

engaged in by the Respondent. Indeed, there is a total lack of evidence that any agent of the Respondent even communicated in any way, shape, or form with any person in Gridley's management.²⁷ It is accordingly concluded that the General Counsel has failed to establish that the Respondent violated Section 8(b)(4)(ii)(B) of the Act with regard to Gridley.

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

CONCLUSIONS OF LAW

1. E. C. Ernst, Inc., and Darin and Armstrong, Inc., are and at all material times have been employers engaged in commerce within the meaning of Section 2(6) of the Act.

2. International Union of Operating Engineers, Local 106, AFL-CIO, is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act. Paul Moran and Milton J. Orslick are, and at all times have been, its agents within the meaning of Section 8(b) of the Act.

3. The General Counsel has failed to prove that Joseph Bundy was, at any material time, an agent of the above-named labor organization within the meaning of Section 8(b) of the Act.

4. By threatening, coercing, and restraining Darin and Armstrong, Inc., with an object of forcing or requiring Darin and Armstrong, Inc., to cease doing business with E. C. Ernst, Inc., the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

5. The above-described unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. The General Counsel has failed to establish that the Respondent has engaged in or is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i)(B) of the Act.

7. The General Counsel has failed to establish that the Respondent violated Section 8(b)(4)(ii)(B) of the Act with regard to C. M. Gridley and Son, Inc.

[Recommendations omitted from publication.]

²⁷ This is true even if Robert Gridley, because of his stock ownership in Gridley, is considered as a "person engaged in commerce" within the meaning of Section 8(b)(4)(ii)(B) of the Act. See *Local Union No. 505, International Brotherhood of Teamsters, et al. (Carolina Lumber Company)*, *supra*.

Even if Bartolet's testimony as to what Orslick said in an alleged telephone conversation of February 28 is taken as true and even if Orslick's alleged remark therein ("sign our contract . . . and that will be it") is considered as a threat, this was *addressed to Bartolet*, a representative of the primary employer, and could not in any sense be viewed as a threat to *Gridley*, the neutral employer.

Sharp's Markets, Inc. and Amalgamated Meat Cutter and Butcher Workmen of North America, Local 109, AFL-CIO.
Case No. 28-CA-822. February 13, 1963

DECISION AND ORDER

On November 14, 1962, Trial Examiner James R. Hemingway 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 General Counsel and

the Union filed exceptions to the Intermediate Report and supporting briefs.

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 Leedom and Brown].

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

The Trial Examiner found that the Respondent had, on and after April 2, 1962, refused to bargain collectively with the Union, in violation of Section 8(a)(5) and (1) of the Act, and recommended that the Respondent be ordered, upon request, to bargain collectively with the Union. The General Counsel and the Union contend that, as the Trial Examiner found that the Respondent and the Union had reached agreement on all the terms and conditions of a collective-bargaining agreement on or about April 2, 1962, the Respondent should be ordered to execute this agreement. We agree.

For several years, the Union has entered into agreements with an employers' association covering the meat department employees of the member employers in the Tucson area. Although the Respondent was not a member of this association and did not execute these agreements, it did apply the contract provisions to its meat department employees. The Union and the association entered into a new contract in March 1962. On April 2, 1962, a union representative met with the Respondent's president, discussed the terms of this new contract at length with him, and, according to the testimony which the Trial Examiner credited, the Respondent "agreed to go along with the contract in its entirety." The Union also asked the Respondent to sign this agreement. The Respondent, however, maintained that, while it would carry out the terms and conditions of the contract, it would not execute it.

We find that the Respondent, having reached agreement with the Union, violated Section 8(a)(5) of the Act by refusing to execute a contract embodying the terms thereof. Accordingly, we shall adopt the Recommended Order of the Trial Examiner with the added requirement that the Respondent, upon request, execute the contract on which it reached agreement with the Union on or about April 2, 1962.

