

5. By interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, 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.

[Recommendations omitted from publication in this volume.]

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner 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 WILL NOT engage in any acts in any manner interfering with the efforts of LOCAL No. 105, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS & HELPERS OF AMERICA, A. F. L., to negotiate for or represent the employees in the bargaining unit described below.

WE WILL bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of the undersigned at his Ashland, Kentucky, operation, excluding all office and clerical employees, and all guards, professional employees, and supervisors as defined in the National Labor Relations Act.

GEORGE SEXTON d/b/a SEXTON WELDING COMPANY.

Dated _____ By _____
(Representative) (Title)

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

THE KROGER Co. and LILLY MAY PARRETT. Case No. 13-CA-741.
July 24, 1952

Decision and Order

STATEMENT OF THE CASE

Upon a charge duly filed on December 18, 1950, by Lilly May Parrett, herein called Parrett, the General Counsel of the National Labor Relations Board, herein called the General Counsel and the Board, respectively, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued his complaint on July 21, 1951, alleging that The Kroger Co., Wabash, Indiana, had engaged in and was en-

gaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint, charge, and notice of hearing were duly served upon the Respondent and the charging party.

With respect to the unfair labor practices, the complaint alleged, in substance, that the Respondent, in violation of Section 8 (a) (1) of the Act, discharged Parrett on November 21, 1950, and has since failed and refused to employ her because she engaged in concerted activities. The complaint also alleged that Parrett's discharge discouraged, and is continuing to discourage, the Respondent's employees in the exercise of the rights guaranteed them in Section 7 of the Act, and that the Respondent did thereby further engage in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

In its answer, duly filed, the Respondent admitted the allegations of the complaint concerning its corporate existence and the nature of the business it transacts. However, the Respondent denied the commission of any of the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held at Wabash, Indiana, on August 28 to 31, 1951, inclusive, before Sidney Asher, Jr., the Trial Examiner duly designated by the Chief Trial Examiner. The Respondent and the General Counsel were represented by counsel. Parrett appeared in her own behalf. All the participating parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. At the close of the hearing the Trial Examiner granted without objection the General Counsel's motion to conform the pleadings to the proof with respect to minor variations such as the spelling of names and dates.

Various rulings were made by the Trial Examiner during the course of the hearing on other motions and on objections to the admission of evidence. The Trial Examiner reserved ruling upon the Respondent's motion to dismiss, which was made at the close of the hearing. The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. These rulings are hereby affirmed. All parties were afforded an opportunity to file briefs and proposed findings of fact and conclusions of law. The Respondent filed a brief with the Trial Examiner.

On December 12, 1951, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, in which he found that the Respondent had not engaged in the unfair labor

practices alleged, and recommended complete dismissal of the complaint. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief. The Respondent filed a brief in support of the Trial Examiner's recommendations.

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and makes the following findings, conclusions, and order:

• FINDINGS OF FACT

I. BUSINESS OF THE RESPONDENT

The Respondent is an Ohio corporation engaged in the retail grocery business as a multistate enterprise. It maintains its principal office in Cincinnati, Ohio, and sales and distributing offices, warehouses, and about 2,000 retail stores in approximately 20 States. During the calendar year 1950, Respondent transported products valued at more than \$50,000,000 from its various installations to and through States other than Ohio and Indiana.

As an integral part of its operations, the Respondent maintains an egg exchange at Wabash, Indiana, which is the only plant involved herein. During the calendar year 1950, the Respondent transported from its Wabash egg exchange eggs valued in excess of \$1,000,000, of which more than 50 percent was shipped to points outside the State of Indiana.

The Respondent admits, and we find, that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The principal function of the Respondent's Wabash exchange is the candling and grading of eggs. The egg candlers in the main candling room work in semidarkness in 29 small booths, which run in a north-south direction along the east wall of the exchange building. A bench runs along the east wall for the full length of the building and is used by the candlers for the storage of empty cardboard egg cartons. In front of the bench there is a 6-foot aisle allowing access to the candling booths, which are about 4 feet wide and 4½ feet deep.

When the candlers are at work they stand in their booths facing west, and candle eggs with special light which penetrates the egg shells. At shoulder height a continuous belt passes through all of the booths for the removal of eggs which had been candled, graded, and placed in cardboard cartons. Below the belt each booth contains a candling table and light. The partition which separates the booths from the

rest of the exchange building runs from the ceiling down to about 3 feet above the floor, allowing space, normally closed by canvas strips, for large cases of uncandled eggs to be passed into each booth from the exchange floor. In addition to the candling lights, each booth contains a switch for that booth's red call light which is located on the exchange side of the partition. The call lights are used by the candlers to attract the attention of linemen, who supply eggs and cartons to the candlers when necessary. The lighting of the candling room is completed by overhead ceiling lights in the aisle. These lights are controlled by switches at the north and south end of the candling room. When the overhead lights are on, it is impossible to candle eggs.

