

(b) All service department employees at the San Diego, California, automobile sales and service agency, including lubemen, body repairmen, painters, polishmen, service writers,³ motor riders, countermen, and janitors,⁴ but excluding all mechanics, helpers, and apprentices, and also excluding office clerical employees, watchmen, guards, professional employees, and supervisors as defined in the Act.⁵

[Text of Direction of Elections ⁶ omitted from publication.]

vealed that McGowan might be consulted with respect to hiring and firing generally and that he hired or effectively recommended the hiring of a mechanic, Paul H. D'Oarst. Accordingly, we find that McGowan is a supervisor and therefore exclude him from the voting group. *Inland Steel Products Company*, 124 NLRB 198

³ Since the record indicates that the service writers do not have any supervisory authority as defined in the Act and as they do not spend more than 50 percent of their time working as mechanics, they are included in the service department unit *Diamond T. Utah, Inc.*, 124 NLRB 966; *International Harvester Company*, 119 NLRB 1709.

⁴ The Employer, reiterating the contentions discussed in footnote 1, disputes the appropriateness of this unit. However, we have established the appropriateness of such a unit in an automobile retail sales agency, *Babb Motors*, 108 NLRB 1140. Accordingly, we find this to be an appropriate voting group.

⁵ As the record indicated that the body and paint department foreman and the parts department foreman do not have any supervisory authority as defined in the Act, they are included in the Unit. *O. Z. Hall Motors, Inc.*, 94 NLRB 1180

⁶ The International Association of Machinists (AFL-CIO), petitioned to represent only the machinists while the Teamsters petitioned to represent only the remainder of the service department employees. The Employer maintains only a unit that encompasses both mechanics and service department employees would be appropriate. In view of the homogeneity of each group, the absence of a bargaining history for the Employer's employees and the fact that no labor organization seeks to represent them in a unit of larger scope, we find that the mechanics and the service department employees constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Accordingly, we direct separate elections as sought by the Petitioners. *Ballentine Packing Company, Inc.*, 132 NLRB 923.

Supermarket Housewares, Inc. and Supermarket Toys, Inc. and Local 115, United Retail & Wholesale Employees Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and Supermarket Housewares Employees Union, Party to the Contract

Supermarket Housewares Employees Union and Local 115, United Retail & Wholesale Employees Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and Supermarket Housewares, Inc. and Supermarket Toys, Inc., Party to the Contract. Cases Nos. 4-CA-2277 and 4-CB-675. October 23, 1961

DECISION AND ORDER

On June 15, 1961, Trial Examiner Max M. Goldman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor

practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent Employer filed exceptions to the Intermediate Report and a supporting brief, and the General Counsel filed a brief in support of the Intermediate Report.¹ No exceptions were filed by the Respondent Union.

The Board has reviewed the rulings of the Trial Examiner made 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 briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. The Respondent Employer, Supermarket Housewares, Inc. and Supermarket Toys, Inc., Collingdale, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assisting, dominating, or contributing financial or other support to Supermarket Housewares Employees Union, or any other labor organization.

(b) Giving effect to its agreement with the above-named Union or to any modification, extension, supplement, or renewal thereof, or recognizing said Union, or any successor thereto, as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms or conditions of employment.

(c) Discouraging membership in Local 115, United Retail & Wholesale Employees Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organizations of its employees by discriminating in regard to their hire or tenure or any term or condition of employment.

¹ In his brief, the General Counsel suggests that it would be appropriate for the Board to order Respondent Union to cease and desist from acting as bargaining representative of the Company's employees and to order it, jointly and severally with the Company, to refund dues and other sums collected from the employees. The remedies suggested would be appropriate if the Board were finding that the Respondent Employer had gone no further than assisting or supporting the Union. See *Revere Metal Art Co., Inc.*, 123 NLRB 114, and *Sierra Furniture Company*, 123 NLRB 1198, where the assisted unions had been named and served as party respondents. An employer must not only withdraw recognition from a dominated union but must also disestablish it. Such disestablishment deprives the organization of any independent status or future existence. As it is in effect merely a creature of the employer, it cannot bear any independent responsibility or liability for its unlawful assumption of representative status. It is the employer who must bear the sole responsibility for remedying all consequences of its unfair labor practices in purporting to recognize a dominated labor organization as the representative of its employees.