ORDER

The Board adopts as its Order the cease-and-desist and affirmative action recommendations made by the Trial Examiner in his Inter-

mediate Report with the following addition, to be numbered "2. (b)," provisions 2. (b) and 2. (c) of these recommendations to be renumbered "2. (c)" and "2. (d)", respectively:

If requested by Local Union 109, Amalgamated Meat Cutter and Butcher Workmen of North America, AFL-CIO, execute the contract on which it reached agreement with the said Union on or about April 2, 1962.¹

¹The notice attached to the Intermediate Report is amended by adding as the last paragraph of the notice the following:

WE WILL, if requested by Local Union 109, Amalgamated Meat Cutter and Butcher Workmen of North America, AFL-CIO, execute the contract on which we reached agreement with the said Union on or about April 2, 1962

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed on May 8, 1962, by Amalgamated Meat Cutter and Butcher Workmen of North America, Local 109, AFL-CIO,¹ herein called the Union, against Sharp's Markets, Inc., herein called the Respondent, the General Counsel, by the Regional Director for the Twenty-eighth Region of the National Labor Relations Board, herein called the Board, issued a complaint on June 14, 1962, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act.

With respect to the unfair labor practices, the complaint alleges, in substance, that, commencing on December 4, 1961, and continuing thereafter to the date of the complaint and, more specifically, on December 4, 1961, and April 2, 13, 23, and 24, 1962, the Union had requested and the Respondent had refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of all employees in an alleged appropriate unit whom, it is alleged, the Union represented and represents for the purposes of collective bargaining. The Respondent's answer filed on June 26, 1962, denied the requests and refusal to bargain as alleged.

Pursuant to notice, a hearing was held at Tucson, Arizona, on July 25, 1962, before Trial Examiner James R. Hemingway. The General Counsel and the Respondent were represented by counsel and the Union appeared by its representative. All parties were afforded full opportunity to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the close of the hearing, at the request of the parties, a time was fixed in which to file briefs. Following an extension of such time, briefs were received from the General Counsel and the Respondent and they have been considered.

Upon the entire record and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is and has been at all times material herein a corporation duly organized under and existing by virtue of the laws of the State of Arizona with places of business at Tucson, Fry, Sierra Vista, Kearney, and Ray, Arizona. It is engaged in the business of the retail sale of groceries and related merchandise. During the year 1961, the Respondent in the course and conduct of its business operations sold and distributed products, the gross value of which exceeded \$3,438,273. During the same period of time, the Respondent received goods valued in excess of \$376,124, transported to its places of business in interstate commerce directly from States of the United States other than the State of Arizona. No issue is raised as to the jurisdiction of the Board. I find that the Board has jurisdiction and that it will effectuate the policies of the Act to assert jurisdiction in this case.

¹ This is the way the Union's name is given in the complaint and one place in the charge. In another place in the charge the word "Cutters" is used instead of "Cutter." The Union's business representative testified that the Union was not affiliated with AFL-CIO, but its contract describes it as affiliated.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material hereto, a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit

The complaint alleged, and the answer admitted, that all meat department employees of the Respondent, employed at its retail stores located at Casas Adobes, at 5250 East Speedway Boulevard, and at 1830 South Alvernon, all in Tucson, Arizona, exclusive of all other employees and all 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, and I so find.

2. The Union's majority in the appropriate unit

On December 13, 1961, Respondent had 10 employees in the appropriate unit, exclusive of Charles Stark, who was then a supervisor. Of the 10, 8 were members of the Union. On April 2, 1962, the Respondent had 12 employees in the appropriate unit. Eleven of these were members of the Union.² The Respondent objected to proof of membership of some of the employees because of the fact that their dues were not current, and in a few instances had not been paid for some time. Even if this were a valid objection, which it is not, since a member does not automatically cease to be one because of nonpayment of dues, a majority of the member-employees were current in their dues. I find, therefore, that the Union was, on the dates mentioned and at all times material herein, the exclusive representative of all employees in the aforesaid unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment within the meaning of Section 9(a) of the Act

