center, excluding all other employees, guards, professional employees, 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.

4. Utility Workers Union of America, System Local 102, AFL–CIO, was, on June 20, 1951, and at all times since has been, the exclusive representative of all employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on and after December 5, 1962, to bargain collectively with the above-named labor organization as the exclusive representative of the employees in the above-described 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 foregoing conduct, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. 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.

8. The charges herein are not barred by Section 10(b) of the Act.

9. Requests for Conclusions of Law Nos. 1, 2, 3, 15, 16, 32, 33, and 34 are granted and incorporated herein.

10. Request No. 4 is granted, except for the last 12 words. As to the last 12 words the request is denied as contrary to the Board's previous finding. Request No. 25 is granted, except for the last 15 words. As to the last 15 words the request is denied as immaterial.

11. All other requests for Conclusions of Law are denied:

Nos. 5 and 24 as contrary to the Board's previous findings.

No. 6 because it applies to supervisors, and the unit herein specifically excludes supervisors.[7]

Nos. 7, 8, 10, 27, and 28 for reasons already stated herein.

Nos. 9, 11, 12, 13, 14, 17, 18, 19, 23, 31, and 37 as immaterial to the issues herein.

Nos. 20, 21, 22, 35, 36, and 38 as dealing with contract obligations, not here in issue.

Nos. 29, 40, 41, and 42 because, as already stated, the Trial Examiner cannot reexamine matters already determined by the Board.

No. 26 because no unfair labor practice charges were filed by the Union on December 19, 1962.

No. 30 because the Respondent's legal right to appeal does not relieve it of its obligation to comply with the Act.

No. 39 because under Section 9(d) of the Act the record in the representation case need not become part of the record in the complaint case until "there is a petition for . . . enforcement or review" filed in a United States Court of Appeals.

[Recommended Order omitted from publication.]

[7] In request No. 6 the reference to Section 14(2) of the Act is presumed to refer to Section 14(a) of the Act.

Beaver Valley Canning Company *and* Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO.

Case No. 18–CA–1553. August 13, 1963

DECISION AND ORDER

On June 3, 1963, Trial Examiner C. W. Whittemore 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 Inter-

mediate 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 [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 entire record in this case, including the Intermediate Report and the exceptions and briefs, 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

STATEMENT OF THE CASE

Upon an original and an amended charge, filed on January 15 and March 18, 1963, respectively, by the above-named labor organization, the General Counsel of the National Labor Relations Board on April 1, 1963, issued his complaint and notice of hearing thereon. Thereafter the Respondent filed its answer. The complaint alleges and the answer denies that the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. Pursuant to notice a hearing was held in Des Moines, Iowa, on April 24, 1963, before Trial Examiner C. W. Whittemore.

At the hearing General Counsel and the Respondent were represented by counsel, and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Each counsel has filed a brief.

Disposition of the Respondent's motion to dismiss the complaint, upon which ruling was reserved at the conclusion of the hearing, is made by the following findings, conclusions, and recommendations.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Beaver Valley Canning Company is an Iowa corporation with its principal place of business at Grimes, Iowa, where it is engaged in the business of processing and canning vegetables, fruit juices, and dog food for wholesale distribution.

During the 12 months before issuance of the complaint it made sales and shipments valued at more than $50,000 from its plant directly to points outside the State of Iowa.

The complaint alleges, the answer admits, and it is here found that the Respondent is engaged in commerce within the meaning of the Act.

II. THE CHARGING UNION

Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and major issues*

The events in issue occurred in a small plant, employing some 45 to 50 workers, situated in a small community of between 750 and 800 population. The chief

conduct of the Respondent alleged to have been violative of Section 8(a)(3) of the Act was the precipitous layoff of seven employees on October 30, 1962, 2 days after at least five of the seven had attended a union organizational meeting at the home of one of them.

In addition to this contention of unlawful discrimination in tenure of employment, the complaint, as amended at the hearing, claims that the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act by: (1) interrogating employees through certain of its agents, concerning their support of the Union; (2) granting a general increase to employees during the pendency of a representation hearing and after the Union had filed its petition for certification; and (3) giving one of the laid-off employees, upon his recall in February 1963, different duties than he had been performing before the layoff.

