

2. All production and maintenance employees of the Respondent Partnership employed at its Lisbon plant, exclusive of all office and clerical employees, professional employees, guards, and supervisors as defined in the Act, constituted and constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. International Brotherhood of Blacksmiths, Drop Forgers and Helpers, AFL, was, on February 2, 1953, until on or about July 7, 1953, the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act; and thereafter, from on or about July 7, 1953, and at all times thereafter, International Brotherhood of Boilermakers, Iron and Ship Builders, Blacksmiths, Forgers and Helpers, AFL, was and has been continuously the exclusive representative of all of the said employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on April 18 and 25, 1953, and until on or about May 5, 1953, to bargain in good faith with International Brotherhood of Blacksmiths, Drop Forgers and Helpers, AFL, as exclusive representative of the employees in the above-described unit, the Respondent Partnership engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) 5 of the Act; that by refusing on or about May 5, 1953, and at all times thereafter, to bargain in good faith with International Brotherhood of Blacksmiths, Drop Forgers and Helpers, AFL, and its successor International Brotherhood of Boilermakers, Iron and Ship Builders, Blacksmiths, Forgers & Helpers, AFL, as the exclusive representative of the employees in the above-described unit, the corporate Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a), (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment and in the terms and conditions of employment of the employees named in the margin hereof ¹⁷ by laying them off and locking them out on or about April 27, 1953, the Respondent Partnership engaged in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.

6. By interfering with, restraining, and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Partnership has engaged in, and the Respondent Corporation has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication.]

¹⁷ Frank Allison
Floyd Bretz
Leo Chamberlain
Albert Cravenes
Herbert Gouldsberry

Andy Kindrick
Ray Morris
Lawrence Reynolds
Charles Richards
Harry Rupp

Paul Stockman
William Thomas
Bryon Williams
Lawrence Estill

SHIRLINGTON SUPERMARKET, INC., and Its Subsidiaries,
SHIRLEY FOOD STORE NO. 1, INC., SHIRLEY FOOD
STORE NO. 2, INC., SHIRLEY FOOD STORE NO. 5, INC.,
SHIRLEY FOOD STORE NO. 6, INC., and WESTMONT
SUPERMARKET, INC. *and* LOCAL 1501, RETAIL CLERKS
INTERNATIONAL ASSOCIATION, AFL. Case No. 5-CA-775.
April 29, 1954

DECISION AND ORDER

STATEMENT OF THE CASE

Upon a charge filed on September 22, 1953, by Local 1501,
Retail Clerks International Association, AFL, herein called

the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director for the Fifth Region, issued a complaint dated September 28, 1953, against Shirlington Supermarket, Inc., and its subsidiaries, Shirley Food Store No. 1, Inc., Shirley Food Store No. 2, Inc., Shirley Food Store No. 5, Inc., Shirley Food Store No. 6, Inc., and Westmont Supermarket, Inc., herein collectively called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Copies of the charge, complaint, and notice of hearing, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the Respondent (1) on or about September 14, 1953, and at all times thereafter, has continuously failed and refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, although the Union had been certified as the representative of the employees in such unit on August 7, 1953; and (2) such acts and conduct constitute unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

The Respondent filed its answer, in which, in substance, it (1) denied the jurisdictional allegations of the complaint, (2) denied the allegation of the complaint with respect to the appropriate unit, (3) denied the allegation of the complaint with respect to the exclusive representative status of the Union, (4) admitted that it refused to bargain with the Union, but denied that such refusal was an unfair labor practice, and (5) asserted certain affirmative defenses to its refusal to bargain.

Thereafter, all the parties entered into a stipulation, in which they stipulated and agreed, in substance, as follows: (1) The charge was filed, the complaint and notice of hearing were issued, and copies of each of these documents were duly served, as stated above; (2) the parties waive any hearing, the issuance of any Intermediate Report, the taking or submission of any further evidence, and any oral argument or other procedure before the Board except for the filing of briefs; (3) the parties agree that the Board may decide the case upon the basis of the stipulation and the entire record contained therein; (4) the entire record in the case, in addition to the stipulation, shall consist of copies of the Union's request for bargaining and the Respondent's reply thereto, the formal papers in this case, and the entire record in Case No. 5-RC-1095; (5) all of the corporations named as the Respondent herein comprise a single integrated enterprise and constitute an employer within the meaning of the Act;

(6) the Respondent's annual purchases approximate \$4,000,000 in value, of which approximately 90 percent represents shipments from out-of-State, but all of Respondent's sales, annually approximating \$5,000,000 in value, are made in the Commonwealth of Virginia; (7) the Union is a labor organization within the meaning of the Act; (8) the Union's request for bargaining was mailed on or about the date set forth therein, and was received by the Respondent in the normal course of mail; (9) the Respondent's reply to the Union's request was mailed on or about the date set forth therein, and was received by the Union in the normal course of mail; and (10) the stipulation contains the entire agreement between the parties.

