

## CONCLUSIONS OF LAW

1. United Furniture Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the Respondent, employed at its Fall River plant, exclusive of office and shop clerical employees, professional employees, executives, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of the Act.

3. United Furniture Workers of America, CIO, was, on July 10, 1953, and at all times since has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on and after March 7, 1954, to bargain collectively with the aforesaid Union as the exclusive representative of the 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 the aforesaid unfair labor practice the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in an unfair labor practice within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication.]

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WITWER GROCER COMPANY (CEDAR RAPIDS WAREHOUSE AND I. O. A. FOODS DIVISION), PETITIONER *and* TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL UNION NO. 238, AFL. *Case No. 18-RM-164. March 11, 1955*

### 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 Lyle C. Howg, 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 labor organization involved claims to represent certain employees of the Employer.

3. The Employer, an Iowa corporation engaged in the wholesale grocery business, maintains a warehouse and manufacturing plant at Cedar Rapids, Iowa, and warehouses at various other points in Iowa and Wisconsin. In the present proceeding, the Employer seeks a determination of the bargaining representative at its Cedar Rapids facilities only.

The Employer's manufacturing plant at Cedar Rapids is known as the I. O. A. Foods Division.<sup>1</sup> It is located approximately 30 feet from

<sup>1</sup>The I. O. A. Foods Division, herein called I. O. A., roasts and processes peanuts; roasts coffee; makes soft drinks, peanut butter, peanut brittle, extracts, pancake flour, preserves and honey; and manufactures sundry other grocery items.

the Witwer Grocer Company warehouse, herein called the Witwer warehouse, and is connected with it by a tunnel. Another warehouse, referred to as the tin warehouse, and the Employer's garage are located across the street from these buildings.

Prior to July 1953, I. O. A. was a separate concern operated apart from the Witwer Grocer Company, although Weaver Witwer was the sole owner of both enterprises. Following the commencement of the strike in 1953, discussed hereinafter, Witwer Grocer Company took over I. O. A. and the 2 establishments have been operated as 1 unit since that time.

In 1948, the Employer voluntarily recognized Teamsters, Chauffeurs and Helpers, Local Union #238, AFL, herein called the Union, as the exclusive bargaining representative for the employees of the Witwer Grocer Company.<sup>2</sup> This contract expired on December 31, 1948, and thereafter the parties entered into oral agreements from year to year, the last such agreement expiring on January 1, 1953.<sup>3</sup> In 1951, a consent election was conducted among the I. O. A. employees, which election was won by the Union. Thereafter, on October 15, 1951, the Board certified the Union as the exclusive bargaining representative for the I. O. A. employees.<sup>4</sup> Although the Union and the Employer entered into contract negotiations following the Board certification, no agreement was ever reached by the parties covering these employees.

During the last week of July 1953, the Union called a strike against both the I. O. A. and Witwer Grocer Company in an attempt to compel the Employer to grant wage increases requested by the Union. The I. O. A. building, the Witwer warehouse, the tin warehouse, and the garage have been picketed continually ever since the strike began.<sup>5</sup> Approximately 90 percent of the I. O. A. employees who went out on strike returned to work shortly thereafter, while the 7 or 8 employees of Witwer Grocer Company who went out on strike did not return. All employees who failed to return to work have been permanently replaced insofar as business needs have required.<sup>6</sup> At various times in 1954, negotiations concerning increases in wage rates for the Employer's employees were carried on between the Employer and the Union with no distinction being made between I. O. A. employees and warehouse employees.

<sup>2</sup> This contract covered all warehouse employees, working foremen, receiving and shipping clerks, checkers, truckdrivers, maintenance men, and helpers.

<sup>3</sup> The Union also represented units of employees of other wholesale grocery firms in Cedar Rapids. Each year, the Union would negotiate a written contract with one of these companies, and would then enter into oral agreements with the other employers conforming to the terms contained in the written contract.

<sup>4</sup> Case Number 18-RC-1256 The certified unit consisted of all I. O. A. employees, excluding office and clerical employees, guards, and supervisors as defined in the Act.

<sup>5</sup> The Union admits that this picketing is directed equally at the warehouses and the I. O. A. building, and includes the garage as it is in the same general area, although it is not directed primarily against the garage.

<sup>6</sup> With the exception of one employee, all employees who went out on strike and refused to return to work have found permanent employment elsewhere.

The Union admits that it has been and is engaged in an economic strike and in "economic" rather than organizational picketing;<sup>7</sup> it contends, however, that no question concerning representation exists, inasmuch as it does not now claim to represent any of the employees of the Employer, but only the 12 employees on strike at these operations who did not return to work and who have been permanently replaced, and who are, therefore, ineligible to vote in any election which may be directed at this time.

