

**Local 575, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Dierickx Vending Co., Inc.** *Cases Nos. 22-CC-161 and 22-CC-176. March 19, 1963*

DECISION AND ORDER

On December 19, 1962, Trial Examiner James F. Foley issued his Intermediate Report in the above-entitled case, finding that the Respondent had engaged 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 and a brief in support thereof.

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

ORDER

The Board hereby adopts the Recommended Order of the Trial Examiner.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, Cases Nos. 22-CC-161 and 22-CC-176, was brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519), herein called the Act, on charges filed on January 12, 1962, and July 9, 1962, by Dierickx Vending Co., Inc., herein called Dierickx, against Respondent Local 575, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent. General Counsel issued a complaint of February 27, 1962, alleging that Respondent by threats and picketing threatened, coerced, and restrained Dierickx in violation of Section 8(b)(4)(ii)(B) of the Act. On March 5, 1962, Respondent and Dierickx entered into an informal settlement agreement with respect to the illegal conduct charged against Respondent in the complaint. The Regional Director approved the settlement on March 7, 1962, and withdrew the complaint. On July 5, 1962, Respondent notified the Regional Director it would no longer be bound by the settlement agreement. On July 24, 1962, the Regional Director withdrew his approval of the settlement agreement and reinstated the complaint. He issued an amended complaint on July 27, 1962, charging Respondent with threats to picket and picketing following its withdrawal from the settlement agreement, as well as the threats and picketing alleged in the complaint of February 27, 1962. Respondent filed an answer to the amended complaint on August 28, 1962, denying the commission of unfair labor practices as alleged in the amended complaint.

A hearing on amended complaint and answer was held before Trial Examiner James F. Foley on October 15, 1962, in Newark, New Jersey. Respondent, General Counsel, and Charging Party were represented at the hearing, and all parties were afforded an opportunity to be heard, to introduce evidence, make oral argument, and

file briefs. Counsel for General Counsel and Respondent filed briefs after the close of the hearing.<sup>1</sup>

## FINDINGS AND CONCLUSIONS

### I. JURISDICTIONAL FINDINGS

Dierickx, the Charging Party engaged in a primary dispute with Respondent, is a New Jersey corporation with principal office and place of business in Irvington, New Jersey. It is engaged in the vending machine business in the State of New Jersey. It leases or rents the vending machines to customers. The machines are serviced by its employees. In connection with this business, it purchases cigarettes, candy, records, and related products and equipment. During the calendar year 1961, its purchases exceeded \$1,000,000. Its purchases directly from out-of-State sources were in excess of \$950,000.

Dierickx's customers are restaurants, taverns, gas stations, office buildings, and similar places. During 1961, these customers included, among others, Oasis Restaurant, Inc., and Henry and Raymond LaBranche, doing business as Ray's Diner, Newark, New Jersey; Walter's Inn Corporation and Springfield Diner, Inc., Springfield, New Jersey; and P & R Restaurant, Inc., t/a Olympic Restaurant, Irvington, New Jersey.<sup>2</sup> Oasis, which went out of business in July 1962, had a gross annual revenue in excess of \$300,000 for 1961. It sold at retail food and alcoholic beverages. Its purchases for that period were in excess of \$100,000, \$12,000 of which was for purchases from suppliers in New Jersey who purchases them directly from outside the State. Hank and Ray's, a partnership, sells and distributes food at retail. Its gross revenue for 1961 was in excess of \$70,000, and its purchases for that period were in excess of \$30,000. Of this amount \$6,000 was for purchases made from local suppliers who in turn purchases them directly from outside the State. Walter's Inn sells and distributes food and alcoholic beverages at retail. During 1961, its gross revenue was \$150,000, and its purchases for the same period were in excess of \$65,000. Of this amount \$6,000 was for purchases from suppliers who purchased them directly from outside the State. Springfield sells food at retail. During 1961, its gross revenue was in excess of \$100,000, and its purchases for that period were in excess of \$80,000. Of this amount \$2,000 was for purchases from suppliers who purchased them directly from outside the State. Olympic sells and distributes food and alcoholic beverages at retail. During 1961, its gross annual revenue was in excess of \$250,000, and its purchases for the same period were in excess of \$100,000. Of this amount \$13,000 was for purchases from suppliers who purchased them directly from outside the State.

I conclude and find that Dierickx is engaged in commerce within the meaning of Section 2(6) of the Act, and that the assertion of jurisdiction will effectuate the purposes of the Act.