3. The refusal to bargain

a. *History of the Union's dealings with Respondent*

The Respondent or its predecessors have been in the grocery business since about 1953. Mervin Stark, the Respondent's president, was a partner and part owner in the Respondent's predecessors. The meat department originally had been sublet, but in early 1954, the Respondent's predecessor took over the operation of the meat department. At that time, it employed Charles Stark as head meatcutter. Under supervision of Sharp, Stark would hire and discharge personnel for the meat department. If someone was needed for the meat department, Stark, when directed to hire someone, would request the Union for such personnel as the Respondent needed. Only in the event that the Union was unable to supply the required help did Stark use any other source for procurement of labor. Stark testified that he procured employees through the Union 95 percent of the time. More frequently than not, the employees supplied by the Union were already members thereof, but in some instances they were not, although most of them joined the Union after they were employed.

The Union was accustomed to negotiate periodically a contract covering meat department employees of a number of employers in the Tucson area who were represented by an employers' council in such negotiations. Although the employers individually signed copies of the resultant agreement, the copies were all the same. At first, the Union entered into annual contracts with members of the employers' council, but beginning in 1957 it had a 2-year contract expiring in 1959, and in the latter year it entered into a 3-year contract, expiring in February 1962.

The Respondent was not a member of the employers' council and was never a signatory to any of the contracts so negotiated. However, the Respondent always attempted to conform to the provisions of the contract entered into by signatory employers. Before the 1959 contract was negotiated, the Union had not requested the Respondent to sign its contract. E. H. Eagle, the Union's business representative, testified that he did not do so because the Respondent always followed the terms of the contract, because the Union had never had grievances from the Respondent's

² Stark, a member of the Union, ceased to be a supervisor on a date which he estimated as 6 weeks before the hearing. I do not count him as in the unit in April 1962

employees, and because he had heard that Sharp had a personal feeling against unions, and he felt like he was handling a delicate situation.

In late 1958, prior to the expiration of the 1957 contract, when Eagle sent notices to contract signatories of the Union's desire to negotiate a new contract, he also sent such a notice by registered mail to the Respondent. There were a number of negotiating meetings in 1959 and, although the Respondent was not a member of the employers' council, Sharp and his brother (another part owner of Respondent and its predecessors) attended one or two of the negotiating sessions.

Following the completion of the 1959 negotiations and after the contract had been signed, Eagle called on Sharp at the Respondent's office and went over the provisions of the contract with Sharp to acquaint him with the changes. At this time, Eagle attempted to get Sharp to sign the contract, but Sharp said that they had been getting along all right and that they should continue it that way. During the term of that contract, Eagle made no other effort to get the Respondent to sign. The evidence is persuasive, however, that the Respondent put into effect the changes called for by the contract and conformed therewith during the term thereof.

b. The request to bargain and the Respondent's refusal

Sixty days before the expiration of the 1959 contract, the Union again sent the customary notices to contract signatories of the Union's request to negotiate a new contract. Again, it sent one to the Respondent by registered or certified mail. This was received by the Respondent about December 13, 1961. Following this date, the Union conducted negotiations with the employers' council, and about March 1962 concluded a 3-year contract.

