

2. Local 560, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in unfair labor practices within the meaning of Section 8(a) (1) and (3) of the Act.

[Recommendations omitted from publication.]

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**Bargain City, U.S.A., Incorporated, a Pennsylvania Corporation and its wholly owned subsidiary, Bargain City, U.S.A., Incorporated, a Delaware Corporation and Retail Store Employees Local 400, Retail Clerks International Association, AFL-CIO and Retail, Wholesale & Department Store Union, AFL-CIO, and its Local 770, Party to the Contract. Case No. 5-CA-1550. September 22, 1960**

### DECISION AND ORDER

On October 23, 1959, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. The Charging Party filed exceptions and a brief, and the Respondent filed a brief. The Party to the Contract also filed a brief.

Subsequently, by Order dated January 28, 1960 the Board remanded this matter to the Trial Examiner, who was directed to hold a further hearing to permit the parties to introduce into evidence certain testimony and documents previously excluded. After the further hearing was held, the Trial Examiner made his Supplemental Intermediate Report on April 27, 1960, also attached hereto, wherein he also re-issued the Intermediate Report dated October 23, 1959. The Charging Party again filed exceptions and a supporting brief, and the Employer filed a 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 [Members Rodgers, Jenkins, and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearings and finds that any prejudicial error which may have been committed in the first hearing was cured at the hearing on the remand, and that no prejudicial errors were committed in the hearing on the remand. The rulings of the original hearing are hereby affirmed, excepting those rulings which excluded evidence the parties were permitted to introduce at the reopened hearing pursuant to the Board's remand. The rulings of the Trial Examiner at the hearing

on the remand are hereby affirmed. The Board has considered the Intermediate Report, the Supplemental Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The nature of this case is such that determination of the issues depends primarily upon the resolution of credibility of witnesses. The Trial Examiner resolved many credibility conflicts in favor of the Respondent's witnesses. In taking exception to the Intermediate Reports, the Charging Party has noted factors in the record which it claims justify reversal of the Trial Examiner's credibility resolutions. Although the Trial Examiner's credibility resolutions involved some matters which have required close scrutiny, we are not convinced that the clear preponderance of all the relevant record evidence shows that the Trial Examiner's resolutions are incorrect.<sup>1</sup> Accordingly, we adopt the Trial Examiner's credibility resolutions and his interpretations of testimony and his findings based thereon.

[The Board dismissed the complaint.]

<sup>1</sup> *Standard Dry Wall Products, Inc.*, 91 NLRB 544.

## INTERMEDIATE REPORT AND RECOMMENDATIONS

### ISSUES

The primary issues herein are: (1) Did Bargain City, U.S.A., herein called Respondent, unlawfully apply a collective-bargaining agreement entered into with the Retail, Wholesale and Department Store Union, AFL-CIO, herein called the RWDSU, on December 22, 1958, at its retail store at Hybla Valley, Virginia? (2) did Respondent unlawfully encourage membership in the RWDSU and discourage membership in Retail Clerks International Association, AFL-CIO, herein called the Retail Clerks? and (3) did Respondent unlawfully require its employees at the Hybla Valley store to sign cards for and join the RWDSU and unlawfully require said employees to pay moneys to the RWDSU?

### FACTS AND CONCLUSIONS

On December 22, 1958, Respondent and the RWDSU entered into a collective-bargaining agreement<sup>1</sup> which contains union-security clauses and a clause purporting to cover future employees.<sup>2</sup> At the time this agreement was executed the Hybla Valley store was not in operation—apparently it was under construction. In any event, it is undisputed that at the beginning of March 1959 Respondent began to hire employees and the store was first opened for business on March 23, 1959.

When it became known that the Hybla Valley store would soon open, Earl McDavid, Eastern Division Director of the Retail Clerks (in January 1959), and thereafter (in February 1959) Frank Meloni and Max Greenberg, officials of the RWDSU, requested recognition as the bargaining representative of the employees at this store. Respondent refused to honor both requests and indicated it would not accord recognition absent proof that a majority of the employees at this store

<sup>1</sup> The agreement was executed by Blausun Corporation and the RWDSU, but for purposes of this proceeding is referred to as a contract between Respondent and the RWDSU.