B. *Facts relevant to the layoffs*

Laid off on October 30, 1962, without prior notice, were employees Donald M. Jackson, Richard Hays, Donald Hertz, Opal Marchant, Marilyn Moore, Phyllis Morris, and Norman Wood. All of these seven except Hays and Wood, competent evidence shows, attended the first organizational meeting at the home of Marilyn Moore on Sunday, October 28. Each of the five present at the meeting signed union cards, and employee Norman Wood signed a card the following day, October 29.[1]

It appears that the initial move toward self-organization was made by Marilyn Moore, after fellow-employees had discussed with her such possibility in the latter part of September. She conferred with her husband, who had worked for the Respondent for several years in the past but who, at the time, was employed elsewhere and was head of another union than the one involved here. She drafted a petition which, although not in evidence, apparently contained a text expressing the desire of its signers for organization. According to Moore, she gave the petition, after she and Lockard had signed it, to employee Hertz, who later returned it to her with 12 signatures upon it. She then sent the signed petition to an official of the AFL–CIO, who referred her to a representative of the Charging Union. Through this representative, the October 28 meeting at Moore's home was set up and held.

On Tuesday, October 30, the seven above-named employees were—without previous notice—laid off. Most, if not all, of them were informed by Foreman Derry that the layoff was occasioned by the removal of a certain machine from the line. As a witness he admitted that to some of them he referred to the layoff as a "few days vacation." None of them were informed that they were discharged.

At a prehearing conference on the Union's petition for certification, however, held in early January 1963, and according to the credible testimony of William Pattie, a union representative, the Union was first informed by Attorney Jones, counsel for the employer, in the presence of General Manager Wright, that the employees laid off on October 30 actually were discharged.[2]

As noted above, a few days after this meeting the Union filed its original charge, alleging the unlawful "termination of employment" of the named employees. And within a few days after receipt of the charge the Respondent called back to work five of the seven laid off on October 30. The parties stipulated that Wood was recalled on January 28, Hays on January 30, Marchant and Moore on January 31, and Hertz on February 1, 1963. Neither Jackson nor Morris had been recalled up to the time of the hearing in these proceedings.

Turning back to certain relevant events in the period between the layoffs and recalls:

Also laid off on October 30 was employee Mayme Rosenstock, who did not attend the meeting at Moore's home but who, at Moore's solicitation, signed a union authorization card. Apparently associating her layoff with having signed a union card,

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[1] The Trial Examiner does not find in the record evidence to support the claim in General Counsel's brief that "All nine employees who attended this union meeting signed union-authorization cards that same day." Certainly the transcript pages cited by him reveal, through the testimony of Marilyn Moore, that in addition to herself there were present only Morris, Marchant, Hertz, and Jackson of the group allegedly discriminated against, and also employees K. Williams and Alice Lockard, neither of whom was laid off on October 30. Hays was not a witness nor did any other witness testify that he was present at the Sunday meeting or thereafter signed a card. Wood was a witness, and stated that he signed a card on October 29, the day after the meeting and as a result of solicitation the same day by Hertz

[2] Questioned on this point Wright said that he did not "recall that term being used."

Rosenstock immediately communicated with Moore and asked her to destroy the card. On November 3, according to her testimony, she called at Moore's home to make certain that her request had been carried out, and the next day visited Wright at his home. According to her uncontradicted testimony she asked to be put back to work. Wright told her there had been "rumors around that there was union talking." She assured him that "I would vote against it" and that "I would not have any part of the election for it at all."

Rosenstock was called back to work the next day. On November 30 the Union filed its petition for certification and the Respondent was duly notified. On December 12, together with a paycheck reflecting a 5-cent per hour wage increase for the preceding 2-week period, each employee received a letter from Wright.