I conclude and find that Oasis, Hank and Ray's, Walter's Inn, Springfield, and Olympic are engaged in an activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce within the meaning of Section 8(b)(4)(ii)(B) as defined by Section 501(1) of the Act. *Local Union No. 299, Sheet Metal Workers International Association (S. M. Kisner and Sons)*, 131 NLRB 1196; *Blueprint Photostat & Photo Employees Union, Local 249, etc. (East Photo Lab)*, 135 NLRB 1090.<sup>3</sup>

### II THE LABOR ORGANIZATION INVOLVED

Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> On November 8, 1962, the United States District Court for the District of New Jersey in a preliminary injunction proceeding under Section 10(1) of the Act (*Cuneo v. Local 575, International Brotherhood of Teamsters, etc (Dierckx Vending Co, Inc)*), 51 LRRM 2400 (D.C.N.J.), found reasonable cause to believe that Respondent had violated Section 8(b)(4)(ii)(B) of the Act, and that injunctive relief should be granted. The court issued an order on November 15, 1962.

<sup>2</sup> These named customers are hereinafter called, respectively, Oasis, Hank and Ray's, Walter's Inn, Springfield, and Olympic.

<sup>3</sup> The indirect out-of-State purchases of each of the five customers of Dierickx exceed *de minimis*. See *Floridan Hotel of Tampa, Inc*, 124 NLRB 261; *N.L.R.B. v. Holiday Hotel Management Company, Inc.*, 311 F. 2d 380 (C.A. 10); *Wickard v. Filburn*, 317 U.S. 111. As in *S. M. Kisner and Sons, supra*, p. 1200, the boycott of these secondary employers obstructed or affected the stream of commerce generated by the purchases across State lines of Dierickx and their other suppliers.

## III. THE UNFAIR LABOR PRACTICES

A. *The issues*

The issues in this case are whether Respondent's picketing of Oasis and Hank and Ray's, and statements made to the management of Hank and Ray's, Springfield, Walter's Inn, and Olympic are conduct constituting threats, coercion, and restraint, and had as their object to force or require any person to cease doing business with any other person, within the meaning of Section 8(b)(4)(ii)(B) of the Act.

B. *The facts*

It is undisputed that Respondent Union has been engaged in a primary dispute with Dierickx over contract terms since early January 1962, and that on January 6, 1962, it called a strike of Dierickx's repairmen, routemen, and servicemen and commenced picketing Dierickx's principal place of business. The strike and picketing were still in effect on October 15, 1962, the day of the hearing.

1. *The secondary picketing*

It is undisputed that from January 11 until 16, 1962, Respondent peacefully picketed in front of Oasis with one picket at a time, and that the picket carried a picket sign bearing the following legend:

Please do not patronize cigarette vending machines maintained by Dierickx Vending Co. at this establishment. Employees of Dierickx Vending Co. on strike for decent wages and working conditions.

Notice: We have no dispute with employees of Oasis. We do not wish an interruption or stoppage of work by these employees. We merely ask your help in not patronizing struck vending machines. Help us win an American standard of living. Local 575 I. B. T.

The picketing did not interrupt deliveries and did not obstruct entrances to the Oasis.

It is also undisputed that from July 9, 1962, until on or about August 1, 1962, Respondent peacefully picketed in front of Hank and Ray's with one picket at a time, and that the picket carried a picket sign bearing the following legend:

To the Public! To all union members. We appeal to you! Please do not patronize vending machines maintained by Dierickx Vending Co. at this location. Dierickx Vending employees on strike for union working standards.

Notice: We have no dispute with employees of Hank and Ray's Diner. We do not wish these employees to stop or interrupt their work. Help us to protect the American standard of living. Local 575, I. B. T.

The picketing did not interfere with deliveries or obstruct entrances to Hank and Ray's. General Counsel introduced evidence that as a result of this picketing Hank and Ray suffered a loss of revenue of about \$300 to \$350 per week. Respondent offered rebuttal hearsay testimony that the employees in an industrial plant in the vicinity were on vacation during the period of the picketing.

2. *The threats*

It is undisputed that in January 1962, Respondent President Robert Noble visited Springfield, Walter's Inn, and Olympic, and had conversations with Rene Gamache, president of Springfield; Frederick Sharpe, president of Walter's Inn; Paul Pahlow, president of Olympic; and in July 1962, visited Hank and Ray's and had conversations with partners Raymond LaBranche and Henry LaBranche. It is also undisputed that the object of each of Noble's visits was to persuade Springfield, Walter's Inn, Olympic, and Hank and Ray's partners, to cease doing business with Dierickx. The evidence of each of the four conversations is stated in the following paragraphs.

