the record that Teleprompter had assigned the work in question to its own employees who were members of Local No. 1.

<sup>13</sup> *Middle States Telephone Company of Illinois*, 91 NERB 598, and cases cited therein in footnote 16.

<sup>14</sup> An officer of Respondent and certain of its members were subpoenaed by the General Counsel to testify at the hearing, but on advice of Respondent's counsel, the members, who were present, refused to do so.

<sup>15</sup> Section 8 (b) (4) (D) contains the proviso "... unless such employer is failing to conform to any order of certification of the Board determining the bargaining representative for employees performing such work. . . ."

These facts are determinative of the present dispute. The Board has specifically held that Sections 8 (b) (4) (D) and 10 (k) do not deprive an employer of the right to assign work to his own employees and that these sections were not intended to interfere with an employer's freedom to hire, subject only to the requirement against discrimination as contained in Section 8 (a) (3).<sup>16</sup> Consequently in determining this dispute, it is sufficient on the facts before us that Teleprompter assigned the work to its own employees and that Respondent acted to force or require Teleprompter to assign this work to its own members.

That there has been no work stoppage by NBC employees since February 20 does not eliminate the necessity for a determination of the dispute, for we find nothing in the record to indicate that the Respondent has abandoned its claimed right to an assignment of the work and that it will not in the future take similar action to force or require Teleprompter to assign the work to its own members. Moreover, the record shows that Teleprompter's future business operations depend, in part, upon a final resolution of this dispute. Under the circumstances we cannot find that the present proceeding is moot.

Accordingly, we find that the Respondent, NABET, is not lawfully entitled to force or require Teleprompter Service Corp. and Teleprompter Equipment Corp. to assign the work in the dispute to members of NABET rather than to employees of Teleprompter.

### Determination of Dispute

Upon the basis of the foregoing findings of fact, and upon the entire record in this case, the Board makes the following determination of dispute pursuant to Section 10 (k) of the amended Act:

1. National Association of Broadcasting Engineers and Technicians, Independent, and its agents are not, and have not been, lawfully entitled to force or require Teleprompter Service Corp. and Teleprompter Equipment Corp. to assign the work of operating teleprompter equipment in Studio 3A of the National Broadcasting Company, New York, New York, to members of National Association of Broadcasting Engineers and Technicians, Independent, rather than to employees of Teleprompter Service Corp. and Teleprompter Equipment Corp., who are, or may be, members of another labor organization.

2. Within 10 days from the date of this Decision and Determination of Dispute, the Respondent shall notify the Regional Director for the

<sup>16</sup> *Juneau Spruce Corporation*, 82 NLRB 650; *United Brotherhood of Carpenters and Joiners of America, et al. (Stroh Brewery Company)*, 88 NLRB 844.

Second Region in writing as to what steps the Respondent has taken to comply with the terms of the Decision and Determination of Dispute.

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LOCAL 428, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, A. F. L., AND BUILDING AND CONSTRUCTION TRADES COUNCIL OF PHILADELPHIA AND VICINITY *and* NICHOLAS PALLADINO, CHARLES PALLADINO, FRED PALLADINO, WILLIAM PALLADINO, AND FRANK PALLADINO, INDIVIDUALLY AND AS CO-PARTNERS, TRADING AS N. PALLADINO BROTHERS. *Case No. 4-CB-63. August 30, 1951*

### Decision and Order

On March 9, 1951, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report, and a supporting brief, and the General Counsel filed a brief.

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 [Members Houston, Reynolds, and Murdock].

The Respondents' request for oral argument is denied, as the record and briefs, in our opinion, adequately present the issues and positions of the parties.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case. We find merit in the Respondents' contention that the Board, in the exercise of its discretion, should decline to assert jurisdiction in this case.

Palladino, the charging party and the employer of the employees involved herein, is engaged in the plumbing and heating business in Pottstown, Pennsylvania, and does an annual gross business of approximately \$138,000, all of which is local. Palladino's annual purchases amount to approximately \$73,500, of which purchases worth approximately \$10,800 are shipped directly to Palladino from outside the State. Palladino was hired as a subcontractor to install the plumbing and heating system in a supermarket being constructed for Ameri-