Thereafter, on October 30, 1953, the Board approved the stipulation and made it a part of the record herein, and transferred the case to the Board for the purpose of making findings of fact, conclusions of law, and the issuance of a Decision and Order.

Thereafter, the Respondent and the Union filed briefs.

Upon the basis of the aforesaid stipulation and the entire record in the case, and upon full consideration of the briefs, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Shirlington Supermarket, Inc., is a corporation duly organized under and existing by virtue of the laws of the Commonwealth of Virginia, having its principal office at Alexandria, Virginia. Together with its wholly owned subsidiaries, described herein, it is engaged in the business of operating a chain of retail grocery stores in the Commonwealth of Virginia. Shirley Food Store No. 1, Inc., Shirley Food Store No. 2, Inc., Shirley Food Store No. 5, Inc., Shirley Food Store No. 6, Inc., and Westmont Supermarket, Inc., are each corporations duly organized under and existing by virtue of the laws of the Commonwealth of Virginia, engaged in the business of operating retail grocery stores in the Commonwealth of Virginia within a radius of 25 miles of Washington, D. C., and are wholly owned subsidiaries of Shirlington Supermarket, Inc. Shirlington Supermarket, Inc., Shirley Food Store No. 1, Inc., Shirley Food Store No. 2, Inc., Shirley Food Store No. 5, Inc., Shirley Food Store No. 6, Inc., and Westmont Supermarket, Inc., together comprise a single integrated enterprise and constitute an employer within the meaning of the Act.

Respondent, in the course and conduct of its business operations as described in the foregoing paragraph, annually purchases merchandise and commodities valued at approximately \$4,000,000, of which approximately 90 percent represents shipments transported to and received at its places of

business in the Commonwealth of Virginia from States of the United States other than the Commonwealth of Virginia and from the District of Columbia. All of Respondent's sales, annually approximately \$5,000,000 in value, are made within each store and carried therefrom by the customer involved.

We find that the Respondent is engaged in commerce within the meaning of the Act. We find further, as we have previously, that because the Respondent's direct inflow exceeds \$500,000 in value annually, it would effectuate the policies of the Act to assert jurisdiction over the Respondent.¹

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

Pursuant to a Decision and Direction of Election issued on August 18, 1952,² an election was held on September 6, 1952, which was lost by the Union.³ Upon objections filed by the Union, the Board on January 15, 1953, set that election aside, and directed a second election.⁴ The reasons therefore were stated by the Board as follows:

The Regional Director found that eligible employees were temporarily relieved of their duties, assembled, and addressed on company time and property by employer-representatives who, inter alia, urged the employees to vote against the Union; and that these speeches began approximately 2½ hours before the start of the election and in some instances were being delivered while the election was actually in progress. As to these findings, the Employer denies only that these speeches in some instances were being delivered while the election was actually in progress.

Even accepting the Employer's denial, we find, as the Regional Director did, that the timing of the speeches denied a substantially equal opportunity for presentation of the Union's views and was tantamount to a refusal to consider a request by the Union to reply; and that the timing of the Employer's speeches was not counteracted by the absence of evidence as to a no-solicitation rule or

¹See the Board's Decision and Direction of Election, Case No. 5-RC-1095, issued August 18, 1952, which is part of the record herein. Chairman Farmer and Member Rodgers concur in the assertion of jurisdiction, but are not to be deemed thereby as agreeing with the Board's present jurisdictional standards.

²Case No. 5-RC-1095, supra.

³Of 60 valid ballots cast, 24 were cast for and 36 were cast against the Union; there was 1 challenged ballot.

4102 NLRB 312.

the opportunities which the Union may have had to present its views to the employees under other circumstances. We find further, as we have under similar circumstances, that such conduct by the Employer was discriminatory and prejudiced that atmosphere we believe is essential to a fair exercise of their franchise by the voters.³

³The Hills Brothers Company, 100 NLRB 964.