Noble's conversation with Gamache was in the middle of January 1962. Respondent President Noble said to Springfield President Gamache that the employees of Dierickx were on strike, and that he wanted Gamache to call Edward Dierickx, president of Dierickx, and ask him to remove the Dierickx vending machine which was on Springfield's premises. Gamache replied that he would not call anybody, and asked Noble why he was picketing him. Noble replied, "We have to have someone Mr. Dierickx will fight for." When Gamache answered that Dierickx would not fight for him, that he had enough troubles of his own, Noble said, "Well, we are going to put a picket line on here." Gamache then said that he would have trouble with the police if he did. Noble thereupon asked the location of the police station Gamache gave him directions, and Noble departed, presumably for the station. He

returned a half hour later, and Gamache asked him how he made out. He said, "Okay," and then said "Give us a break and take the machine out." Gamache pulled the plug out of the wall socket, and put an out-of-order sign on the machine when Noble asked him to do so. Noble then left. About an hour later, when a customer asked for cigarettes, Gamache reconnected the machine, and removed the out-of-order sign. The machine continued to operate without interruption. Noble did not return.<sup>4</sup>

Noble's conversation with Frederick Sharpe, president of Walter's Inn, took place about January 11, 1962. Noble identified himself as president of Respondent and informed Sharpe that Respondent was on strike against Dierickx. He asked Sharpe to remove the Dierickx vending machines he had on his premises, and stated that if he did not get his cooperation he had pickets available nearby in an automobile and would picket his restaurant. Noble suggested to Sharpe that Sharpe call the president of Dierickx and disclose to him the message he had just received from Noble. Sharpe telephone Edward Dierickx, the president of Dierickx, and apprised him of Noble's message. Dierickx informed him that Noble's conduct was a secondary boycott and illegal. Sharpe then told Noble that the vending machines on his premises were only a small part of his business, and he did not wish to get involved in the labor dispute Respondent was having with Dierickx. Sharpe testified that he did not want a picket outside his premises, as he felt it would hurt his business. After conversing further with Noble, Sharpe put an out-of-order sign on the Dierickx vending machines. Noble then left, and Sharpe never saw him again. On cross-examination, Sharpe testified that the income Walter's Inn received from the vending machines was only a small part of its business, and that he did not wish a picket of any kind in front of his premises. Sharpe testified further on cross-examination that he could not recall Noble telling him that the pickets would carry a sign "advising of the fact that there was a dispute with Dierickx." He testified, "The only thing I remember distinctly is that pickets would be in front of my place and I didn't want them there." Sharpe admitted that he suggested that he disconnect the machines by pulling out the plugs from the wall sockets.<sup>5</sup>

Noble's conversation with President Pahlow of Olympic took place on or about January 12, 1962. He had one Dierickx cigarette vending machine on his premises. Noble introduced himself, and said he was an official of Respondent. He then said that Respondent was having a dispute with Dierickx, and he would like him to remove the vending machine from his premises. Pahlow replied that four union locals represented his employees, and that he did not have trouble with any one of them. Noble said that to be fair Pahlow should side with Respondent. Pahlow replied that he did not side with anyone, that the machine was for the convenience of his customers. He asked Noble what the consequences would be if he did not remove the machine. Noble answered, "You run the chance to have a picket line." Pahlow then asked Noble to leave him out of the dispute, that he had nothing against Dierickx or against Respondent. Noble then left. Respondent did not picket Olympic. About a week before the hearing, Olympic removed the machine from its premises.<sup>6</sup> On cross-examination, Pahlow denied that Noble said to him "that if you had a Dierickx machine at your premises, he would feel free simply to tell the public that there is a Dierickx machine there and that there is a strike at Dierickx." He admitted that he did not want anyone carrying any kind of a sign outside his premises. He received from \$24 to \$34 a month from Dierickx as compensation for permitting it to place

<sup>4</sup>I have credited Gamache's testimony. Noble denied he mentioned the term "picket line." He testified he said to Gamache that Respondent intended to advertise its dispute with Dierickx by patrolling and the distribution of leaflets. Noble also testified he said to Gamache that if they had to have a vending machine he would appreciate their having a machine serviced by Local 575 members. He claimed that Gamache said he did not want to be involved in a labor dispute, and that it was Gamache, and not he, that suggested disconnecting the machine from the wall plug. In resolving this credibility matter, I have considered the demeanor of the witnesses. On cross-examination, Gamache testified he received a commission of \$6 to \$7 a week from Dierickx.