<sup>2</sup> The introductory clause reads "This AGREEMENT made and entered into this 22nd day of December 1958, by and between Blausun Corporation, on its own behalf and, with due authority, on behalf of all Concessionaires who now do or may hereafter conduct business at Bargain City USA. . . ."

(the Hybla Valley store) desired representation by the organization seeking such.<sup>3</sup>

During March 1959 each of the Unions involved herein initiated and thereafter conducted organizing campaigns at the Hybla Valley store and one of the issues herein is whether Respondent unlawfully assisted the RWDSU by applying the December 22, 1958, contract at this store prior to March 20, 1959. In support of the affirmative of this proposition the General Counsel relies upon the testimony of McDavid, noted above in footnote 3, and upon the testimony of Jacob W. Ray, Kenneth L. Taylor, and John Rowell.

Jacob W. Ray testified that he was interviewed for employment by Howard Niederman, general manager of the Hybla Valley store, on March 10, 1959, and testified further:

Q. Would you relate your conversation with Mr. Niederman at that time?

A. Well, he had me fill out a questionnaire as to what my previous experience had been, and then he stated to me what the salary was. He said it would be a dollar an hour.

And after 30 days I would receive an additional 7½ cents an hour union raise.

And I asked him if he was going to have a closed shop. He said, "No, that is a harsh term. We call it a Union shop."

He said that they had brought their union with them from Philadelphia that was in their other stores.

Niederman testified that he did not remember the exact words of the conversation with Ray and that he did not remember whether Ray asked if Respondent had a closed shop. Niederman denied telling Ray that Respondent had a union shop at the Hybla Valley store and denied telling Ray that Respondent brought a union with it from Philadelphia. Niederman also testified he thought he told everyone he interviewed that Virginia was a right-to-work State and that they did not have to belong to a union.

The General Counsel contends that Niederman had in mind the December 22, 1958, contract mentioned earlier herein when he was talking to Ray. However, even if Ray's testimony is accepted, it is not clear therefrom which union Respondent brought from Philadelphia since both the RWDSU and the Retail Clerks had agreements with Respondent covering stores in the vicinity of Philadelphia. Furthermore, it is clear from other parts of Ray's testimony that Respondent was not at this time, at least, applying the December 22, 1958, contract and requiring Ray to join the RWDSU or any other union. In any event, after observing the witnesses and analyzing the record herein, the Trial Examiner believes Niederman a more reliable witness than Ray and credits his (Niederman's), rather than Ray's, testimony concerning this matter where there are conflicts.

Kenneth L. Taylor testified that on March 10, 1959:

I applied for the position at Bargain City through Mr. Niederman, who was interviewing at the time. Mr. Niederman looked at my application and stated he would pay one dollar an hour to come to work for him at Bargain City; that he would hire me. I told him I wouldn't be interested at that price. He said—"well," he looked my application over again and said, "Well, on your previous experience I will give you \$1.15 an hour. But I will have to give you some sort of title so that it will be legal."

Q. (By Mr. Segal) Was that all there was to the conversation?

A. No, sir. After he looked over my application, he said most of your previous employment has been produce. And he gave me a card of introduction to Mr. DeBenedictis, who is in charge of the produce department of Bargain City.

Q. Did he say anything about a union?

Mr WACHS: Objection, Mr. Examiner. This is the worst form of leading.

TRIAL EXAMINER: Sustained.

<sup>3</sup> Based upon the testimony of William Chanoff, Respondent's labor consultant, and Frank Meloni. In the light of the entire record herein and inherent probability (i.e., it strains credulity to believe that the extreme organizing efforts of the RWDSU and the Chanoff-Meloni meeting on March 20 were contrived to camouflage an illegal application of the December contract), their testimony with respect to this matter appears more reliable than that of McDavid. McDavid testified that he asked if Respondent would recognize the Retail Clerks after a card check and without the necessity of a Board-conducted election and that Respondent (Chanoff) refused, indicating that the December 22, 1958, contract (referred to above) covered this store and that he (Chanoff) would make "a deal" if he (McDavid) would forget about the Hybla Valley store.

Q. (By Mr. Segal.) Was anything else said at that conversation?

A. Yes, sir. He said that they would be represented by a national union, and that they were going to pay \$1 an hour, and eventually they would go to \$1.07.

But they had that agreement. That was all he was able to pay.