Thereafter, after making an unsuccessful attempt to find Sharp in his office about March 29, Eagle on April 2 again called at Sharp's office about 1:30 p.m. and was told by a receptionist to return at 4:30 p.m. Eagle did so and was then directed to Sharp's office, where he spent approximately 2½ hours with Sharp, going over the contract and talking about the Respondent's position with regard to it. The testimony of Eagle and Sharp differed as to what was said at this meeting. According to Sharp, none of the provisions of the contract except that concerning hospitalization insurance was discussed. Sharp testified that about 6 o'clock, Eagle asked that the Respondent sign the contract and that he told Eagle that even if he (Sharp) negotiated a contract with him he would not be interested in "that phase of it," that is, the hospitalization provision which covered the employee's family as well as the employee. Eagle gave a more explicit account in his testimony of what was said at the meeting. He testified that he pointed out the changes in the contract including that concerning the health and welfare program which was not to go into effect until February 1, 1963. Eagle testified that Sharp told him that the Respondent was already giving insurance to his employees and that he objected to the covering of dependents. Eagle sought to explain to Sharp the fact that the employee would be paying for the increased coverage, and Eagle testified that thereafter Sharp did not object to the provision since he was not required to pay the cost of the added benefits. Eagle testified that Sharp agreed to go along with the contract in its entirety, testimony which was denied by Sharp. Eagle testified that when he asked Sharp to sign the contract, Sharp said that they were getting along nicely, that he was living up to the contract, but that he did not want to sign it. Eagle testified that he told Sharp that the Respondent had new ownership in it (a new stockholder had been acquired) and that it was only businesslike to have a signed contract. He quoted Sharp as saying that, if he signed the contract, that is when they would have trouble. According to Eagle, Sharp repeated that they should go along as they had been in the past and that the next time the contract expired the Respondent would get in on it. Sharp told Eagle that his pride had a great deal to do with his refusal to sign a contract, that he had various grievances against the Union, that in 1952, when there was a strike, he had gone through a picket line at a certain market, and that, as he drove away, another car followed and someone in it had thrown tacks into Sharp's car and hit Sharp's wife. Eagle apologized and said that that was not the policy of the Union. In the course of the meeting, according to Eagle, Sharp told Eagle that, if he would divorce himself from the International, he would sign the contract and that Sharp also brought in the name of Hoffa. Eagle told Sharp that Hoffa had nothing to do with his Union and that the Union was not even affiliated with the AFL-CIO.³ Eagle also quoted Sharp as asking why Eagle did not let Sharp give him a job and that he had answered that he would be no good

³The contract describes the Union as affiliated with "Arizona State Federation of Labor and the Tucson Central Labor Council, all affiliated with the American Federation of Labor and Congress of Industrial Organizations."

to Sharp because he had been away from the craft too long. Eagle told Sharp that he valued his friendship and acknowledged that they had gotten along very well but said that he would have to insist on Sharp's signing and that if Sharp failed to sign, Eagle would have to take other action, intimating that the Union would call a strike. At 7 o'clock, Eagle, noticing how late it had become, asked Sharp to think the matter over that night and to let him know the next day. Sharp told Eagle that he would not be in the next day. Eagle asked if he would be in the day after that, Wednesday, April 4. Sharp replied that he would be out of town but might be in on Friday, the 6th, suggesting that Eagle telephone to see if he was in and that, if he was not in then, to call the following Monday, April 9. Eagle had with him copies of the contract. He himself signed one copy, intending to leave it with Sharp. The evidence is vague as to whether any copies were left with Sharp. From my observation of the witnesses and on the entire record, I credit Eagle's account of the April 2 conference as substantially accurate.

On Friday, April 6, Eagle inquired at the Respondent's office and was told that Sharp was not in. He returned on the following Monday, April 9, and was told that Sharp was still not in. He tried again later that day and also on the succeeding 2 days. Each time he received the same answer—that Sharp was not in. Following an unsuccessful telephone call on April 11, Eagle consulted the Union's attorney, who advised him to write a letter. On April 13, Eagle wrote as follows:

This is in reference to the copies of our contract with present employers in the city of Tucson, effective February 10, 1962.

You have stated to me on several occasions that you are willing to live up to all of the terms of the contract, and in accordance therewith you have even paid your employees retroactive pay to February 10, 1962. Everything was satisfactory to you, even the new health and welfare provisions of the agreement.

However, as I explained to you, the agreement is reduced to writing and should be signed by the parties. The union is therefore requesting that you execute the agreement signed by me on behalf of the union and return the same to me at your earliest convenience. Please advise.

The letter was sent certified mail. Sharp declined to accept delivery; so it was returned to the Union unopened. On April 23, the Union wrote a letter which included the first two paragraphs of the above-quoted letter and then added the following:

We cannot understand why you are unwilling to sign the agreement, and hereby request you to do so, unless you are willing to state what you don't like, if you have changed your mind since I last saw you. If this is true please call me at your earliest convenience so that I might bargain with you in regard to any changes.

I have written to you on April 13, 1962, but you have not picked up the certified letter.