<sup>5</sup>I credit the testimony of Sharpe. Noble testified he informed Sharpe he intended to advertise Respondent's dispute with Dierickx in front of Walter's Inn by leaflets and placarding, that Sharpe said he did not want to become involved, and was sympathetic with Respondent's side, and that he agreed to disconnect the machine and place an out-of-order sign on it. In crediting the testimony of Sharpe, I considered his demeanor as contrasted with that of Noble.

<sup>6</sup>The evidence does not disclose whether it was or was not operated after Pahlow's conversation with Noble.

the machine on the premises. Olympic did not have written lease agreement with Dierickx.<sup>7</sup>

Noble's conversation with Raymond LaBranche, partner in Hank and Ray's, was on Friday, July 6, 1962. Noble asked LaBranche if he had any ties with Dierickx, and LaBranche answered no. Noble then said that Respondent was having a dispute with Dierickx, and if he did not remove the Dierickx vending machine he would put a picket line around his premises. LeBranche replied that he would talk with his brother over the weekend regarding Noble's request. Noble visited Hank and Ray's about 8:30 a.m. on Monday, July 9, 1962, and met Henry LaBranche, the brother and other partner. Noble said that he had a Dierickx vending machine in the diner, and that he was going to put a picket line in front of the diner. Henry LaBranche told him to "go ahead." About 9 or 9:30 a.m., Respondent began the picketing described *supra*. As stated, the picketing lasted about a month.<sup>8</sup>

### C. Analysis and concluding findings

I conclude and find that the premises of Dierickx's customers were not extensions of the situs of the primary dispute. The customers rented or leased the vending machines from Dierickx to provide cigarettes, candy, or music to customers. They made a profit on these sales which they received from Dierickx as it removed the total revenue from the machines that the customers paid for their contents. The conduct of the Respondent here is a secondary service or product boycott. The Board has uniformly held that the secondary premises where the service is furnished or the product is sold are not part of, or an extension of, the primary situs.<sup>9</sup>

I conclude and find that Respondent by its picketing at the premises of Oasis and Hank and Ray's threatened, coerced, and restrained Oasis and Hank and Ray's in violation of Section 8(b)(4)(ii)(B) of the Act. The evidence shows that the picketing was peaceful, was conducted by one picket at a time, did not obstruct entrances or interfere with or cause stoppage of deliveries, and the picket sign used bore a legend stating that Respondent had a dispute with Dierickx, did not have a dispute with Oasis or Hank and Ray's, was not asking employees of Oasis or Hank and Ray's to stop work or their patrons to cease patronizing them, and sought only to have customers refrain from using the Dierickx vending machines. However, the Board has construed Section 8(b)(4)(ii)(B) to proscribe all consumer picketing that has an object the forcing or requiring of any person to cease doing business with another person.<sup>10</sup> The statements of Respondent President Noble to officials of Hank and

<sup>7</sup> I have credited Pahlow's testimony. Noble testified he told Pahlow Respondent had a labor dispute with Dierickx and asked him to cooperate, and also said to him that if it was necessary for him to have a machine he would appreciate his having one serviced by a member of Respondent. He further testified that Pahlow said he felt he should not be involved, and to come back in a few days and he would give him an answer. Noble said he did not go back. He denied he said he was going to picket Olympic. I credit Pahlow's testimony. I considered their demeanor as witnesses in resolving this credibility issue.

<sup>8</sup> I have credited Raymond LaBranche's and Henry LaBranche's testimony. Noble testified that he informed Raymond LaBranche that Respondent intended to advertise by means of distributing leaflets and placarding its dispute with Dierickx, and that it had no dispute with him. He further testified that he said Respondent did not wish any interruption of work by his employees, or interruption with or refusal of deliveries, or refusal of customers to patronize the diner, that Respondent only wanted the customers to refrain from patronizing the Dierickx vending machine while in the diner. He also testified that he returned on Monday to the diner and talked to Henry LaBranche as suggested by his brother. He said that he apprised Henry of the dispute Respondent had with Dierickx, and Henry replied Respondent had no right to picket the diner. He testified he replied that Respondent was not picketing Hank and Ray's, but Dierickx's vending machine. Henry answered by saying the picketing would be secondary and a court injunction would stop it. Respondent began the picketing about an hour later as described *supra*.

