

WE WILL NOT refuse to bargain with the Hotel-Motel, Restaurant Employees Union Local No. 200, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, the certified collective-bargaining representative of our employees at our cafeteria on Louisiana Avenue, Little Rock, Arkansas, by failing to give it notice of a change in policy dealing with the status a worker has as an employee when on a leave of absence, or by failing to offer to negotiate with this Union regarding it, before placing it in effect.

WE WILL NOT intimidate employees or threaten them with discharge when they are engaged in union or other concerted activity or because of such activity.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights to engage in union or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

All our employees are free to become, remain, or refrain from becoming or remaining; members of the Hotel-Motel, Restaurant Employees Union Local No. 200, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO.

FRANKE'S, 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, Seventh Floor Falls Building, 22 North Front Street, Memphis, Tennessee, 38103, Telephone No. Jackson 7-5451, if they have any question concerning this notice or compliance with its provisions.

Realist, Inc. and International Union, Allied Industrial Workers of America, AFL-CIO. Case No. 18-CA-1546. May 13, 1963

DECISION AND ORDER

On March 26, 1963, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that 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 supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].

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 Respondent's exceptions and brief, and the entire record in the case, 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.

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 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 and his certification after a second election, and the Board's direction of a second election.

The charge was filed herein on December 28, 1962; the complaint issued on January 7, 1963. A hearing was held before Trial Examiner Lloyd Buchanan at Berlin, Wisconsin, on February 26, 1963.

It was admitted and I find that the Company, a Wisconsin corporation, manufactures, sells, and distributes cameras, photographic accessories, and optical equipment; that during 1961 it sold and shipped from its plant in Berlin, Wisconsin, to points outside the State, goods valued at more than \$50,000; and that it 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 August 16, 1962, the Regional Director recommended that an election held on July 17, 1962, in Case No. 18-RC-5183 be set aside, the Union having filed objections thereto. Overruling the Company's exceptions, the Board issued its Decision, Order, and Direction of Second Election on November 16. A second election was held on December 4, and on December 11 the Regional Director certified the Union as the exclusive collective-bargaining representative of the employees in the unit described below.

On December 21, 1962, the Union requested the Company to bargain collectively, but the Company on December 26 refused. The Company contends that its refusal to bargain was not an unfair labor practice, however, since the certification of the Union is invalid because the election on which it was based did not represent the free choice of the employees and because there had been a valid election in the same bargaining unit within the preceding 12-month period.

The Company's position that the certification was invalid and that there is therefore no obligation to bargain with the Union is based on the contention that the Regional Director's and the Board's procedures and actions in the representation proceeding were improper. That contention, and arguments in support thereof, were considered in the representation proceeding, and were there rejected; 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 direction of a second election and the certification thereafter, and the request and refusal to bargain being admitted, I find that at all times since December 26, 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 an appropriate unit.

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. International Union, Allied Industrial Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. All production and maintenance employees of the Company at its Berlin, Wisconsin, operation, including the timekeeper, but excluding the production control department employees, production engineering department employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
3. The Union was on December 11, 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, since December 26, 1962, to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, Realist, 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, Realist, Inc., Berlin, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union, Allied Industrial Workers of America, AFL-CIO, 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 activities 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 Berlin, Wisconsin, copies of the attached notice marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for the Eighteenth 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 Eighteenth Region, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps have been taken to comply herewith.²

¹ 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."

² 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 International Union, Allied Industrial Workers of 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 of the Company at its Berlin, Wisconsin, operation, including the timekeeper, but excluding the production control department employees, production engineering department employees, office clerical employees, professional employees, guards, 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 International Union, Allied Industrial Workers of 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.

REALIST, 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 with the Board's Regional Office, 316 Federal Building, 110 South Fourth Street, Minneapolis, Minnesota, 55401, Telephone No. 339-0112, Extension 2601, if they have any question concerning this notice or compliance with its provisions.

**Associated Grocers, Incorporated and Paul D. Jackson. Case
No. 19-RC-3177. May 13, 1963**

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The Petitioner claims to represent employees of the Employer.
3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

The Petitioner seeks to represent seven bakery truckdrivers of the Employer who are not presently being represented by the Intervenor.¹ The Employer contends that these employees are, or should be, members of the Intervenor and are already covered under an existing collective-bargaining agreement.

The Employer is a cooperative engaged in the distribution of food products to its members, who are independent supermarket operators. It has a warehouse in Seattle from which most of the products it supplies to its members are distributed by approximately 120 drivers in 35-foot tractor-trailers. All of Associated's tractor-trailers are of an identical type except that the trailers used to haul baked goods have heating units to keep the baked goods fresh. The duties of all

¹ General Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, intervened on the basis of its contract with a multiemployer association of which the Employer is a member.