The second election was held on February 7, 1953, and the Union won.⁵ Upon objections filed by the Employer, including an attack on the validity of the Board's action in setting aside the first election, the Board on August 7, 1953, overruled the objections, and certified the Union.⁶

On August 18, 1953, the Union requested the Respondent to meet "for the purpose of negotiating a working agreement covering the employees which we have been certified to represent." On September 14, 1953, the Respondent in reply refused to "extend recognition" to the Union "on the grounds among others, that the Board certification of your Union in this matter is a nullity, since the action of the Board in setting aside the first election lost by the Union was invalid, and in addition, despite certification, the Union does not in fact represent a majority."

The Respondent's chief defense to its refusal to bargain is that the Board's decision setting aside the first election was invalid. The arguments in support of this position were fully considered in the representation case and rejected by the Board at that time. That decision was proper under the Board's then-existing rule for cases of this type.⁷

In any event, we have recently established a new rule applicable to election situations of this type. Under the rule of the Peerless Plywood case,⁸ an election will be set aside whenever an employer, or a union, makes an election speech on company time to massed assemblies of employees during the 24-hour period preceding the election. Therefore, even if our new election rule were to be applied to the election here, it too would require that the election be set aside, in view of the fact that the Respondent's speeches were made on company time to massed assemblies of employees only 2 1/2 hours before the election. We find, therefore, that the first election was validly set aside, and consequently that the certification of the Union resulting from the second election was also valid.

⁵Of 55 valid ballots cast, 32 were cast for and 23 were cast against the Union; there were 2 challenged ballots.

⁶106 NLRB 666.

⁷See Bonwit Teller Inc., 96 NLRB 608, remanded 197 F. 2d 640 (C. A. 2), employer's petition for certiorari denied 345 U. S. 905.

⁸Peerless Plywood Company, 107 NLRB 427.

The Respondent also made the assertion in its refusal to bargain that the Union no longer represents a majority of the employees. There is no evidence in the record to support this assertion, and the Board has held that a certified union's majority status, in the absence of evidence of unusual circumstances, is conclusively presumed to continue for 1 year following certification.⁹

Accordingly, we find no merit in the defenses of the Respondent to its refusal to bargain.

The Appropriate Unit

We find, as alleged in the complaint, and as the Board found in the representation case, that the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees employed as food clerks, handling food merchandise and other merchandise usually sold in grocery stores, in all of the Respondent's stores within a radius of 25 miles of Washington, D. C., including all grocery clerks, produce clerks, dairy clerks, cashiers, porters, receiving clerks, and baggers, but excluding meat department employees, drivers, warehousemen, guards, watchmen, office clerical employees, and supervisors as defined in the Act.

Representation by the Union of a Majority in the Appropriate Unit

As stated above, the Union won the second election on February 7, 1953, and was certified by the Board on August 7, 1953, as the exclusive representative of all employees in the above-described appropriate unit for the purposes of collective bargaining. We have, above, rejected the Respondent's contention that the Board's certification was void and of no force or effect, and its further contention that the Union no longer represents a majority of the employees.

Accordingly, we find that on, and at all times after, August 7, 1953, the Union was the duly designated bargaining representative of the employees in the aforesaid appropriate unit, and, pursuant to Section 9 (a) of the Act, the Union was on, and at all times after, August 7, 1953, the exclusive representative of all employees in the aforesaid appropriate unit for the

⁹N. L. R. B. v. Ray Brooks, 204 F. 2d 899 (C. A. 9), enforcing 98 NLRB 976.

To the extent that this statement of the Board's so-called "1-year rule" is intended to hold that despite a clear and uncoerced loss of majority a union continues throughout the certification year to be the statutory bargaining representative of the employees, Member Rodgers does not agree. He is of the opinion that once a reasonable period of time, as measured by the circumstances of the individual case, has elapsed since the election and certification, it is "violative of the spirit and the very letter" of the Act for the Board to require employees to continue to be represented by an agent (union) which they themselves for reasons of their own have repudiated, N. L. R. B. v. Globe Automatic Sprinkler Co., 199 F. 2d 64, 70 (C. A. 3).

purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The Refusal to Bargain

As indicated above, the Respondent admits that on or about September 14, 1953, it refused the request of the Union to bargain collectively with the Union. We have, above, rejected the Respondent's defenses to its refusal to bargain.