<sup>9</sup> *Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, et al. (Selby-Battersby & Company)*, 125 NLRB 1179; *Local 636 of the United Association of Journeymen, etc., AFL-CIO, et al. (The Detroit Edison Company, et al.)*, 123 NLRB 225, enfd as modified 278 F. 2d 858 (C.A.D.C.); *Local 294, International Brotherhood of Teamsters, etc. (Bonded Freightways, Inc.)*, 121 NLRB 924, enfd. 273 F. 2d 696 (C.A. 2).

<sup>10</sup> *Upholsterers Frame & Bedding Workers Twin City Local No. 61, etc. (Minneapolis House Furnishing Company)*, 132 NLRB 40; *United Wholesale and Warehouse Employees, Local 261, et al. (Perfection Mattress & Spring Company)*, 129 NLRB 1014; *Blueprint*

Ray's, Walter's Inn, Springfield, and Olympic clearly disclose that Respondent's picketing had as an object the forcing or requiring of these customers of Dierickx to cease doing business with Dierickx. Noble said in effect to these customers that if they did not remove the vending machines voluntarily, Respondent would force them to do so by picketing.<sup>11</sup>

I also conclude and find that the statements made by President Noble to officials of Springfield, Walter's Inn, and Olympic in January 1962 and to the partners in Hank and Ray's on July 6 and 9, 1962, in regard to picketing their premises, are threats violative of Section 8(b)(4)(ii)(B) of the Act.<sup>12</sup> Noble threatened to engage in picketing, a threat clearly illegal. He did not limit his threats to the type of picketing actually engaged in at the premises of Oasis and Hank and Ray's. So even if the decision of the District of Columbia Court of Appeals in *Tree Fruits*, footnote 10, were controlling, the threats would still be violative of Section 8(b)(4)(ii)(B).<sup>13</sup>

#### 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 Dierickx, Oasis, Hank and Ray's, Walter's Inn, Springfield, and Olympic 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 Respondent has engaged in unfair labor practices, it will be recommended that Respondent cease and desist therefrom and that it take certain affirmative action of the type conventionally ordered in such cases. Since the evidence discloses that Respondent's conduct has been directed to all customers of Dierickx, the Recommended Order will provide that Respondent cease and desist its conduct against not only Hank and Ray's, Walter's Inn, Springfield, and Olympic but against all persons engaged in commerce or in an industry affecting commerce doing business with Dierickx. The Order does not refer to Oasis as it is out of business.

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

#### CONCLUSIONS OF LAW

1. Dierickx Vending Co., Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and Local 575, International Brotherhood of Team-

*Photostat & Photo Employees Union, Local 249, International Jewelry Workers Union, AFL-CIO (East Photo Lab), 135 NLRB 1090* The Board's adherence to this ruling in *Fruit & Vegetable Packers & Warehousemen, Local 760, et al. (Tree Fruits Labor Relations Committee, Inc.), 132 NLRB 1172*, was reversed by the Court of Appeals for the District of Columbia (308 F. 2d 311 (C.A.D.C.)), rehearing denied October 12, 1962). It held that all consumer picketing was not *per se* illegal. However, the Board has reaffirmed its position in *Perfection Mattress* and related cases by petitioning the Fifth Circuit for enforcement of its 8(b)(4)(ii)(B) order in *Perfection Mattress*, and arguing in support of its petition before that court on October 15, 1962. The Fifth Circuit has not rendered a decision.

<sup>11</sup> The term "forcing or requiring" refers to the intended effect of the picketing not the method of picketing. See *N.L.R.B. v. Local 239, International Brotherhood of Teamsters, etc. (Stan-Jay Auto Parts & Accessories Corp.), 289 F. 2d 41, 44 (CA 2); N.L.R.B. v. Enterprise Assn. of Steam, Hot Water, etc., Local 638 of Plumbers, etc., 285 F. 2d 642, 645 (CA 2)*. In Section 8(b)(4) cases, the courts and the Board have always considered peaceful picketing intended to persuade a person to cease doing business with another person to have the intended effect of "forcing or requiring" the cessation of business between them. E.g., see *N.L.R.B. v. Denver Building and Construction Trades Council, et al. (Gould & Preisner), 341 U.S. 675, 691; International Brotherhood of Electrical Workers, Local 501, et al. (Samuel Langer) v. N.L.R.B., 341 U.S. 694, 701-705*.