During cross-examination Taylor testified that Niederman offered him \$1.15 an hour and remarked that in order to pay him at this rate some sort of a title would be given so that the terms of the contract with the national union to pay \$1 an hour would not be applicable.

Niederman testified he did not recall anyone by the name of Kenneth Taylor and denied that he ever told any employee that Respondent had a national contract with any union.

In the light of the entire record herein, it appears probable that Niederman in offering Taylor a \$1.15 an hour made some mention that this rate was a higher rate than called for by the contract which ultimately went into effect at this store (the December 22, 1958, contract mentioned above), and indicated that in order to pay Taylor this higher rate and not have repercussions therefrom he would give him a title not encompassed by the terms of the contract. These facts tend to establish, however, that Niederman was circumventing rather than applying the terms of the contract. While there is an innuendo from Taylor's testimony that the contract was then being applied at the Hybla Valley store such innuendo is not sufficient to establish this as a fact. Standing alone, or in conjunction with other credible evidence in this record, it does not meet the requirement that such fact be established by the preponderance of the evidence.

John Hugh Rowell, at one time the manager of the grocery department (at the times material herein a supervisor for Respondent), testified that during his prehire employment interview (on March 9, 1959), General Manager Niederman "informed me that the operation would be union. He did not state which union," that on the day he reported for work or the next day (on March 12 or 13, 1959), Lawrence Millstein, assistant manager of the Hybla Valley store, gave him approximately 50 RWDSU authorization and checkoff cards together with income tax papers and instructed him to have the employees sign these cards and return them, and that he and Millstein thereafter sought and obtained signatures upon the union cards from employees. According to Rowell he (Rowell) obtained in the neighborhood of 50 to 75 signatures<sup>4</sup> between March 12 or 13 and April 20, 1959 (and approximately 25 or 30 before the store opened on March 23). Rowell testified further that he turned all these cards over to Millstein. He could not name anyone to whom either he or Millstein gave a card. Rowell testified further that "Two, maybe three, or four," days after March 12, 1959, he asked RWDSU representative Graham for a "copy of the contract" and Graham handed him a copy of the December 22, 1958, contract (mentioned above).

General Manager Niederman testified that at the prehire interview Rowell asked "if this would be a union shop" and he answered that he did not know, that Respondent had unions in other stores and it was "quite possible we would have a union here." Assistant Manager Millstein was also present at this conference. He testified that Rowell inquired whether there would be a union in the store when it opened and that Niederman replied that such was a "possibility."

Millstein testified he never had any union authorization or checkoff cards in his possession and that he did not give any to Rowell or to any other employee. The testimony of RWDSU representatives Graham and Meloni tends to corroborate this testimony by Millstein. Graham also testified that on March 13 he gave Rowell one authorization card and one checkoff card and attempted to get him to sign these cards but abandoned such efforts upon being told by Rowell that he (Rowell) was going to be the manager of the department (a supervisory employee). Graham testified these were the only authorization and checkoff cards he gave Rowell—that he did not give him extra cards to be signed.

Graham testified on one occasion (Graham was not able to establish the date) Rowell asked for a copy of the contract which the RWDSU had covering another store because some of the employees were asking about the benefits in various unions and that on this occasion he gave Rowell a copy of the December 22, 1958, contract.

Even if Niederman and Millstein's version of the conversation were ignored, Rowell's testimony was in the nature of a prediction of things to come—not proof

<sup>4</sup> Rowell further testified that he got about 25 of these cards from John Graham, an RWDSU organizer.

that the contract was then being applied. In addition, Graham's conduct at the store belies the fact that the December contract was applied before March 20, 1959. Furthermore, Rowell, did not make a favorable impression upon the Trial Examiner as he was testifying and the record as a whole supports the Trial Examiner's original impression that Rowell exaggerated his activities on behalf of the RWDSU. While the Trial Examiner believes and finds that Rowell engaged in some activity beneficial to the RWDSU, he is not convinced that it was anywhere near as extensive as Rowell would have him believe or that it was at the request of, or with the assistance of, Respondent's officials. Rather, whatever activity of this nature Rowell engaged in appears to have been without the express authorization or approval from Respondent or the RWDSU.

On the basis of observations of witnesses and analysis of the record herein, the trial Examiner rejects Rowell's testimony (with respect to this matter and other incidents involved in this proceeding) where it is in conflict with other evidence.