(d) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, by interrogating its employees concerning their union activities, or soliciting them to resign from a labor organization.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection, 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 a condition of employment, as authorized in 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) Withdraw and withhold all recognition from and completely disestablish Supermarket Housewares Employees Union, or any successor thereto, as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms or conditions of employment.

(b) Reimburse its employees for any initiation fees, dues, or any other moneys paid or checked off as a condition of employment pursuant to its agreement with the above-named Union, or any extension, renewal, modification, or supplement thereof, or any agreement superseding it.

(c) Offer Fred Potter 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 in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records and reports, including such records as are received from the Respondent Union, necessary to analyze the amounts of moneys due under the terms of this Order.

(e) Post at its warehouse at Collingdale, Pennsylvania, copies of the notice attached hereto marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the Company, be posted by

² 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"

it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

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

B. The Respondent Union, Supermarket Housewares Employees Union, Collingdale, Pennsylvania, its officers, representatives, agents, successors, and assigns, shall:

1. Transmit to the Company all records of payment of all initiation fees, dues, or any other moneys on hand paid or checked off as a condition of employment pursuant to its agreement with the Company, or any extension, renewal, or modification, or supplement thereof, or any agreement superseding it.

2. Notify the Regional Director for the Fourth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

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, as amended, we hereby notify our employees that:

WE WILL NOT assist, dominate, contribute financial or other support to Supermarket Housewares Employees Union or any other labor organization.

WE HEREBY disestablish the Supermarket Housewares Employees Union as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, or rates of pay, hours of employment, or other terms or conditions of employment.

WE WILL NOT recognize the above-named labor organization or any successor thereto for any of the foregoing purposes.

WE WILL NOT interrogate our employees concerning their union activities or solicit them to resign from a labor organization.

WE WILL NOT in any other manner interfere, restrain, or coerce our employees in the exercise of their right to self-organization, to form or join a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agree-

ment requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT discourage membership in Local 115, United Retail & Wholesale Employees Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of our employees.

WE WILL offer Fred Potter 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 suffered as a result of the discrimination against him.

WE WILL reimburse our employees for any initiation fees, dues, or any other moneys paid or checked off as a condition of employment pursuant to our agreement with Supermarket Housewares Employees Union, or any extension, renewal, modification, or supplement thereof, or any agreement superseding it.

All our employees are free to become, remain, or refrain from becoming or remaining, members of any labor organization, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act.

SUPERMARKET HOUSEWARES, INC.
AND SUPERMARKET TOYS, 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 AND RECOMMENDED ORDER
STATEMENT OF THE CASE

This proceeding against Supermarket Housewares, Inc. and Supermarket Toys, Inc., herein referred to as the Respondent Company or the Company, involving Section 8(a) (1), (2), and (3) allegations, and against Supermarket Housewares Employees Union, herein called the Respondent Union or the Independent, involving Section 8(b)(1)(A) and (2) allegations, was initiated by Local 115, United Retail & Wholesale Employees Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein referred to as the Charging Party or the Teamsters. The hearing was conducted on April 3 and 4, 1961, at Philadelphia, Pennsylvania. The Respondent Company and the General Counsel filed briefs with the Trial Examiner.

