

2. By discriminating in regard to the hire and tenure of employment of Watkins, Maybon, Snyder, and Ernest J. and Jess Runger, thereby discouraging membership in International Association of Machinists, Local Lodge 1491, Respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (a) (3) of the Act.

3. By interrogating their employees regarding their union sympathies thereby interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication in this volume.]

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 556, AFL and SAFEWAY STORES, INCORPORATED.
Case No. 21-CD-30. October 31, 1952

Decision and Determination of Dispute

This proceeding arises under Section 10 (k) of the Act, as amended by the Labor Management Relations Act, 1947, 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 practice shall have arisen. . . ."

On May 19, 1952, Safeway Stores, Incorporated, herein called the Company, filed with the Regional Director for the Twenty-first Region a charge against Amalgamated Meat Cutters & Butcher Workmen of North America, Local 556, AFL, herein called Meat Cutters, alleging that it had engaged and was engaging in certain activities proscribed by Section 8 (b) (4) (D) of the amended Act. It was alleged, in substance, that the Meat Cutters had induced and encouraged employees of the Company in the course of their employment to engage in a strike or concerted refusal to work with an object of forcing or requiring the Company to assign particular work to employees who are members of the Meat Cutters rather than to employees who are members of Retail Clerks International Association, AFL, Local 899, herein called the Clerks.

Pursuant to Section 102.71 and 102.72 of the Board's Rules and Regulations, the Regional Director investigated the charge and provided for an appropriate hearing upon due notice to all the parties. Thereafter, a hearing was held before Nathan R. Berke, hearing officer, on June 17, 18, and 19, 1952. The Clerks was permitted to inter-

vene and to participate fully in the hearing. 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. All parties were afforded an opportunity to file briefs with the Board.¹

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Safeway Stores, Incorporated, is a Maryland corporation, engaged in the business of processing, distributing, and selling of food, food products, and allied merchandise. It operates approximately 2,000 retail food outlets in various States of the United States, including the State of California. In the southern California area, the Company operates approximately 300 retail stores, and the only store involved in this proceeding is located at Santa Maria, California. The Board heretofore asserted jurisdiction over the Company.

We find that the Company is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters & Butcher Workmen of North America, Local 556, AFL, and Retail Clerks International Association, AFL, Local 899, are labor organizations within the meaning of the Act.

III. THE DISPUTE

A. *Facts*

The Company operates a retail store at Chapel Street in Santa Maria, California, where it employs members of the Meat Cutters and members of the Clerks. It opened this store on April 17, 1952. Before that date, it operated a similar retail store on Church Street, also in Santa Maria, which it sold, transferring its operations to the new location.

Among the food items sold at the old store were precooked luncheon meats. These were, for the most part, sold in bulk, and to a lesser extent, in prepackaged form. The bulk luncheon meat was displayed in a conventional meatcase, and sliced and wrapped to order at the customer's request. It was handled by meat department employees. The prepackaged luncheon meat was stocked in an open top cooler

¹ The request of the Respondent for oral argument is hereby denied as the record and briefs, in our opinion, adequately present the issues and positions of the parties.

located in the grocery section. It was handled by food clerks. The employees in the meat department are members of the Meat Cutters and the food clerks are members of the Clerks.

On April 17, 1952, when the new store was opened, shortly after a member of the Meat Cutters had been assigned to display pre-packaged luncheon meats, he was told by a company official not to continue with that work, as it would be performed by food clerks. Somewhat later, representatives of the Meat Cutters, who were at the opening of the new store, seeing food clerks—members of the Clerks—handling and displaying the luncheon meats, protested to company representatives. No further action was taken.

The following day, April 18, at about 8 a. m., the Meat Cutters advised the Company's manager that unless their members stocked the luncheon meats, they would refuse to work. The Company did not accede to this demand. Thereupon, meat department employees, all of whom were members of the Meat Cutters, left the store. Other meat department employees, arriving after the initial walkout, joined them outside the store. They remained away from work until April 22, 1952.²

The Company's operations at the new Chapel Street store, although for the most part like those at its former store on Church Street, have certain innovations. Thus, for example, it has eliminated *bulk* luncheon meats. All of the luncheon meats are prepackaged off the premises at the Company's warehouse, and are handled by food clerks, all of whom are members of the Clerks.

B. Bargaining history

For a number of years, the Meat Cutters and the Clerks have represented the Company's employees. Both labor organizations have collective bargaining contracts with the Company.

The Company signed its most recent agreement with the *Meat Cutters* on February 2, 1951, to be in effect from November 5, 1950, through November 5, 1955. That agreement by its terms provides that the Meat Cutters shall have jurisdiction over all employees and merchandise as follows:

Handling the tools of the trade such as saws, slicing machines, knives, etc.; preparing, packaging, displaying and dispensing of fresh, chilled frozen meat; fresh, chilled or frozen poultry; fresh, chilled or frozen fish; fresh, chilled or frozen rabbits; and all smoked and cured meats in the retail operation.