In view of the foregoing, the Trial Examiner hereby rejects the contention of the General Counsel that Respondent applied the December 22, 1958, contract to the store at Hybla Valley prior to March 20, 1959.

Prior to March 23, 1959, the store at Hybla Valley was without windows or doors, construction work was still in progress, merchandise was being shelved, employee training was in progress, union organizing campaigns were being conducted, and hundreds of people were constantly walking in and out. In short, a state of chaos prevailed. Insofar as the organizing campaigns are concerned, the record reveals that both unions (Retail Clerks and RWDSU) engaged in solicitation and organizational work in the vicinity of the store. At times this activity was conducted on the store premises during working hours. There is no doubt from the record herein that Respondent was aware of this activity. In fact, some of the supervisors engaged in this conduct—John Rowell on behalf of the RWDSU and Joseph Owens, Jacob Ray, and Paul Price on behalf of the Retail Clerks. While the RWDSU's activity was more aggressive and more extensive than that of the Retail Clerks, each union roamed the store without interference from Respondent, with one exception hereinafter noted (see facts regarding discharge of Jacob W. Ray). The record reveals that the RWDSU was accorded certain privileges (hereinafter noted) not accorded to the Retail Clerks. However, the evidence establishes that the RWDSU requested such privileges and the evidence adduced does not establish that similar privileges were requested by the Retail Clerks and denied.

On March 19, 1959, RWDSU representatives Meloni and Graham approached a group of trainees being instructed by General Manager Niederman. At the conclusion of Niederman's remarks Meloni asked Niederman for permission to address the group. Niederman then introduced Meloni to the group and Meloni spoke about the benefits of authorizing the RWDSU to represent them and thereafter sought and obtained signatures to authorization cards.<sup>5</sup>

During the afternoon or evening on March 19, 1959, RWDSU representative Meloni telephoned Respondent's labor consultant, William Chanoff, and requested a meeting with him (Chanoff) on the following day (March 20, 1959). Meloni told Chanoff the RWDSU had authorization cards from a majority of the employees at the Hybla Valley store and that he (Meloni) wanted to discuss and negotiate a contract to cover these employees. A meeting was scheduled for the following day at 4 p.m. After the telephone call from Meloni, Chanoff contacted Respondent's comptroller and Respondent's executive assistant to the vice president and ascertained from them that there were between 175 and 200 employees then working in the Hybla store.

At the meeting on March 20 Meloni presented 138 cards<sup>6</sup> to Chanoff and advised Chanoff he had more in his possession but not with him at the time. Chanoff examined the cards "to make sure that they weren't signed by one person" and then turned them over to his assistant (Jack Soloff) who made a list of the names appearing on the cards. After examination and counting of the cards a "memorandum of agreement" recognizing the RWDSU (Local 770 of the RWDSU) as the bargaining agent for the employees of the Hybla Valley store was executed by

<sup>5</sup> Mabel O'Neil testified that Graham addressed the employees and Betty June Bergeron testified that Assistant Manager Millstein made the introduction. In these respects these witnesses appear to be in error and the Trial Examiner so finds.

<sup>6</sup> There is no evidence that these cards were not signed by the persons whose names appear on them or that these persons were not employees of Respondent at the Hybla store. The record tends to support the affirmative of these propositions.

Chanoff and Meloni. The "memorandum of agreement" contains a notation that the terms of the December 22, 1958, agreement (mentioned earlier in this report) with certain exceptions, notably the provisions concerning union security, are to be applicable at the Hybla Valley store. A copy of the "memorandum of agreement" is attached hereto marked "Appendix A."

The General Counsel contends that at the time of the execution of the memorandum of agreement on March 20 the RWDSU did not represent a numerical majority of employees at the Hybla Valley store. However, he offered no evidence to substantiate this contention. He asserts that Respondent undertook to prove majority and failed because Respondent did not compare the names on the cards against its payroll records. These contentions by the General Counsel are hereby rejected. The burden in this matter is on the General Counsel to prove lack of majority, not on Respondent to prove majority status. Furthermore, the inference from the entire record herein is that at the time in question the RWDSU did in fact have signed authorization cards from a numerical majority.