<sup>12</sup> *San Diego County Building and Construction Trades Council, Local 230 (Broadway Hale Stores, Inc.), 138 NLRB 315; Teamsters Local Union No 559, etc. (Connecticut Sand and Stone Corporation), 138 NLRB 532; Orange Belt District Council of Painters, #48, AFL-CIO, et al. (Cathoun Drywall Company), 139 NLRB 383; Building and Construction Trades Council of San Bernardino, etc., et al. (Gordon Fields, et al.), 139 NLRB 236*.

<sup>13</sup> See *Teamsters, Chauffeurs, Warehousemen & Helpers, Local 901, etc. (Editorial "Et Imparcial," Inc.), 134 NLRB 895*.

sters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. Oasis, Hank and Ray's, Walter's Inn, Springfield, and Olympic are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4)(ii)(B) of the Act as defined by Section 501(1) of the Act.

3. Respondent, in violation of Section 8(b)(4)(ii)(B) of the Act, threatened, coerced, and restrained Oasis and Hank and Ray's, by picketing and threats to picket, and Walter's Inn, Springfield, and Olympic, by threats to picket, to force or require them to cease doing business with Dierickx, with which it was having a primary dispute.

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

### RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and pursuant to Section 10(c) of the Act, I hereby recommend that the Respondent, Local 575, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, successors, and assigns, shall:

1. Cease and desist from threatening, coercing, or restraining, by picketing, or threats to picket, Henry and Raymond LaBranche, doing business as Hank and Ray's Diner; Walter's Inn Corporation; Springfield Diner, Inc.; P & R Restaurant, Inc. t/a Olympic Restaurant, or any other person engaged in commerce or in an industry affecting commerce doing business with Dierickx Vending Co., Inc., where an object thereof is to force or require them to cease doing business with Dierickx Vending Co., Inc.

2. Take the following affirmative action:

(a) Post at its offices and meeting halls, copies of the attached notice marked "Appendix."<sup>14</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region shall, after being duly signed by Respondent's authorized representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by other material.

(b) Notify the said Regional Director, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply with it.<sup>15</sup>

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

<sup>14</sup> In the event that this Recommended Order is 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 is 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."

<sup>15</sup> In the event that this Recommended Order is adopted by the Board, paragraph 2(b) thereof shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

### APPENDIX

#### NOTICE TO ALL MEMBERS OF LOCAL 575, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

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 you that:

WE WILL NOT by picketing, or threats to picket, threaten, coerce, or restrain Henry and Raymond LaBranche, doing business as Hank and Ray's Diner; Walter's Inn Corporation; Springfield Diner, Inc.; and P & R Restaurant, t/a Olympic Restaurant, or any other person engaged in commerce or in an industry affecting commerce doing business with Dierickx Vending Co., Inc., where an

object thereof is to force or require them to cease doing business with Dierickx Vending Co., Inc.

LOCAL 575, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,  
*Labor Organization.*

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.

Union members may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. Market 4-6151, if they have any questions concerning this notice or compliance with its provision.

**Robert Price and Glen Price, Co-Partners d/b/a Price's IGA Foodliner and Retail Clerks International Association, Local 1612, AFL-CIO. Case No. 36-CA-1169. March 19, 1963**

### DECISION AND ORDER

On December 18, 1962, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding, finding that Respondents 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 attached Intermediate Report. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief,<sup>1</sup> the Charging Party filed a brief in opposition to the Intermediate Report, and the Respondents filed a brief in support of the 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 made by the Trial Examiner at the hearing and finds 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 case, and hereby adopts the findings,<sup>2</sup> conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

<sup>1</sup> In its brief, the General Counsel moved that the Board either remand this case to the Trial Examiner to take evidence from Edna Copeland or to reopen the record to receive a deposition from Copeland, on the ground that it is "expected" that Copeland will give testimony adverse to the testimony of Glen Price which the Trial Examiner credited. In our opinion, the grounds advanced by the General Counsel in support of his motion are insufficient to warrant reopening the record for receipt of Copeland's testimony. The motion is accordingly denied.

<sup>2</sup> The Trial Examiner inadvertently found that the Union had demanded recognition as bargaining representative of Respondents' employees on April 22, 1962, rather than April 21, 1962, and that Glen Price rather than Harold E. Carlson testified concerning the wage increase which Respondents accorded to employees in the bakery department. While we correct these inadvertencies, they in no way affect the Trial Examiner's ultimate findings and conclusions or our concurrence therein.