² On that date, the superior court for Santa Barbara County, California, issued a temporary restraining order at the Company's request.

On March 12, 1952, pursuant to a consent election,³ the Meat Cutters was certified as exclusive bargaining agent in the following unit:

All fabricators, cutters, wrappers, sellers, handlers and merchandisers of meat, fish, rabbits, and poultry, including meat cashiers and individuals working in meat cutters' departments who are engaged in handling and selling meats and who may sell other food products in combination with their regular duties in meat departments; excluding supervisors as defined by the Act, office employees, retail clerks, and delicatessen clerks.

The Company signed its most recent agreement with the *Clerks* on December 28, 1949, to be in effect from January 1, 1950, through April 1, 1951, and from year to year thereafter, unless terminated. On November 3, 1950, the Employer and the Clerks extended this agreement, as modified, to December 31, 1955, but continued in effect substantially all the provisions of the original contract, including the following recognition clause:

The Employer recognizes the Union as the sole and exclusive collective bargaining agent for all employees working in its retail stores coming under the jurisdiction of the union as granted by the Retail Clerks International Association.

The constitution of the Clerks' International spells out the jurisdictional boundaries as covering "all employees of stores, mercantile and mail order establishments, who are actively engaged in handling or selling merchandise or performing other services incidental thereto."

The Clerks received a union-authorization certificate early in 1952 covering a bargaining unit which included "all retail store employees," and excluded "meat cutters, meat department wrappers, and meat department cashiers" in addition to the statutory exclusions.

Agreements as to Jurisdiction

As far back as July 7, 1949, the Meat Cutters and Clerks recognized the existence of the problem now under consideration. On that day, their two Internationals executed an agreement which stated:

It is recognized that special problems exist within the operation of certain present-day grocery stores and super markets; particularly with respect to the handling and selling of prepackaged meats, frozen meats, poultry, fish and in some instances delicatessen products.

³ Case No. 21-RC-1712.

To avoid any future conflict between the two labor organizations, the agreements specifically provided :

In instances where meat is prepackaged, it is recognized by the [Clerks] that the selling, cutting, prepackaging and displaying of this meat comes under the jurisdiction of the [Meat Cutters].

Where similar or like methods of handling frozen meats may apply, the Meat Cutters shall also have jurisdiction. . . .

Thereafter, on May 22, 1951, cognizant of the underlying problem, the Meat Cutters and Clerks executed a memorandum in which they stipulated to a "Meat Cutters' bargaining unit description to be accepted for the purpose of National Labor Relations Board elections to be held in the future in California. . . ." The unit, substantially like the one certified in the consent election of March 12, 1952, was described as follows :

Included: All fabricators, cutters, wrappers, sellers, handlers and merchandisers of meat, fish, rabbits, poultry and including meat cashiers. *Excluded:* Supervisors as defined by the Act, office employees, retail clerks and delicatessen clerks other than individuals working in meat cutters' department where the delicatessen department is operated in combination with the meat cutters' department.

This stipulation also provided that this agreement as to the unit description was *not* to modify the terms of the July 7, 1949, agreement between the two Internationals, nor to require any change of affiliation by any of their memberships.

D. *Contentions of the parties*

Although the Company filed the charge herein, it declared its neutrality at the hearing and in its brief, stating that it "takes no position with respect to which of these organizations has the right to perform the work involved."

The Meat Cutters contends in substance that it has a right to the work in question, and for that reason urges a determination of dispute in its favor.

The Clerks contends that the proceeding should be dismissed because of an agreement that allegedly created machinery for the voluntary adjustment of this dispute. Failing that, the Clerks urges that it is entitled to the disputed work, and asks that a determination be made accordingly.

E. *Applicability of the statute*

It is clear from the record that the "dispute" in this proceeding involves efforts by the Meat Cutters to force or require the Company to

assign the work of displaying and selling prepackaged luncheon meats to employees who are members of the Meat Cutters and covered by its existing contract, although the work was assigned to and being done by employees who are members of the Clerks. Accordingly, we find that this is a dispute within the meaning of Sections 8 (b) (4) (D) and 10 (k) and is therefore properly before us for determination.

F. The Clerks' contention as to the alleged agreement for the voluntary adjustment of the dispute

The Clerks urges the dismissal of this proceeding on the ground that the July 7, 1949, agreement between the two Internationals and the May 22, 1951, memorandum containing the unit stipulation constitute an agreed-upon method for voluntarily adjusting the dispute. The Clerks bases its position on the provision in Section 10 (k) which empowers the Board to hear and determine a dispute such as this "unless, within ten days after notice that [an 8 (b) (4) (D)] charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute."