The General Counsel asserts that assuming the RWDSU represented a numerical majority this majority was obtained with the assistance of Respondent and was, therefore, not a valid basis upon which Respondent could accord recognition. As noted above, each of the unions involved herein exploited the prevailing situation and engaged in organizational activities during working hours and on Respondent's property and with the help of minor supervisors. In addition, the RWDSU was accorded a privilege not accorded to, or declined to, the retail clerks. Thus, each union received assistance which it may not have been entitled to receive. However, the Trial Examiner believes and finds that such assistance, under the circumstances, is not sufficient to warrant a finding that Respondent thereby violated the Act or a finding that because of this assistance the RWDSU's majority was a coerced or tainted majority.

On or about March 25, 1959, following the execution of the memorandum of agreement with Local 770 RWDSU, Chanoff went to the Hybla Valley store and spoke to an assemblage of concessionaires, managers, assistant managers, and supervisors. He told them, *inter alia*, about the terms of the agreement between Respondent and the RWDSU and explained that under the terms of the agreement and the Virginia right-to-work laws, employees were not required to join the RWDSU.

There is a dispute herein as to whether, on or about March 26 or 27 David Lewin, a supervisor in charge of the domestic department, advised Mary Morrison and Doris Bryant, employees in the domestic department, that it was "mandatory" for them to join the RWDSU. On the basis of observations of witnesses and analysis of the record, the Trial Examiner accepts Lewin's version of this matter rather than that given by Morrison or Bryant and credits his (Lewin's) denial that he told them it was "mandatory" to join the RWDSU.

General Counsel's witness, Jacob W. Ray, testified that "a week or two" after March 23, 1959, which was after the execution of the memorandum of agreement, Produce Manager William DeBenedictis went to a manager's meeting and after his return called the employees of the produce department together and stated "that we all had to join the Union, the Union in the store." General Counsel's witness, Kenneth L. Taylor, fixed the date as April 3, 1959, and testified that DeBenedictis said Respondent "had an agreement with the Union, and that he wanted all of us to become union members." No other witness testified about this matter. As noted above, there were several persons who could have testified about this matter, but only two were called and they were called by the General Counsel and their testimony conflicts. Under these circumstances, the Trial Examiner credits neither. Furthermore, the Trial Examiner believes Taylor a more reliable witness than Ray and under his version of the incident DeBenedictis was suggesting (not requiring) that in the light of the memorandum of agreement employees joined the RWDSU.

On May 2, 1959, Jacob W. Ray became a supervisor in the shoe department and while thus employed engaged in activities on behalf of the retail clerks. He was criticized on May 10 by General Manager Niederman for engaging in such activities in the store and told to quit passing out cards. On May 13, 1959, Ray was discharged and was told at that time that he was being discharged because of his union activities. Ray was recalled on May 16, and told at that time that Respondent did not object to him engaging in union activities provided he did not do it in the store. The General Counsel argues that Ray's discharge was because of his activities on behalf of the retail clerks and consequently an act of assistance to the RWDSU. There is no doubt herein that Ray was discharged because of activities on behalf of the retail clerks. However, from Ray's testimony (and his is the only evidence concerning this matter) it appears that Respondent believed that he was engaging in these

activities during working hours and on company property and discharged him for that reason. There is no evidence that in discharging Ray, a supervisory employee, Respondent was attempting to encourage or discourage union membership by rank-and-file workers. The Trial Examiner hereby rejects the contention that Ray's discharge was an unlawful act of assistance to the RWDSU.

The contract of December 22, 1958, which was incorporated by reference into the memorandum of agreement of March 20, 1959, contains provisions concerning checkoff of RWDSU dues and initiation fees and the parties herein stipulated that for the purpose of this proceeding it may be found that since May 20, 1959, and pursuant to signed checkoff authorization cards dues payments on behalf of the RWDSU have been checked off by Respondent. Having rejected the contention of the General Counsel that the December 22, 1958, contract was unlawfully applied to the Hybla Valley store, the Trial Examiner now rejects the contention that Respondent unlawfully required employees to pay moneys to the RWDSU.

