

**Clearfield Cheese Company, Inc. and Amalgamated Meat Cutters
and Butcher Workmen of North America, AFL-CIO. Case No.
6-CA-2503. October 10, 1962**

DECISION AND ORDER

On August 17, 1962, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report.

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 McCulloch and Members Rodgers and Fanning].

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 and the entire record in the case, including the exceptions, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.¹

¹The first line of the notice below the signature is amended to read ". . . posted for 60 consecutive days from the date of posting . . ."

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Admitting its refusal to bargain, the Company here would test the Board's procedure and the Regional Director's certification of the Union as the exclusive collective-bargaining representative of all of the employees in the unit. The facts of certification and request and refusal to bargain are admitted; challenged are the Regional Director's action in setting aside an earlier election, his certification after a second election, and the Board's denials of the Company's requests for review.

Charges were filed herein on May 4 and 24, 1962; the complaint issued on May 25, 1962. A hearing was held before Trial Examiner Lloyd Buchanan on July 12, 1962. Pursuant to leave granted to all parties, a brief has been filed by the Company.

It was admitted and I find that the Company, a Pennsylvania corporation, manufactures and sells cheese at its plant in Curwensville, Pennsylvania; and that during the 12 months preceding issuance of the complaint it produced, sold, and shipped products valued at more than \$50,000 from said plant to points outside the Commonwealth of Pennsylvania. I find that the Company is engaged in commerce within the meaning of the Act. It was also admitted and I find that the Union is a labor organization within the meaning of the Act.

On December 8, 1961, the Regional Director set aside an election held on October 18 in Case No. 6-RC-2950, the Union having filed objections thereto, and directed a second election. The Board on January 16, 1962, denied the Company's request to review that action by the Regional Director. A second election was held on

February 19, and the Regional Director issued a second supplemental decision and certification of representative on April 5. The Company's request for review of the latter was denied by the Board on April 30.

On May 1, 1962, the Union requested the Company to bargain collectively, but the Company on May 2 refused. The Company contends that its refusal to bargain was not an unfair labor practice, however, since the setting aside of the October 1961 election and the holding of the February 1962 election were unlawful and the certification thereafter issued is void. The Company's position that the certification of the Union was illegal and that there is therefore no obligation to bargain with it is based on the contention that the Regional Director's and the Board's procedures and actions in the representation were improper. That contention and arguments in support thereof were considered in the representation proceeding and, were rejected at that time; at the instant hearing no matters were offered for consideration which were not or could not have been presented in the representation proceeding.

It is neither my function nor my right to review the Board's determinations. Accepting its denial of the Company's requests to review the Regional Director's decisions, particularly his certification of the Union, and the request and refusal to bargain being admitted, I find that at all times since May 2, 1962, the Company has in violation of the National Labor Relations Act, as amended, 73 Stat. 519, refused to bargain with the Union as the collective-bargaining representative of the employees in the unit described *infra*.¹ Any contention based on the fact that certain acts were by the Regional Director and not by the Board in the first instance is met by Rule 102.67(f)² and the recent decision in *The Mountain States Telephone and Telegraph Company*.³

Upon the basis of the above 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. All production and maintenance employees employed by the Company at its Curwensville, Pennsylvania, plant, including shipping and receiving employees and laboratory employees, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

3. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, was on May 2, 1962, and at all times since has been the exclusive bargaining representative within the meaning of Section 9(a) of the Act, of all employees in the aforesaid unit for the purposes of collective bargaining.

4. By refusing to bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive representative of the employees in the appropriate unit, Clearfield Cheese Company, Inc., has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By such refusal to bargain, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Company, Clearfield Cheese Company, Inc., Curwensville, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted ac-

¹ See *Moloney Electric Company*, 129 NLRB 1208.

² Board's Rules and Regulations, Series 8, as amended

³ 136 NLRB 1612.

tivities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from 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.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and embody in a signed agreement any understanding reached

(b) Post at its plant in Curwensville, Pennsylvania, copies of the notice attached hereto marked "Appendix."⁴ Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Company's representative, be posted by the Company immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its 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.

(c) Notify the Regional Director for the Sixth Region, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps have been taken to comply herewith.⁵

⁴ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order"

⁵ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL bargain, upon request, with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and embody in a signed agreement any understanding reached. The bargaining unit is:

All production and maintenance employees employed by the Company at its Curwensville, Pennsylvania, plant, including shipping and receiving employees and laboratory employees, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, 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, or to refrain from any or all of 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.

CLEARFIELD CHEESE 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.

Employees may communicate with the Board's Regional Office, 2107 Clark Building, Pittsburgh 22, Pennsylvania, Telephone Number, Grant 1-2977, if they have any question concerning this notice or compliance with its provisions.