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 COMPANY

Supermarket Housewares, Inc. and Supermarket Toys, Inc., constitute a single integrated enterprise engaged in the business of wholesale distribution of toys, books, household items, soft goods, and other products with a principal office and place of business in New York City, and operating a branch at Collingdale, Pennsylvania, the only facility involved in this proceeding. During the past year the above-named corporations have jointly and severally in the course of their business operations purchased, transferred, or delivered to the Collingdale, Pennsylvania, location products of the above description, valued in excess of \$50,000, of which products valued in excess of \$50,000 were transported to said location directly from States of the United States other than the Commonwealth of Pennsylvania. It is found that the above-named corporations are engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Supermarket Housewares Employees Union, and Local 115, United Retail & Wholesale Employees Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, are labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

The issues presented, among others, are whether the Company engaged in certain acts of interference, restraint, and coercion and discriminated against Fred Potter (also referred to in the transcript as Winifred F. Potter) in violation of Section 8(a)(1) and (3); whether the Company initiated, supported, and dominated the Independent, and required membership in the Independent as a condition of employment in violation of Section 8(a)(1), (2), and (3); and whether the Independent entered into an exclusive bargaining agreement while it did not represent an unassisted or uncoerced majority, and gave effect to an agreement requiring membership as a condition of employment in violation of Section 8(b)(1)(A) and (2) of the Act.

B. *The events*

The operation involved since about the beginning of 1961 has been located at Collingdale in a one floor warehouse structure which also provides office space for Stanley Katz, general manager, and his secretary. The driver-salesmen report at this location at 7:30 every morning. Their trucks are then loaded with merchandise for delivery to various retail outlets.

Prior to the advent of the Independent a sign was posed at the Company's premises stating in effect that it was a union shop and that the Company was under contract with a Local 124. At the time of hire all employees executed membership and dues checkoff authorizations on behalf of Local 124 which they were presented by the Company. It does not appear that dues were in fact paid by the employees. Katz informed Fred Potter, the alleged discriminatee, around the time he was hired not to worry about the dues to Local 124 as the Company takes care of it. It does not appear that employees attended any Local 124 meetings. Katz, who reports only to his superiors at the Company's principal office in New York City and has been the branch general manager since June 1958, did not know whether the Company had had a contract with Local 124, stated that he had never seen such a contract, and further that he had never had any contact with representatives of Local 124.

During the course of his employment Potter talked at the warehouse to employees William Passarella, Robert Ehrenzeller, and Jim McNeill, among others, about Local 124 and also about the Teamsters. After telling some of the employees of his plans, on January 19 Potter went to see the Teamsters. The following day Potter was discharged.

Martin Klein and Bernard Kleeman, concerning whom there is an issue as to the Company's responsibility for their conduct, and who became officers of the Independent, and others conferred after Klein reported that there was talk about a union at the warehouse. Klein and Kleeman were of the view that it would be a good idea to form their own union and to keep the other union out.

Klein informed the Company's vice president, Israel Kofman, in New York that the men wanted a union. Learning from Kofman that the Company would go along

if Klein had authorizations from the men, on Sunday, January 22, Klein stating to the men that the employees wanted their own union, obtained signatures from about 15 of the men to a document which stated that they were members of the Independent and named Klein as president and Kleeman as secretary-treasurer of the Independent, as their bargaining agents.¹ That night Klein and Kleeman went to New York to see Kofman who assured them that they would get basically the same contract as the Company had in New York. Klein had not examined the contract in effect in New York and it does not appear that contract terms were discussed.

Potter, who had discussed the Teamsters with Passarella, Ehrenzeller, and McNeill at the warehouse while he was employed by the Company, met with these employees during the evening of January 24, and persuaded them to sign Teamster designation cards. In the afternoon of the next day, January 25, Passarella was called to the office. In the interview that ensued in Katz' office Katz declared that he had heard that Passarella had signed up with the Teamsters and Passarella admitted that he had. Katz responded that Passarella could be discharged for belonging to two unions, the Teamsters and the Independent. During the course of the interview Klein was in and out of the office. After Passarella left the office Klein dictated and Passarella wrote a letter of withdrawal to the Teamsters. The envelope shows that it was sent to the Teamsters by registered mail. Passarella did not register the letter. That same evening Ehrenzeller was also called to the office and Katz talked with Ehrenzeller in McNeill's presence. Klein was also in and out of the office during this incident. Katz asked Ehrenzeller if there was anything wrong and why Ehrenzeller had not come to Katz. Katz also declared that Ehrenzeller and the Company could part and that Potter had been discharged for complaining too much. Katz asked Ehrenzeller whether he had signed a card for the Teamsters and Ehrenzeller admitted that he had. Klein was in the office at this time. Klein asked Katz if he was finished with Ehrenzeller and McNeill and stated that he wanted to write withdrawal letters to the Teamsters. The three left Katz' office and Klein dictated the letter to McNeill and Ehrenzeller. The Ehrenzeller letter is almost in the identical language as the Passarella letter.²