As noted above, the Trial Examiner rejects the contention of the General Counsel that the contract executed in December 1958, months before the Hybla Valley store was in existence, was applied in violation of the Act to the employees at the Hybla Valley store immediately upon being hired, and that the RWDSU was recognized long before there were any employees at this store. In addition, the Trial Examiner has rejected the contention of the General Counsel that at the time of the execution of the memorandum of agreement of March 20 the RWDSU did not represent a numerical majority of the employees at the Hybla Valley store and the contention that the numerical majority was a coerced or tainted majority. While the Trial Examiner believes and finds that the evidence adduced establishes that the RWDSU and the retail clerks roamed the store and solicited membership, that Respondent upon request introduced RWDSU representatives to employees who then solicited membership and that minor supervisors distributed RWDSU and retail clerks membership and checkoff cards to new employees and solicited their membership in these organizations, the Trial Examiner is not convinced that under the circumstances involved herein these acts constitute violations of the Act as alleged in the complaint.

In view of the foregoing, it is believed that the complaint, in its entirety should be dismissed.

[Recommendations omitted from publication.]

## APPENDIX A

### MEMORANDUM OF AGREEMENT

At a meeting held at 326 South 19th Street, Philadelphia, on March 20, 1959, the undersigned representatives of Local 770 and the Blausun Corporation met for the purpose of ascertaining the Union's right to represent the employees at the Bargain City store #6, located at Hybla Valley, Alexandria, Virginia.

The union representatives presented membership application cards and check-off authorization cards from 138 employees purporting to give Local 770 the right to represent the employees as their authorized bargaining agent.

The company representative counted and examined the union application cards and established their validity.

On the basis of these cards, the company representative recognized Local 770 as the sole agent for collective bargaining purposes for the employees of the above named store.

The parties then proceeded to establish the terms of a collective bargaining agreement and agreed that the employees would be covered by the National Agreement currently in effect between the Union and Blausun Corporation, dated the 22nd day of December 1958, except for the provisions of Article II of that agreement which shall not apply to the employees of Bargain City #6, located at Hybla Valley, Alexandria, Virginia. This agreement was reached with the complete understanding of the parties that the National Agreement contains certain provisions in excess of those agreed herein.

This agreement provides that all employees working as of March 16, 1959, will receive an immediate increase of \$3.00 per week, effective as of March 16, 1959, and that all employees hired subsequent to that date, and prior to April 15, 1959 will receive a wage increase of \$3.00 per week sixty days from their date of employment.

In addition, the parties agreed to a merit increase provision identical to the provision operative in the Fairless Hills Bargain City store.

This agreement between Local 770 and the Blausun Corporation, Alexandria, Bargain City store, is to remain effective from March 16, 1959 to May 1, 1962.

For the Company:

(S) William Chanoff.  
WILLIAM CHANOFF.

For the Union:

(S) Frank E. Meloni.  
FRANK E. MELONI.

RETAIL, WHOLESALE AND DEPARTMENT  
STORE UNION, LOCAL 770, AFL-CIO.

### SUPPLEMENTAL INTERMEDIATE REPORT

On October 23, 1959, the duly designated Trial Examiner issued his Intermediate Report in the above-entitled matter. Thereafter, by order dated January 28, 1960, the Board remanded this matter with directions that the Trial Examiner hold a further hearing to permit the parties to introduce into evidence "certain testimony and documents previously excluded" and with directions that upon conclusion of such further hearing the Trial Examiner issue a Supplemental Intermediate Report.

In the order remanding this matter the Board:

1. Reversed a ruling made at the original hearing refusing to permit the General Counsel to introduce evidence bearing upon the "intent of the parties, as indicated, in their negotiations, with respect to the applicability of the December 22, 1958, contract to the Hybla Valley store." The order in effect reversed the Trial Examiner's ruling refusing to let the General Counsel go into the negotiations leading up to the December 22, 1958, contract.

2. Reversed the Trial Examiner's rulings rejecting the General Counsel's offer of proof that John Graham, and RWDSU organizer, made a request to John Hugh Rowell, manager of the grocery department, that he (Rowell) discharge employee Henry Levin (also spelled Levene in the record herein) because Levin would not sign a union authorization card and that shortly after Rowell refused to honor this request General Manager Howard Niederman told Rowell that he did not have to discharge Levin because Levin had signed a card. In addition, the Board indicated that it wants to know the name of the Union for which Levin had signed a union authorization card on or about March 20, 1959.

3. Reversed the Trial Examiner's ruling rejecting Respondent's offer of certain collective-bargaining agreements between Respondent and an affiliate of the same parent organization of which the Charging Party herein is an affiliate (between Respondent and a Local of the Retail Clerks other than the Local involved herein).