The letter of April 23 was delivered by a process server to Sharp's home, where Sharp's wife received it⁴. Sharp never replied to it.

Although the 1962 contract with the employers' council was not signed until late in March, the new wage rates as well as the rest of the contract were effective as of February 10. Some time after that contract was negotiated, the Respondent gave its employees a retroactive wage increase. The record is vague as to dates, but I infer that the increase was granted in April and that it was, in amount and effective date, in conformity with the terms of that contract. The only provision of the contract that Sharp had found fault with was the one extending hospital insurance to dependents of employees. Even as to this, he gave Eagle to believe, there would be no objection if the employees were the ones to bear the cost.

c Concluding findings, contentions, and conclusions thereon

Although the complaint alleges a refusal to bargain on December 4, 1961 (as well as on April 2, 1962, and thereafter), the General Counsel in his brief does not allude to this allegation of the complaint nor does he argue that there was a refusal to bargain on December 4. It is unnecessary to make a finding as to that date, because a refusal to bargain on and after April 2, 1962, is clearly evident. The Respondent

⁴ Sharp also refused to receive the Board's registered letter containing the notice of the filing of the charge. Following a visit by a field examiner, on about May 25, at which time the field examiner served a copy of the charge on Sharp, Sharp did go to the post office and accepted a second registered notification letter which had been sent by the Board on May 18.

on and after April 2, 1962, demonstrated a purpose not to enter into a contract under any circumstances. Sharp admitted that he had argued with Eagle on April 2 that a contract was not needed and that he would not sign it. At the hearing, on direct examination by Respondent's counsel, Sharp testified that, at the April 2, 1962, meeting with Eagle, he had told Eagle that he "wouldn't under any condition sign a contract that I wasn't allowed to negotiate, furthermore, I wasn't sure whether our employees wanted it. . . ." The Respondent argues that it did not refuse to bargain but just refused to sign a contract without its being negotiated by it. Collective bargaining embraces the signing of a written contract containing the terms and conditions agreed to. There is no credible evidence that Sharp indicated any desire to negotiate a different contract. His objection was to signing any contract. In the past, the Respondent had always conformed to the Union's contract and the changes effected by new contracts, which had been negotiated without the Respondent's participation. It had paid the contract wage rates, conformed to the contract hours (when the 1959 contract reduced the hours from 48 to 40 a week, the Respondent had conformed), to the holidays and vacation provisions, and when a question arose concerning some matter involving conditions of employment, Sharp would ask Stark, the head meatcutter, what the contract provided in such case. The entire history of the Respondent and its predecessors discloses a purpose on the Respondent's part to maintain the wages, hours, benefits, and working conditions in effect at markets whose owners were under contract with the Union. However, even if Sharp had genuinely wished to depart from such practices and to reach different terms, the Union, by its letter of April 23, gave the Respondent such an opportunity, but the Respondent chose to ignore the letter. By this action the Respondent clearly demonstrated a refusal to bargain. Even before the letter of April 23 reached the Respondent's home, however, Sharp had sought to avoid any communication with the Union. Sharp testified that he never received any information about Eagle's calls (which stretches credulity) and that it was his policy not to accept registered mail. This policy, he said, was only for himself, when he went to the post office for the Respondent's mail; it did not apply to others who picked up the Respondent's mail at the post office. Such testimony I find incredible. Receipts for registered mail in December 1958 and December 1961 were signed by other agents of the Respondent than Sharp. That others than Sharp should cease to pick up mail in April 1962 or refuse to accept registered letters would appear to be a departure from precedent. The notation of the post office on the Union's certified letter of April 13 (postmarked "April 14, [at] 6 p m") was "unclaimed" not "refused." Yet the evidence indicates that it was refused. If it was unclaimed, it was an intentional omission. I find that the Respondent's refusal to accept the Union's letter of April 13 evidences its attempt to evade its statutory obligation to bargain with the Union. I further find that the refusal of the Respondent to reply to the Union's letter of April 23 was because the Respondent had a fixed determination not to sign any contract with the Union, even if the terms were agreeable to it. Hence, I find that Respondent on April 2, on April 15 (I infer from the postmark on the envelope containing the Union's letter of April 13 that the letter would not have come to the Respondent's attention before April 15,) and on and after April 23, 1962, refused to bargain with the Union.