On January 30 about 7:30 a.m., the regular reporting-in time, without prior notice, Klein and Kleeman called a meeting of the men. At this meeting, without the benefit of a secret ballot, Klein was elected president, Kleeman, secretary-treasurer, and John Miller, shop steward of the Independent.³ At this meeting Klein and Katz read to those assembled an agreement between the Company and the Independent which was hand dated January 24. The agreement was approved by the group. This agreement grants exclusive recognition to the Independent and provides, among other things, for membership in good standing in the Independent as a condition of employment.

The Independent conducted a meeting in February and a meeting in March at the warehouse after 7:30 a.m. with Mr. Katz' permission. These meetings lasted about 15 minutes. The Independent has no constitution or bylaws. Dues were checked off in February and March for the account of the Independent.

C. The conclusions

1. The responsibility issue

The General Counsel takes the position that Klein and Kleeman are supervisors and/or agents of the Company. It is sufficient as to the issues presented to pass only upon Klein's status.

¹ Klein obtained additional signatures at the warehouse the following day, Monday, January 23.

² The incidents related above are based on Passarella's and Ehrenzeller's credible testimony. Klein and Katz, who did not impress the Trial Examiner favorably as witnesses, gave testimony at odds with these findings.

³ The Teamsters attack the bona fides of the Independent by contending that the Independent failed to comply with certain provisions of the Labor-Management Reporting and Disclosure Act of 1959. There is no showing that the Secretary of Labor issued a decision in this matter. A Board proceeding is not the proper forum within which to litigate issues under that Act, and the contention is accordingly found to be without merit. See *Inyo Lumber Company of California*, 129 NLRB 79, and cases there cited Cf. *The American News Company, Inc.*, 55 NLRB 1302, as to an aspect of accommodation to War Labor Board decisions.

Katz referred to Klein as a sales supervisor and troubleshooter and views Klein as being in the same category as Kleeman, James Fry, and Ted Posner. None of these men, according to Katz, has authority to hire or fire but they have hired and fired under his direction. Klein, who preceded Katz at the branch operation involved and came from the Company's principal location in New York City, can interview applicants for employment and make recommendations concerning the applicants to Katz. Katz makes the final decisions. Posner was hired about 3 years prior to the events involved. At that time Posner worked for Potter elsewhere. Klein, Potter, and Posner were present at Posner's home when Klein asked Posner, his cousin, to join the Company and stated the salary to be paid. Posner agreed to accept employment with the Company and told Potter that he was quitting.⁴ Concerning the hiring of Potter in June 1960 as a driver salesman, Katz admittedly knew Potter only "very slightly." Posner recommended Potter to Katz. Katz told Posner to have Potter come in the following morning to fill out the necessary forms. Katz, knowing that he was not going to be in the office at that time, had Klein take care of the paperwork and told Klein to have Potter come in to work the following Monday. After Potter was hired Katz told Potter that Klein was a supervisor and in Katz' absence Potter took up with Klein matters which required consultation with a supervisor.⁵ In Katz' absence, Klein usually checked upon who among the men were present, and it is Klein's duty to see to it that driver-salesmen, about 12 in number, service their accounts properly as to timeliness in filling orders and setting up certain displays. The driver salesmen work on a basis of a \$70 guarantee against commissions, and their average weekly gross pay on or about January 24 was \$84.86. Klein's salary is \$100 a week plus \$50 a week for car expenses and certain commissions, an amount more than that of any person at this operation with the exception of Katz.

