C. L. Morris, Inc., subsidiary of J. B. Liebman and Company, Inc. *and* Local 312, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent. *Case No. 4–CA–1956. May 16, 1960*

DECISION AND ORDER

On November 9, 1959, 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 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 and a supporting brief to the Intermediate Report.

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

We agree with the Trial Examiner's finding that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

The Respondent, a Pennsylvania corporation, is engaged in the retail furniture business in Marcus Hook, Pennsylvania. It is a wholly owned subsidiary of J. B. Liebman and Company, Inc., of Philadelphia, Pennsylvania, a holding corporation, which owns and controls nine other corporations operating 15 furniture stores in Delaware, Pennsylvania, and New Jersey. Liebman and Company, whose gross volume of business in the past year exceeded $500,000, exercises close overall control over its subsidiaries, including the Respondent herein, pays the monthly bills and checks, accepts daily reports and records, and makes all major decisions incident to the operations of the stores. It is clear, as the Trial Examiner found, that for the purpose of this proceeding the Respondent and Liebman and Company constitute a single Employer which meets the Board's retail standards for assertion of jurisdiction.

We have held, however,[1] that in addition to showing the Board's discretionary jurisdictional standards, the record in each case must also show by probative evidence the existence of the Board's statutory jurisdiction, i.e., that the operations of a respondent before us affect interstate commerce. The record herein contains no figures as to the purchases or sales directly or indirectly made by either the Respondent

[1] *Southwest Hotels, Inc.*, 126 NLRB 1151; *Catalina Island Sightseeing Lines*, 124 NLRB 813.

or Liebman and Company outside of the Commonwealth of Pennsylvania. The record does show, however, that the Respondent is an integral part of a company whose operations extend over the territory of three States; that the Respondent's warehouse stores merchandise for Liebman and Company's Wilmington, Delaware, affiliate, and makes deliveries of merchandise to that company's customers; and that there is a free and frequent exchange of merchandise between the various stores in the Liebman chain across State boundaries.

The Board with court approval has held that an otherwise local enterprise may lose its character as such when it becomes a link in a business which stretches over many States.[2]

In *Polish National Alliance, etc.* v. *N.L.R.B.*,[3] the United States Supreme Court has recognized that otherwise local activities are subject to regulation by Congress where they are interlaced with business carried on across State lines.[4] We believe, therefore, that evidence showing multistate operations of a Respondent before us is pertinent and satisfactory evidence to support a finding that such Respondent's operations "affect commerce" and that such Respondent is engaged in commerce within the meaning of the Act.

Because of the multistate character of Liebman and Company's operations and because of the above additional facts, we are satisfied that the combined operations of Liebman and Company, including the operations of the Respondent, affect commerce within the meaning of Section 2(7) of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, C. L. Morris, Inc., Marcus Hook, Pennsylvania, subsidiary of J. B. Liebman and Company, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in or activity on behalf of Local 312, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or in any other labor organization of their employees, by discharging, laying off, refusing to rein-

[2] *Collins Baking Company*, 83 NLRB 599 In enforcing the Board's decision the Fifth Circuit Court of Appeals stated as follows (193 F. 2d 483, 485):

> This close integration of ownership and operation with a bakery chain operating in several States effectively removes petitioner from the realm of purely local enterprise.

See also *Tennessee Egg Company*, 93 NLRB 846, *Air Line Pilots Association, International*, 97 NLRB 929

[3] 322 U S 643, 648

[4] See also *N L R B* v *Local 74, United Brotherhood of Carpenters & Joiners of America, A.F of L, et al. (Watson's Specialty Store)*, 341 U.S. 707, 712, where the Supreme Court noted with approval the Board's taking of jurisdiction of a retail store system, because *inter alia* of its operations in seven different States.

state, or in any other manner discriminating against their employees in regard to their hire or tenure of employment, or any term or condition of employment, except as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

(b) Threatening their employees with economic reprisals to discourage membership in or activity on behalf of any labor organization.

