

L Alversano, *San Silverio*¹¹
 Liberad De Bernardo, *Santa Maria*
 Peter Guarrasi, *Santa Rita*
 John Sima, *Santa Teresa*
 Aniello Pilato, *Sea Maid*

Antonio Mascola, *S G Guiseppe*¹²
 Guiseppe Iacono, *S Restituta II*
 Pasquale Artiano, *S Teresa*
 Santo Trama, *Tommy Boy*
 John Scognamillo, *Vittoria*

¹¹ Alversano is also referred to in the record as "L Auersano"

¹² Mascola is registered with U S Customs as part owner of, and is a member of, the Co op for the *S G Guiseppe*

Netti Wholesale Grocery of Watertown, Inc., Petitioner and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 263. Case No 3-RM-153 August 20, 1958

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Bernard Ness, 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 National Labor Relations Act¹

2 The labor organization named below claims to represent certain employees of the Employer

3 The Union contends that it has presented no claim for recognition to the Employer, and that the petition should be dismissed because no question of representation exists

At the hearing, there was evidence indicating that, on three occasions, the union business agent threatened the Employer with "trouble" if it did not "go along" with the Union. The Employer's president testified that in the course of one conversation, the business agent told him that he had advised Camp Drum, a customer of the Employer, not to accept beer deliveries from Netti. The Company president also testified that the union business agent promised him "a few breaks" if he cooperated.

Although the Union claimed that its calls and visits were merely to inform the Employer of the Union's forthcoming organizational drive, the Employer's version was corroborated by uncontradicted evidence that, within an hour after the business agent's first call, the Employer was called by a supplier, who said that "through union channels" he had been advised not to send the Employer any beer.

¹ We reject the Union's contention that the Board should not assert jurisdiction in the present case, as it is clear from the record that the Employer's purchases from across State lines are approximately \$1,000,000 annually. *The T H Rogers Lumber Company*, 117 NLRB 1732

Later the same day, a company salesman was informed by the beer purchaser at Camp Drum that he had been "contacted" not to accept any beer from Netti. The Union admitted that it had made a "spot check" at Camp Drum, "to let the licensees know that drivers are not members of any union."

On Friday, April 25, the Employer filed a petition with the Board, requesting an election. The following Monday, the union business agent telephoned the Employer in regard to the petition, denying that a claim for recognition had been made. The Employer testified that, during the same conversation, the Union once again threatened trouble "if you don't get together and join this Union now." There was uncontradicted testimony that, after this last conversation, the Employer's president was contacted by four other purchasers who said they feared picketing if they continued to buy beer from Netti.²

We recognize that not every telephone call to an employer from a business agent may be construed as a union claim for recognition. However, in this case, the Union repeatedly stated that it had not yet attempted to organize the employees of this Employer. At the same time it appears, and we find, that the Union continued to communicate with the Employer's president, conveying the clear implication that it desired the Employer to recognize the Union or sign a contract, regardless of the wishes of the employees. To attain its objective, the Union set in motion economic pressures against the Employer in the form of promised "breaks" in contract terms, threats of picketing, and spreading the word that the Employer's product be boycotted. These pressures were continuing, and were renewed, after the filing of the instant petition. In these circumstances, we are constrained to hold that the Union's disclaimer is ineffective, and that a current claim for recognition has sufficiently been made out.³ Accordingly, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9 (b) of the Act:⁴

All drivers and warehousemen of the Employer's operations at Watertown, New York, excluding all other employees, office clerical

² We do not credit the business agent's testimony that the Union was not responsible for these calls, particularly in view of its admitted "spot check" at Camp Drum.

³ *Jerome E. Mundy Co., Inc.*, 116 NLRB 1487; *McAllister Transfer, Inc.*, 105 NLRB 751; *Sweet-T-Shirts, Inc.*, 111 NLRB 377.

⁴ The Union at the hearing claimed that, in the event of a Board election, it would be interested in representing only drivers and warehousemen connected with the beer business, and not those connected with the grocery business. It is not necessary for us to decide whether a unit so limited would be appropriate, as all of the Employer's drivers and warehousemen handle beer and groceries interchangeably.

employees, salesmen, professional employees, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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

**Imperial Machine Corp. and United Steelworkers of America,
AFL-CIO. Case No. 1-CA-2303. August 25, 1958**

DECISION AND ORDER

On December 30, 1957, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting 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 [Chairman Leedom and Members Bean and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.¹ The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications indicated below.

We agree with the Trial Examiner that the Respondent, in violation of Section 8 (a) (5) and (1) of the Act, refused to bargain in good faith with the Union as the exclusive representative of the Respondent's employees in an appropriate unit.²

The Respondent contends that the bona fides of its collective bargaining cannot be tested because the Union, itself, did not bargain in good faith. The record, however, discloses that the Union did bargain in good faith. Accordingly, we find no merit in the Respondent's contention.

¹ The Respondent excepts to the Trial Examiner's refusal to view its premises during the course of the hearing. We find that the Trial Examiner properly exercised his discretion in this matter and therefore find no merit in the Respondent's exceptions.

² Although the evidence indicates that the reduction in hours was necessitated by the resignation of the Respondent's skilled setup man, we find that the Respondent, nevertheless, violated Section 8 (a) (5) and, independently, Section 8 (a) (1) by failing to consult and discuss this matter with the Union, the employees' bargaining representative.