On the morning of November 21, 1950, the egg candlers found the candling room cold when they arrived for work at 7:00 a. m. At the starting hour they entered the booths and began candling eggs as usual. However, a few of the candlers at least felt that the room was too cold to work in, and occasionally stepped into the aisle behind their booths to discuss the matter with their neighbors. From time to time some of the candlers left the candling room and gathered in groups in the rest room. There was considerable discussion about the cold and the difficulty of candling eggs under such conditions. Some of the conversation was loud enough to be characterized as shouting; the resultant disturbance affected production in the north end of the candling room.

During the morning, although the exact hour was not fixed by the testimony, Complainant Parrett suggested to the candlers in the adjoining booths that they plug in their red call lights and get the linemen to request more heat. It appears that about 15 of the lights were turned on, whereupon lineman Snell called into the booths to find out what was required. Parrett and other candlers replied that it was cold and asked Snell to locate Manager Otto Pagel and ask for more heat. Snell failed to deliver the message.

Sometime between 9 and 9:30 a. m. the candlers had their regular morning rest period. It is not clear from the record whether the turning on of the red lights occurred before or after the rest period. When considerable time had elapsed and Manager Pagel did not appear in response to the candlers' request, candler Essie Kozez suggested that Parrett turn on the overhead ceiling lights to attract Pagel's attention. Parrett called to candler Jo Ann Woodward, in the booth next to the light switch at the north end of the building, and asked that the lights be turned on. Woodward told Parrett that she would not do so because she might get in trouble. Thereafter, Parrett told several of the candlers that she was going to turn on the ceiling lights, and did so.

When the ceiling lights went on, all of the of the candlers stepped back into the aisle to see what was happening. Almost immediately

the lights were turned off by Oren Hays, the Government inspector, whose booth is located at the south end of the main candling room. Thereafter, in the next few minutes the lights went on once or twice more and each time Hays turned them off. He then left his booth and found Pagel in another part of the building, and suggested that Pagel go to the candling room because the lights were going on and off. Hays left his booth for this purpose at about 10:30 a. m., at least an hour after the morning rest period.

As soon as Pagel got Hays' report, he went to the candling room and walked through the aisle asking who had turned on the lights. There was no answer, so Pagel left. When he returned in a few minutes he overheard Parrett say, "I turned on the lights, and I will do it again." Pagel thereupon decided to discharge Parrett for attempting to cause "a work stoppage or production stoppage"; he went to his office and had the necessary separation papers prepared. At the time of Parrett's discharge, Pagel was unaware of her reason for turning on the ceiling lights. Further, the record establishes that when grievances arose in the exchange, the candlers customarily communicated with Pagel by asking a lineman to call him, or by going directly to his office either during working hours or during a regular recess period.

Based upon the foregoing, and upon the entire record, we find that the General Counsel has failed to prove that the discharge of Parrett constituted interference, restraint, or coercion within the meaning of Section 8 (a) (1) of the Act. We need not decide whether Parrett acted in concert with other employees in turning on the lights in the candling room. Under the special circumstances of this case, we find that her unexplained conduct, which she indicated would be repeated, was not protected employee activity within the meaning of Section 7 of the Act. We shall therefore dismiss the complaint in its entirety.

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

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of the Act.
2. The Respondent, by discharging Lilly May Parrett on November 21, 1950, and thereafter failing and refusing to reinstate her, did not violate Section 8 (a) (1) of the Act.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor

Relations Board hereby orders that the complaint issued herein against the Respondent, The Kroger Co., Wabash, Indiana, be, and it hereby is, dismissed.

CHAIRMAN HERZOG and MEMBER STYLES took no part in the consideration of the above Decision and Order.

SYLVANIA ELECTRIC PRODUCTS INC. and INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 1-RC-2533. July 24, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Leo J. Halloran, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The Petitioner and the Intervenor, Local 1502 International Brotherhood of Electrical Workers, AFL, are labor organizations claiming to represent employees of the Employer.
3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Petitioner seeks a unit of production and maintenance employees at the Employer's plant at Ipswich, Massachusetts. The Intervenor and the Employer contend that their current contract operates as a bar to the present petition. The Petitioner alleges that the contract is not a bar (1) because it contains an illegal union security clause, and (2) because of a schism within the Intervenor's local organization.¹

¹ The Petitioner indicated at the hearing that there may be a third ground for holding the current contract invalid, namely, the contention that the contract is invalid unless the Intervenor was in compliance on the date of the execution of the contract and for an entire year prior thereto. There is no merit in this contention. The compliance record of the Intervenor shows that it was in compliance on June 18, 1951, the date of execution of the contract, and that it had been notified of its achievement of compliance by the Regional Office of the Board on September 21, 1950, which was within 1 year of such date. *The Mellin-Quincy Manufacturing Co.*, case, 98 NLRB 457, therefore does not apply.