We find it impossible to reconcile the current picketing activities of the Union with its statement made at the hearing to the effect that it disclaims representing any of the present employees of the Employer. As stated by the Union, the dual purpose of the picketing is to inform the public that the Union is on strike for economic reasons,<sup>8</sup> and to make the Employer competitive in pay rates and working conditions with employers in this area engaged in the same type of business activities. The Board has in the past construed such conduct on the part of a union to be an attempt to secure by picketing results normally resolved through the process of collective bargaining. In effect, the Union is seeking to force the Employer to bargain with it in a unit coextensive with the warehouse and manufacturing plant in Cedar Rapids without regard to the question of its majority status. We find, therefore, that this picketing is tantamount to a present demand for recognition and is sufficient to support this petition.<sup>9</sup> Accordingly, we find that a 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,<sup>10</sup> and shall direct an election among the employees in the unit hereinafter found appropriate.

4. The Employer-Petitioner requests a unit composed of all employees of Witwer Grocer Company, including warehouse employees, mechanics, truckdrivers, and I. O. A. Foods Division employees at its Cedar Rapids plant, garage, and warehouses, but excluding office clerical personnel, salesmen, guards, and supervisors as defined in the Act.<sup>11</sup> The Union contends that, if an election is directed, it should be in two separate units, one of I. O. A. employees, and the other of warehouse employees. In such an event, the Union would include the mechanics in the unit of warehouse employees.

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<sup>7</sup> The Union stated at the hearing that the picketing is designed to advise the public that the Union is on strike at the Employer's operations, and to make the Employer competitive with respect to hourly rates of pay and working conditions with other wholesale grocery businesses in Cedar Rapids with whom the Union currently has contracts.

<sup>8</sup> The signs carried by the pickets are changed frequently, but the record shows that they are all to the general effect that A. F. L. employees are on strike against the Employer.

<sup>9</sup> *Francis Plating Co*, 109 NLRB 35.

<sup>10</sup> *s Beall Brothers 3, et al*, 110 NLRB 685.

<sup>11</sup> The unit description appears above as amended at the hearing.

*The scope of the unit:* Although, as stated above, the Board certified the Union in a separate unit of I. O. A. employees following a consent election in 1951, the Employer and the Union have never entered into any agreement concerning these employees. Moreover, since July 1953, the I. O. A. has become an integrated operating division of the Witwer Grocer Company, and now functions as a warehouse unit as well as a manufacturing plant. As a result, all employees are not only under common supervision,<sup>12</sup> but are interchangeable,<sup>13</sup> have practically the same wage rates, and are paid from a single Witwer Grocer Company bank account. Also, in the negotiations carried on between the Union and the Employer since the commencement of the strike, no distinction has been drawn by the parties as to warehouse employees, truckdrivers, and I. O. A. employees. In view of these facts, we find that the appropriate unit is one comprising all the Employer's Cedar Rapids operations, including the I. O. A. Foods Division.

*The composition of the unit:* The only employees in question are the two mechanics.<sup>14</sup> These mechanics ordinarily work in the Employer's garage, where they service a fleet of approximately 50 trucks. The truckdrivers, who are included in the appropriate unit, are the only other employees who operate from the garage. The mechanics fill in as extra drivers when business conditions warrant it, and also spend approximately 1 day per week working as warehouse employees. In these circumstances, and as these mechanics would otherwise be the only unrepresented category among the production and maintenance employees, we shall include them in the unit.

Accordingly, we find that all employees of Witwer Grocer Company at its manufacturing plant, warehouse operation, and garage located in Cedar Rapids, Iowa, including warehouse employees, mechanics, truckdrivers, and I. O. A. Foods Division employees, but excluding office and clerical employees, salesmen, guards, foremen, 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.]

**MEMBER MURDOCK** took no part in the consideration of the above Decision and Direction of Election.

<sup>12</sup> Weaver Witwer is in charge of the entire operation. Robert Walker, his assistant, is similarly responsible for all the facilities. There is no supervisory personnel directly and solely in charge of the I. O. A.

<sup>13</sup> There is testimony that there is no operation which will keep one employee busy during an entire day, and therefore no employees do any specified type of work regularly. Whenever an employee is not busy at one building, he is assigned work in another. This type of change occurs daily.

<sup>14</sup> The record is not entirely clear as to whether the mechanics were included in the unit of Witwer Grocer Company employees.