It is found that Klein had the authority to effectively recommend action relating to the hire or tenure of employees and to responsibly direct them, and that Klein is a supervisor within the meaning of the Act and the Company held Klein out as its agent.

2. Interference, restraint, and coercion, and the discrimination

Potter was hired in June 1960 as a driver-salesman. He was discharged on January 20, 1961. The General Counsel alleges that the discharge was discriminatory. The Company takes the position that Potter was discharged for not appearing for work on January 20.

There was a snowstorm on Friday, January 20. That morning Potter tried to move the truck which had been parked at his home and was unable to do so without possible injury to the transmission. He decided not to risk the injury to the vehicle and to call the office for a tow truck as he had done on a prior occasion. By about 8 a.m. he was able to reach Kleeman at the office. Potter explained the situation to Kleeman and Kleeman stated that everyone would have to work the following day, Saturday, to make up the time.⁶ About 11 a.m. Potter received a telephone call from Klein. Klein stated that Potter had to come into the office as it was very important. Potter thereupon, after spending about an hour trying to get the truck going, arrived at the office around 1:30 p.m. Klein then informed Potter that he was discharged but that he did not know why Potter was discharged.

According to Katz, everyone living in all parts of Philadelphia and suburban areas appeared that day, Potter's truck was among the few with snow tires, Potter had used the same excuse for not coming in on prior occasions, and Potter's absences during snowstorms were getting to be a habit. According to Klein and Katz, during the morning of Potter's discharge, Klein informed Katz that Potter had not come in, they discussed how Potter had been coming in late, that Potter was behind in his work, and that every time there was snow on the ground Potter had trouble with

⁴ Klein at first testified to having hired one person, Posner. Klein then testified that he did not, but that Duberstein, president of the Company, hired Posner. Neither Duberstein nor Posner was called as a witness. The findings appearing in the text to the effect that Klein hired Posner are based upon Potter's credible testimony.

⁵ In addition to the Trial Examiner's views of Katz as a witness given above, Katz' testimony that in his absence on days during which he is in the field or in New York City no one in particular is in charge of the operation, that no one has authority to do anything, and that he merely telephones his clerical employee at the office about every hour and a half, is found not to be credible.

⁶ Kleeman was not called as a witness.

his truck and it was setting a bad example for the other men. Klein suggested that if he were in Katz' place he would discharge Potter.⁷

It appears that during a prior snowstorm Potter was absent from work and he did not appear until the next day when his truck was towed out. In November 1960, Potter was absent from work 1 week while he was under his doctor's care for a leg injury. With Katz' permission Potter was also out for 2 days in December during deer season. Potter was late for work on one occasion. Potter was never criticized for his absences.⁸ Katz testified on cross-examination that he believed that Potter was absent two or three times because of snowstorms and then testified also that he did not know but Potter could have been absent only on one occasion during a snowstorm prior to the discharge.

During the course of the events Katz gave other reasons for Potter's discharge. On Sunday, January 22, the same day Klein solicited authorizations from the employees for the Independent, Mrs. Potter telephoned Katz at his home and asked why her husband was discharged. According to Mrs. Potter's credible testimony, Katz made reference to the way Potter acted in instigating the men and starting trouble despite Katz having been so good to Potter, and that he had learned this from a very good authority, the Globe Detective Agency.⁹ As already found, on the evening of January 25, when Katz questioned Ehrenzeller about the Teamsters, Katz declared that Potter was discharged for complaining too much.

Between 2 and 3 months after Potter started to work for the Company in June 1960, Potter received a \$10 a week raise in pay. At that time Katz stated to Potter that he had gone out on a limb for Potter as no one received more than a \$5 a week raise and never before 3 months.

The Trial Examiner is of the opinion and finds that Katz exaggerated the significance of Potter's absences to conceal the actual reason for Potter's discharge as is disclosed by Katz' opposition to the Teamsters and his admission to Mrs. Potter, namely, that he had learned that Potter, instead of being grateful to Katz, had been instigating the men. It is accordingly found that the Company discriminated against Fred Potter by discharging him on January 20, 1961, in violation of Section 8(a)(3) and (1) of the Act. It is further found that the Company violated Section 8(a)(1) of the Act through Katz' interrogation of Passarella and Ehrenzeller, and Katz' and Klein's solicitation of Passarella, Ehrenzeller, and McNeill to resign from the Teamsters.