We find no merit in this contention. The July 7, 1949, agreement between the two Internationals, executed long before the dispute in question arose, clearly proved ineffectual in achieving its stated purpose of eliminating jurisdictional strife between the Meat Cutters and the Clerks, as the facts of this case make evident. This is also true of the May 22, 1951, memorandum relied on by the Clerks. The record shows no effective steps taken by the parties in this case pursuant to the Internationals' agreement, nor any other means applied or invoked which could reasonably be considered as a sufficient agreement "upon methods for the voluntary adjustment of the dispute." Rather, the circumstances as they are revealed in the record clearly indicate that as of the hearing date the dispute was wholly unresolved,⁴ and that the parties to the dispute had reached no agreement upon methods for its voluntary adjustment, as the Board has construed that provision of Section 10 (k) of the Act.⁵

G. Merits of the dispute

We view the dispute here presented as essentially a disagreement between two unions over the question of which of the two existing

⁴ At the hearing, the Meat Cutters opposed the Clerks' motion to dismiss under this provision of Section 10 (k), indicating the apparent lack of agreement that existed.

⁵ *United Brotherhood of Carpenters and Joiners of America, et al. (Ora Collard)*, 98 NLRB 346; *International Hod Carriers, Building, Common Laborers' Union of America, Local 231 (Middle States Telephone Company)*, 91 NLRB 598.

bargaining units appropriately includes the work of handling and displaying prepackaged luncheon meats.⁶

Employees in the meat department handled and displayed luncheon meats, as such, at the Company's former location on Church Street, except that food clerks handled some prepackaged items. At the new store on Chapel Street, the Company modified its operations by prepackaging the luncheon meats at the warehouse instead of displaying and handling them in bulk. The Meat Cutters contends that this modification was insubstantial and had no effect in changing the essential character of the products in question or their display and handling. The Meat Cutters relies on its collective bargaining agreement of February 2, 1951, which was in effect at all times material here, describing its jurisdiction as embracing "all employees . . . handling . . . preparing, packaging, displaying and dispensing . . . cured meats." The unit in which the Meat Cutters was certified on March 12, 1952, included "all fabricators, cutters, wrappers, sellers, handlers and merchandisers of meat . . . including . . . individuals working in meat cutters' departments who are engaged in handling and selling meats. . . ." There was apparently no exception set forth in either the contract or the unit as to the kind of meat involved; the language in the contract appears to specify all the different kinds of meat, including "cured" meats, and the unit description uses the term "meat" without suggesting any exception.

The Clerks relies, *inter alia*, on the recognition clause in its contract. This clause is general in nature, simply referring to "the jurisdiction of the Union as granted by the Retail Clerks International Association." The constitution of the Clerks' International defines such jurisdiction in broad terms as covering "all employees of stores, mercantile and mail order establishments, who are actively engaged in handling or selling merchandise or performing other services incidental thereto." The Clerks also relies on the fact that food clerks at the old store at times handled and displayed prepackaged items, urging that a valid distinction exists between bulk luncheon meats and prepackaged luncheon meats.

We have carefully considered the facts in this case and the contentions of the parties, including reasons given and evidence presented in support of the jurisdictional claim of each Union, in addition to those specifically adverted to here. It is our opinion that the handling and display of prepackaged luncheon meats at the Company's present location is not materially or substantially different from that performed by members of the meat department employees at the old

⁶ Local 26, International Fur and Leather Workers Union (Winslow Bros. & Smith Co.), 90 NLRB 1379.

store. A reasonable construction of the pertinent provisions of the collective bargaining agreement between the Company and the Meat Cutters, and the unit description in the Board's certification, compels the conclusion that there is no valid basis for the distinction contended for by the Clerks between bulk and prepackaged luncheon meats. On the contrary, we believe that the language in these documents, which we have considered in passing on the issues here, is sufficiently clear to support the position taken by the Meat Cutters in this proceeding. This conclusion is further supported by the very precise terms of the July 7, 1949, agreement between the two Internationals, where it is stated that "*in instances where meat is prepackaged, it is recognized by the [Clerks] that the selling, cutting, prepackaging and displaying of this meat comes under the jurisdiction of the [Meat Cutters].*" [Emphasis added.]

In view of the foregoing, and upon the record as a whole, we believe that the employees handling and displaying prepackaged luncheon meats have interests in working conditions more closely related to those of the meat department employees than to those of the food clerks. Accordingly, we find that the disputed work appropriately is included in the meat department unit presently represented by the Meat Cutters.

Determination of Dispute

On 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. The handling and display of prepackaged luncheon meats at the Company's store at Chapel Street, Santa Maria, California, is included in the meat department employees' unit presently represented by Amalgamated Meat Cutters & Butcher Workmen of North America, AFL, Local 556, and not in the food clerks' unit now represented by Retail Clerks International Association AFL, Local 899.

2. Within ten (10) days from the date of this Decision and Determination of Dispute, Safeway Stores, Incorporated, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL, Local 556, and Retail Clerks International Association, AFL, Local 899, shall each notify the Regional Director for the Twenty-first Region, in writing, of the steps it has taken to comply with the terms of this Decision and Determination of Dispute.

MEMBER PETERSON took no part in the consideration of the above Decision and Determination of Dispute.