The complaint alleged the Respondent's giving of the retroactive increase as additional evidence of refusal to bargain. In view of the uncertainty as to when the increase was given and the Respondent's past practice of conforming to the Union's contract terms with the tacit approval of the Union, I do not rely on the 1962 wage increase as evidence of a refusal to bargain in reaching my conclusions.

The Respondent, by questions asked of Sharp at the hearing, apparently intended to raise an issue of Respondent's doubt of the Union's majority. This point was not, however, raised in the Respondent's brief. It will suffice to say, therefore, that the Respondent never questioned the Union's majority, and I find that it had no reason to doubt it.

By refusing to bargain with the Union as herein found, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I have found that the Respondent has refused to bargain with the Union as the exclusive representative of the employees in the appropriate unit. I shall, therefore, recommend that, upon request, the Respondent bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

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. The Respondent, Sharp's Markets, Inc., is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Meat Cutter and Butcher Workmen of North America, Local 109, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All meat department employees of the Respondent employed at its retail stores in Tucson, Arizona, to wit, those located at Casas Adobes, at 5250 East Speedway Boulevard, and at 1830 South Alvernon, exclusive of all other employees and all 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.

4. On December 13, 1961, and at all times material thereafter, the Union was and now is the exclusive representative of the Respondent's employees in the said appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on April 2, 15, and 23, 1962, and at all times thereafter to bargain with the Union as the exclusive representative of all its employees in the above-described appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the conduct described in paragraph 5, above, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. 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 Sharp's Markets, Inc., Tucson, Arizona, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Meat Cutter and Butcher Workmen of North America, Local 109, AFL-CIO, as the exclusive representative of all its employees in the unit herein found appropriate, with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 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 Amalgamated Meat Cutter and Butcher Workmen of North America, AFL-CIO, as the exclusive representative of the employees in the unit herein found appropriate and embody any understanding which may be reached in a signed agreement.

(b) Post at its places of business in Tucson, Arizona, the attached notice marked "Appendix."⁵ Copies of said notice, to be furnished by the Regional Director for the Twenty-eighth Region, shall, after they have been duly signed by an authorized representative of the Respondent, be posted by the Respondent at its Tucson stores

⁵ 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 Recommended Order 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."

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

(c) Notify the Regional Director for the Twenty-eighth Region, in writing, within 20 days from the date of receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply herewith.⁶

It is also recommended that unless on or before 20 days from the date of the receipt of this Intermediate Report and Recommended Order the Respondent notifies the aforesaid Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take such action.

⁶In 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 National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Amalgamated Meat Cutter and Butcher Workmen of North America, Local 109, AFL-CIO, as the exclusive representative of all our employees in the appropriate unit described below or in any other manner interfere with the efforts of the aforesaid Union to bargain collectively on behalf of said employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL bargain collectively, upon request, with the aforesaid Union as the exclusive bargaining representative of all our employees in the appropriate unit described below with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

The appropriate unit is:

All meat department employees of the Respondent employed at its retail stores in Tucson, Arizona, to wit, those located at Casas Adobes, at 5250 East Speedway Boulevard, and at 1830 South Alvernon, exclusive of all other employees and all supervisors as defined in the Act.

SHARP'S MARKETS, INC.,
Employer.

Dated_____ By_____ (Representative) _____ (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1015 Tijeras Street NW., Albuquerque, New Mexico, Telephone No. 243-3536, if they have any question concerning this notice or compliance with its provisions.

Zimnox Coal Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Teamsters, Chauffeurs, Warehousemen and Helpers, Local 428. Case No. 8-CA-2811. February 13, 1963

DECISION AND ORDER

On October 31, 1962, Trial Examiner Joseph I. Nachman issued his Intermediate Report in the above-entitled proceeding, finding that the
140 NLRB No. 111.