The only evidence offered at the further hearing bearing upon the negotiations leading up to the December 22, 1958, contract consists of testimony by Respondent's labor consultant (William Chanoff) which the Trial Examiner credits. Chanoff's testimony is to the effect that there was no discussion at these negotiations with respect to stores that might open in the future, that there was no discussion with respect to Hybla Valley and that there was no discussion that in any way referred to the Hybla Valley store.

At the further hearing held on March 29, 1960, Rowell testified that 2 or 3 days prior to March 23, 1959, he saw Graham and Levin talking and that at the conclusion of this conversation Graham "came directly to me" [Rowell] and "told me that I would have to let Mr. Levene go; he had refused to join the Union." Rowell testified further that he told Graham he would not let Levin go and that later that day Niederman "came up to me and told me that I didn't have to let Levene go; that the situation had straightened out."

In an affidavit executed on May 10, 1959, Rowell stated that Niederman "came over to me, told me that the situation had straightened out and that Hank [Levene or Levin] had signed a card."

At the further hearing on March 29, 1960, Rowell testified he was not sure whether Niederman had said "Hank had signed a card" since he (Rowell) had been told by Levin that he (Levin) had not signed any union authorization card but that he (Rowell) believed that Niederman had said that Levin had signed an RWDSU authorization card.

Henry Levin testified that on the occasion in question Graham told him he (Levin) "had to join the Union" and that he (Levin) responded that he would not join and walked away from Graham and that he (Levin) did not "join any union while" employed by Respondent.

At the original hearing in this matter Graham denied telling Rowell he would have to let Levin go.

Niederman, generally and specifically, denied making the statements attributed to him by Rowell and denied that at the time in question he had any conversation with Rowell "as to whether Levin ought to be discharged or not discharged."

In the original Intermediate Report the Trial Examiner indicated that Rowell had not made a favorable impression upon him (the Trial Examiner). After observing Rowell at the further hearing on March 29, 1960, and analyzing his testimony the Trial Examiner adheres to his view that Rowell is not a reliable witness and again rejects his testimony where it is in conflict with other evidence.<sup>1</sup>

At the further hearing held on March 29, 1960, each of the parties herein was afforded an opportunity to offer into evidence the collective-bargaining agreements rejected at the original hearing or any collective-bargaining agreements between "Respondent and the Charging Party which govern the terms and conditions of employment of Respondent's employees at the stores covered by such agreements." Such documents were not offered. Furthermore, statements by counsel for the Charging Party indicate that there are no collective-bargaining agreements between Respondent and the Charging Party.

In its directions that the Trial Examiner issue a Supplemental Intermediate Report, the Board directed that such report contain, *inter alia*, findings of fact pertinent to the business of Respondent, the Board's jurisdiction with respect thereto, and the status of the labor organizations.

Respondents are separate corporate entities but for the purpose of this proceeding may be considered as a single Employer engaged in the operation of department stores in various States of the United States, including one located at Hybla Valley, Fairfax County, Virginia. The store at Hybla Valley was open for business on or about March 23, 1959.

In the operations of the department stores in various States of the United States, Respondent receives a gross income from sales in excess of \$500,000 annually. Purchases of merchandise, equipment, and supplies of substantial value are received annually from points and places located outside the States in which the various department stores operated by Respondent are located. It is anticipated that the gross income from sales at the Hybla Valley store will exceed \$500,000 annually and that merchandise, equipment, and supplies of substantial value will be received at said store from points and places located outside the State of Virginia. The evidence reveals that Respondent is engaged in a business affecting commerce within the meaning of Section 2(6) of the Act and that the Board's requirements for the assertion of jurisdiction have been satisfied.

Retail Store Employees Local 400, Retail Clerks International Association, AFL-CIO, and Retail, Wholesale & Department Store Union, AFL-CIO, and its Local 770, are labor organizations within the meaning of Section 2(5) of the Act.

As supplemented by the information contained herein the Intermediate Report issued on October 23, 1959, is hereby reissued.

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<sup>1</sup>The reasons or basis for such credibility resolutions are personal demeanor, conduct and attitude of witnesses, and careful evaluation and weighing of evidence and inherent probability

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**Atlas Engine Works, Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO.** *Case No. 8-CA-2048. September 22, 1960*

### DECISION AND ORDER

On May 10, 1960, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that the Respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report appended hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.