

necessary to compute the manner of reinstatement and amount of backpay due under these recommendations.

In view of the serious nature and variety of unfair labor practices committed, I shall also recommend that a broad cease-and-desist order issue, requiring Respondent to cease and desist from infringing in any manner upon employees' rights guaranteed by Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discharging, laying off, transferring to less desirable work, and refusing to recall employees, because of their union activities, to the extent found above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By the above conduct and by interrogation of employees, threats of discharge and other economic reprisal, and giving the impression of surveillance of union meetings, thereby interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of 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.

5. Respondent has not violated the Act by its refusal to recall, reinstate, or re-employ Edith Brower on and after July 1, 1959.

[Recommendations omitted from publication.]

Quality Markets, Inc., Petitioner and Retail Clerks International Association, AFL-CIO, Petitioners. *Cases Nos. 3-RM-209 and 3-RC-2372. December 8, 1960*

DECISION AND DIRECTION OF ELECTIONS

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

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 Fanning and Kimball].

Upon the entire record in this case, the Board finds:¹

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Employer stated in its petition that the following unions had asserted claims for recognition: New-Penn Employees Union, Independent (New-Penn); Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Meat Cutters); and Retail Clerks International Association, AFL-CIO (Clerks), which is also the Petitioner in Case No. 3-RC-2372. Truck Drivers and Helpers Union, Local No. 649, Jamestown, Olean & Vicinity, affiliated with Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind.

¹ The Clerks' request for oral argument is hereby denied as the record and brief adequately present the issues and contentions of the parties.

(Teamsters) was permitted to intervene at the hearing without objection. After the hearing, the officers of New-Penn advised the Board that its members had voted to disband the organization, and that it no longer existed for any purpose. We construe this advice as a motion to withdraw from the instant proceedings, and such withdrawal is hereby granted.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

4. The Employer operates a chain of 42 retail food markets within a 90-mile radius of Jamestown, New York, where it maintains its general offices and a warehouse which supplies its entire operations. Meat Cutters seeks a unit of all meat department employees and the Clerks seeks to represent all the grocery and produce clerks, constituting the remaining store employees. The Employer and Teamsters contend that only a unit of store and warehouse employees combined is appropriate. There is no recent history of bargaining for employees in any of the units which are here urged to be appropriate,² and the record does not reveal the pattern of bargaining, if any, for similar units in the area.

The Board recognizes that there are differences in the functions and skills exercised by meat department employees from those displayed by other grocery store employees which are sufficient to warrant the establishment of separate meat and grocery department units where, as here, there is no controlling history of bargaining on a stores-wide basis, and a union wishes to represent the meat department employees separately.³ However, a single unit of all storeclerks, warehouse employees, truckdrivers and mechanics, constituting a unit of all employees of the Employer with the usual exclusions, would also be appropriate. Moreover, since the Teamsters are willing to represent all the employees who work out of the warehouse, we shall also establish a separate voting group for these employees, as they would otherwise be unrepresented if the two voting groups of store employees vote for separate representation.⁴ Accordingly, we shall direct separate elections in the following voting groups in the Employer's retail food operations in and around Jamestown, New York, excluding from each such group all office clerical and professional employees, outside salesmen, guards, and supervisors:

Group 1. All full-time and regular part-time meat department employees, including first meatcutters.⁵

² For a short period ending 6 or 7 years ago, the Employer had voluntarily recognized the Meat Cutters for the meat department employees in a small number of its stores.

³ See *Schaeffers Prospect IGA Store*, 124 NLRB 1433; *Weis Markets, Inc.*, 116 NLRB 1993.

⁴ *Jackson Jitney Jungle Stores, Inc.*, 115 NLRB 374, 376-377.

⁵ The parties stipulated, and the record substantiates that first meatcutters are not supervisory employees.

Group 2. All other full-time and regular part-time store employees.

Group 3. All warehouse employees, including truckdrivers and mechanics.

We shall place the names of the Meat Cutters and the Teamsters on the ballot in the election among the employees in Group 1; the Clerks and the Teamsters in group 2; and the Teamsters alone in group 3.

If the majority of employees voting in group 1 select the Meat Cutters, or if the majority of employees voting in group 2 select the Clerks, they will be taken to have indicated their desire to constitute separate units, and the Regional Director conducting the elections directed herein is hereby instructed to issue a certification of representatives to the Meat Cutters and to the Clerks for such units, which the Board, in such circumstances, finds appropriate for the purposes of collective bargaining. However, if a majority of the employees in group 1 and in group 2 do not vote for the Meat Cutters and the Clerks, respectively, those employees will appropriately be included with the employees in group 3, and their votes will be pooled with those in group 3.⁶ The Regional Director is instructed to issue a certification of representatives to the Teamsters if it is selected by the majority of the employees in group 3 or in the pooled group, as the case may be, which the Board, in such circumstances finds to be a unit appropriate for the purposes of collective bargaining.

[Text of Direction of Elections omitted from publication.]

⁶If the votes are pooled, they are to be tallied in the following manner: the votes for the labor organizations seeking separate units in groups 1 and 2 shall be counted as valid votes, but neither for nor against the labor organization seeking to represent an employerwide unit. All other votes are to be accorded their face value, whether for representation by the union seeking the more comprehensive group or for no union.

Branch Motors, Inc. and Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. *Case No. 2-CA-6903. December 9, 1960*

DECISION AND ORDER

On May 5, 1960, Trial Examiner John F. Funke 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. Thereafter, the General Counsel 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 [Members Rodgers, Fanning, and Kimball].