3. The Independent

As has been found, Klein formed the Independent to counter the organization of the employees by the Teamsters; Katz discharged Potter for instigating the men to join the Teamsters. Klein solicited the authorizations from the employees to join the Independent; Katz sought to maintain membership in the Independent by soliciting employees to withdraw from the Teamsters, including in the instance of Ehrenzeller, solicitation by means of a threat of discharge. Without even the appearance of bargaining, Klein agreed to accept from Kofman a contract governing the employment relationship, the terms of which he was unaware. The Company sought to perpetuate the Independent by entering into this contract which made membership a condition of employment and thereafter deducted dues from employees for the account of the Independent. Klein without the limitations of a constitution and bylaws presided over the Independent's meetings on company time and property. It is accordingly found that by forming, dominating, and contributing support to the Independent, and by recognizing the Independent as the exclusive representative of its employees while the Independent did not represent an uncoerced majority of the employees and entering into a contract with the Independent conditioning employment upon membership, the Company violated Section 8(a)(1), (2), and (3) of the Act.

It is further found that by entering into a contract with the Company granting it exclusive recognition while it did not represent an uncoerced majority of the

⁷ Katz testified that he believes he did not, prior to Potter's discharge, consult Potter's immediate supervisory salesman, Don Sharp, but that Katz had discussed Potter with Kleeman, Miller, and Fry. Katz did not testify as to the content of conversations with these men, and these men did not appear as witnesses.

⁸ These findings are based upon Potter's credible testimony.

⁹ Katz testified that he could not recall the substance of this conversation with Mrs. Potter.

employees, and providing in the contract for membership as a condition of employment, the Independent violated Section 8(b)(1)(A) and (2) of the Act.¹⁰

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company and the Independent set forth in section III, above, occurring in connection with the operations of the Company 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 Company and the Independent have engaged in unfair labor practices, it will be recommended that they take certain action designed to effectuate the policies of the Act.

Having found that the Company violated Section 8(a)(1), (2), and (3) of the Act by forming, dominating, and contributing support to the Independent, and by recognizing the Independent as the exclusive representative of its employees while the Independent did not represent an uncoerced majority of the employees and entering into a contract with the Independent conditioning employment upon membership in that labor organization, the usual order will be recommended to cure the effects of such conduct, including an order to withdraw and withhold all recognition and completely disestablish the Independent. As the Independent will be disestablished no order will be recommended as to it except that it transmit the Company such dues, fees, or other moneys it received under the contract and such records of payment as it has in its possession for the purpose of aiding in the reimbursement of the employees.

Having also found that the Company discriminated with regard to the hire and tenure of employment of Fred Potter beginning January 20, 1961, the Trial Examiner will recommend that the Company offer him 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 suffered as a result of the discrimination against him, by payment to him of a sum of money equal to the amount he would have earned from the date of the discrimination to the date of the offer of reinstatement less net earnings to be computed on a quarterly basis in a manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. Earnings in any one particular quarter shall have no effect upon the backpay liability for any other such period. It will also be recommended that the Respondent preserve and, upon request, make available to the Board, payroll and other records to facilitate the computation of the backpay or other moneys due.

As the unfair labor practices committed by the Company are of a character striking at the root of employee rights safeguarded by the Act, it will be recommended that the Company cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of 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. Supermarket Housewares Employees Union, and Local 115, United Retail & Wholesale Employees Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, are labor organizations within the meaning of the Act.
2. The Independent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.
3. The Company has engaged in and is engaged in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

¹⁰ See *Revere Metal Art Co., Inc.*, 123 NLRB 114; and *International Ladies' Garment Workers' Union, AFL-CIO (Bernhard-Altmann Texas Corp.)*, 366 U.S. 731.