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right of self-organization, to form, join, or assist Local 312, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer to Arthur York immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Post at its Marcus Hook, Pennsylvania, store, copies of the notice attached hereto marked "Appendix."[5] Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the rights of employment under the terms of this Order.

[5] In 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"

(d) Notify the Regional Director for the Fourth Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

MEMBERS RODGERS and BEAN took no part in the consideration of the above Decision and Order.

APPENDIX

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, we hereby notify our employees that:

WE WILL NOT discourage membership or activity on behalf of Local 312, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or in any other labor organization of our employees, by discharging, laying off, refusing to reinstate, or in any other manner discriminating against our employees in regard to hire or tenure of employment or any term or condition of employment, except as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT threaten our employees with economic reprisals to discourage membership in or activity on behalf of any labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right of self-organization, to form, join, or assist Local 312, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to Arthur York immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reasons of the discrimination against him.

All our employees are free to become or to remain or to refrain from becoming or remaining members of Local 312, International

Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization.

C. L. MORRIS, INC., SUBSIDIARY OF
J. B. LIEBMAN AND COMPANY, INC.,
Employer.

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.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

A charge having been filed and served in the above-entitled proceeding, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent, a hearing involving allegations of unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, was held in Philadelphia, Pennsylvania, on October 5 and 6, 1959, before the duly designated Trial Examiner.

At the hearing all parties were represented by counsel and were afforded full opportunity to introduce evidence pertinent to the issues, to examine and cross-examine witnesses, to argue orally, and to file briefs. Argument was waived. Briefs have been received from the Respondent and General Counsel.

Disposition of the Respondent's motion to dismiss, upon which ruling was reserved at the conclusion of the hearing, is made by the following findings, conclusions, and recommendations.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

C. L. Morris, Inc., is a Pennsylvania corporation, maintaining its principal place of business at Marcus Hook, Pennsylvania, where it is engaged in the retail sale of household furniture. It is a wholly owned subsidiary of J. B. Liebman and Company, Inc., which is also a Pennsylvania corporation with its office in Philadelphia, Pennsylvania.

J. B. Liebman and Company, Inc., is a holding corporation, all of its stock being owned by the Liebman family. It does not engage in the business of selling as a store, but owns and controls, besides C. L. Morris, Inc., 15 retail stores located in various cities and towns of New Jersey and Pennsylvania. All such Liebman-owned stores sell furniture, although not all carry precisely the same lines of other merchandise. Joseph Liebman is the president of all but one of the subsidiary operating companies, but including C. L. Morris, Inc.

C. L. Morris, Inc., and all other Liebman-owned companies, are required to submit a daily statement of sales to the parent company, and payment for all Morris' monthly bills is made by J. B. Liebman. All store managers for the entire group are hired, or fired, by Liebman. Specifically as to C. L. Morris, Inc., the one store involved in this proceeding, J. B. Liebman instructs the store manager, Harry Morris, as to the number of employees who may be carried on the payroll. Liebman also controls the broad labor policy of C. L. Morris, Inc.,—Harry Morris testifying that he has no authority to enter into a collective-bargaining agreement with a representative of Morris' employees without Liebman's approval.

Contrary to the Respondent's contention, ably argued in its brief, the Trial Examiner is convinced and finds, as alleged in the complaint and as governed by the cases cited below,[1] that C. L. Morris, Inc., and J. B. Liebman and Company, Inc.,

[1] *York Coca-Cola Bottling Works, Incorporated*, 119 NLRB 147, and *Orkin Exterminating Company, Inc. (of Kentucky)*, 115 NLRB 622.

constitute a single integrated enterprise for the purpose of determining the Board's jurisdiction, and are an employer within the meaning of Section 2(2) of the Act.

The Respondent in its answer concedes that the gross sales of J. B. Liebman and Company, Inc., exceed $500,000 annually.

The Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 312, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

There are only two major issues in this case: (1) Was employee Arthur G. York illegally discharged on June 3, 1959; and (2) on or about the same date did management threaten employees with economic reprisals if they chose to have the Union represent them?

The circumstances of York's discharge, established by his uncontradicted testimony and that of two other employees, is as follows:

1. In May and early June 1959, employees York, Perkins, and McAbee were working in, or from, Morris' warehouse, under the supervision of Foreman Lester.

2. On June 1 and 2 these employees met with a representative of the Charging Union for the purpose of organization. The second meeting was at York's home.

3. On June 3 Harry Morris, store manager, received from the union representative a letter seeking recognition as the bargaining agent for these warehouse employees. When the three employees returned that noon from lunch they were met by Morris, who said he had received a letter from the Union and asked who knew about it. None of the three answered for a moment, and finally York spoke up and admitted that he did. York also told Morris, in effect, that they wanted to be represented by the Union. Upon receiving this reply, Morris discharged York, saying, "As of today you are finished."

4. Having thus summarily dismissed York, Morris turned to the other two employees and told them that it was "up to" them if they wanted a union, but if they did they would work only 2 or 3 days a week and eventually Liebman would shut down the warehouse.

5. A few days later Morris came to the warehouse and told Perkins and McAbee that he had been called by the Union regarding his discharge of York. He further told them that he had intended to let York go soon, but the "union business" had "hastened it up."

6 About a week after the above-described incident, Foreman Lester told Perkins and McAbee that Morris had been informed by Liebman that if the employees "went union" the warehouse would be shut down.

As previously noted, undisputed testimony establishes the above-described facts.

Morris was not asked by his counsel either as to why he dismissed York or as to the dismissal interview. He did state that sometime in the latter part of May he had "received a note from J. B. Liebman suggesting" that he let York go, but that he had not done so. The "note," if any, was not produced to support his testimony. Only from other testimony, elicited from him on cross-examination, does it appear by inference to be Morris' claim that there was no work for York to do and that this was the cause of his discharge. And this implication is negated by his other testimony to the effect that the busy season continued until the last of June, and would begin again in October. Furthermore, although he claimed that York had been hired as a "temporary" employee, he admitted that he could not recall having told York that this was the case. It is uncontradicted that York was working overtime at the time of his discharge

The Trial Examiner concludes and finds that Arthur York was discriminatorily discharged on June 3, 1959, to discourage union membership and activity, and that by this discharge and by the above-described threats by Morris and Lester to the effect that if the warehouse employees "went union" economic reprisals would follow, the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.[2]

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[2] As to Lester's statement to the two employees, heretofore described, the Trial Examiner makes no finding either that Liebman told Morris, or that Morris told Lester, that the warehouse would be closed Whether or not Lester had actually been so informed, the coercive nature of the remark is established by the fact that Lester was a representative of management.

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 in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It will be recommended that the Respondent offer Arthur York immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of the discrimination to the date of the offer of reinstatement, less his net earnings during such period, in accordance with the Board policy set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Crossett Lumber Company*, 8 NLRB 440.

It will be further recommended that the Respondent, upon reasonable request, make available to the Board and its agents all payroll and other records pertinent to the analysis of the amount of backpay due.

Since the violations of the Act which the Respondent committed are closely related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is reasonably to be anticipated from its past conduct, the preventive purposes of the Act may be thwarted unless the recommendations are coextensive with the threat. To effectuate the policies of the Act, therefore, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by the Act.

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

CONCLUSIONS OF LAW

1. Local 312, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of Section 2(5) of the Act.
2. By discriminatorily discharging employee Arthur York to discourage membership in and activity on behalf of the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by 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.
4. 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.]

Stanley Levandowsky, d/b/a L & L Shop Rite Market *and* Retail Grocery and Food Clerks Local No. 876, Retail Clerks International Association, AFL-CIO.

Case No. 7-CA-2289. May 16, 1960

DECISION AND ORDER

On November 12, 1959, 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 the unfair