Accordingly, we find that on September 14, 1953, and at all times thereafter, the Respondent has refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, in violation of Section 8 (a) (5) and Section 8 (a) (1) of the Act.¹⁰

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged, and is engaging, in certain unfair labor practices, we shall order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Local 1501, Retail Clerks International Association, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees employed as food clerks, handling food merchandise and other merchandise usually sold in grocery stores, in all of the Respondent's stores within a radius of 25 miles of Washington, D. C., including all grocery clerks, produce clerks, dairy clerks, cashiers, porters, receiving clerks, and baggers, but excluding meat department employees, drivers, warehousemen, guards, watchmen, office clerical employees, and supervisors as defined in the Act,

¹⁰ See Foreman & Clark, Inc., 105 NLRB 333.

constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Local 1501, Retail Clerks International Association, AFL, was on August 7, 1953, and at all times thereafter has been, and is, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on September 14, 1953, and at all times thereafter, to bargain collectively with Local 1501, Retail Clerks International Association, AFL, as the exclusive representative of its employees in the aforesaid 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 the aforesaid refusal to bargain, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby 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.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Shirlington Supermarket, Inc., and its subsidiaries, Shirley Food Store No. 1, Inc., Shirley Food Store No. 2, Inc., Shirley Food Store No. 5, Inc., Shirley Food Store No. 6, Inc., and Westmont Supermarket, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local 1501, Retail Clerks International Association, AFL, as the exclusive representative of all employees employed as food clerks, handling food merchandise and other merchandise usually sold in grocery stores, in all of the Respondent's stores within a radius of 25 miles of Washington, D. C., including all grocery clerks, produce clerks, dairy clerks, cashiers, porters, receiving clerks, and baggers, but excluding meat department employees, drivers, warehousemen, guards, watchmen, office clerical employees, and supervisors as defined in the Act.

(b) In any other manner interfering with the efforts of Local 1501, Retail Clerks International Association, AFL, to bargain collectively with it in behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Upon request, bargain collectively with Local 1501, Retail Clerks International Association, AFL, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at each of its stores within a radius of 25 miles of Washington, D. C., copies of the notice attached hereto and marked "Appendix A."¹¹ Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (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 insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Member Beeson took no part in the consideration of the above Decision and Order.

¹¹In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX A

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, as amended, we hereby notify our employees that:

WE WILL bargain collectively upon request with Local 1501, Retail Clerks International Association, AFL, as the exclusive representative of all employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment, or other terms or conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees employed as food clerks, handling food merchandise and other merchandise usually sold in

grocery stores, in all of our stores within a radius of 25 miles of Washington, D. C., including all grocery clerks, produce clerks, dairy clerks, cashiers, porters, receiving clerks, and baggers, but excluding meat department employees, drivers, warehousemen, guards, watchmen, office clerical employees, and supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain collectively with us, or refuse to bargain with said Union, as the exclusive representative of the employees in the bargaining unit set forth above.

SHIRLINGTON SUPERMARKET, INC., and Its Subsidiaries, SHIRLEY FOOD STORE NO. 1, INC., SHIRLEY FOOD STORE NO. 2, INC., SHIRLEY FOOD STORE NO. 5, INC., SHIRLEY FOOD STORE NO. 6, INC., and WESTMONT SUPERMARKET, INC.,

Employer.

Dated By.....
(Representative) (Title)

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

MICHAEL SILVERS, d/b/a SILVERSSPORTSWEAR, Petitioner and INTERNATIONAL LADIES GARMENT WORKERS UNION, LOCAL 266, AFL; LOS ANGELES SPORTSWEAR JOINT COUNCIL; I.L.G.W.U., AFL; GARMENT SHIPPING & RECEIVING CLERKS, WAREHOUSEMEN, DRIVERS & HELPERS, LOCAL No. 994.¹ Case No. 21-RM-267. April 29, 1954

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Fred W. Davis and Irving Helbling,² hearing officers. The hearing officers'

¹The names of the participating unions, herein referred to collectively as the "Union," appear as set forth in the amended petition and as modified at the hearing.

²Hearing Officer Davis sat at the first day of the hearing; Hearing Officer Helbling completed the hearing and issued the hearing officer's report.