Upon receipt of this increase and letter, employee Alice Lockard, who had attended the union organization meeting at Moore's home and had signed a union card but who had not been laid off with the others on October 30, went to Wright's home. She told him that she had heard rumors among the employees that she might lose her job because of her union activity. Wright told her that as long as she did her work properly she was in no danger of discharge. It is undisputed that he also told her: "We know pretty well who is involved and who is not." It is likewise uncontradicted that he named two other employees and asked if she knew whether they had signed the first union petition. On the same occasion he told her he was "surprised at the attitude" of an employee who, he said, she would probably know as "a tall individual who had six youngsters." She assumed he meant K. Williams Williams, a witness for General Counsel, is tall and has six children. As noted in a footnote above, Williams is the one employee, besides Lockard, who attended the union organizational meeting but was not laid off on October 30.

On January 4, 1963, the day after the prehearing conference, and before the Union had withdrawn its petition, Wright sent employees a letter which reasonably left them in no doubt as to his hostility toward their being represented by a union. Although in his letter he expressed many other thoughts and opinions, he said, flatly, "It would be an insult to your intelligence for me to say anything other than that I am very strongly opposed to the Amalgamated Meat Cutters, or any other union, organizing our plant."

C. *The Respondent's claim and conclusions as to the layoffs*

Two undisputed facts, in the opinion of the Trial Examiner, completely vitiate management's stout contention during the hearing voiced in the testimony of Wright and Plant Manager Wade Chard, who assumed full responsibility not only for the decision to lay off employees on October 30, but also for the selection of the individuals, that it was unaware either of union activity or of the identity of employees engaged in it before that date. As noted, it is uncontradicted that employee Rosenstock was permitted to resume work less than 24 hours after she had told Wright she would vote against the Union. It is also unrefuted that in mid-December, Wright told employee Lockard that he knew "pretty well who is involved and who is not."

In short, it is concluded and found that management representatives, responsible for the layoffs, well knew on October 30 the identity of the employees engaged in the organizational efforts. Wright's open hostility toward such activities is expressed unequivocally in his letter to employees above quoted.

The Trial Examiner considers that the foregoing facts establish a strong *prima facie* case of unlawful discrimination.[3]

As an affirmative defense the Respondent's witnesses strove to make it appear that this general layoff of some 15 percent of its working force was made necessary (1) because a certain high speed "filler" machine had to be removed from the line and sent to the originating factory for repair, and (2) because of dire financial straits—pressure from a banker to do "whatever" according to Wright's testimony "I felt necessary to make our operation on a basis we could pay off these loans."

The first point is clearly without merit. Evidence shows that this "high speed" machine had been in operation only a few weeks and that upon its removal for repair

[3] As previously noted, the complaint also alleges that Hertz, after his recall, was discriminated against by failing to assign him to duties previously performed. The evidence in the record is insufficient, in the opinion of the Trial Examiner, to sustain this allegation. From the employee's own testimony it appears that he was, at the time of the hearing, carrying out the same variety of tasks that he had before his layoff. The fact that he may not have operated a forklift quite as often was credibly explained by the undisputed fact that one such machine was undergoing repair. He readily admitted that he had no complaint about the duties he was performing.

it was promptly replaced by the machine which for an undetermined period had been its predecessor on the line. The Respondent offered no credible evidence to show that fewer employees were required *before* the high speed machine was installed. And there is ample evidence that other employees were transferred from another or other departments, or were hired from outside, to perform the work previously performed by the employees laid off.

The second point is likewise without merit. Not only were no records offered to support Wright's claim of a poor financial status, but his granting of a voluntary and general wage increase immediately after notification of the Union's petition for certification plainly negates his contention.

As to specific individuals involved, it is claimed by the Respondent that Hertz was selected because management understood that he was going to quit about October 30 anyway, and that Morris was let go because she was pregnant.

Concerning Hertz it is true that in mid-October he had been approached by a local trucker to drive for him, and that he had let it be known that he *might* take the proffered job. But the testimony of Foreman Derry, under whom Hertz worked, establishes the fact that when he asked Hertz about the offer on the morning of the layoff the employee merely told him he was "thinking about it." And as a witness, Wright admitted that shortly after the layoff, when Hertz called him and asked what the chances were for reemployment, he might very well have replied, as Hertz credibly testified he did, "Not very good, that's for damn sure." The Trial Examiner finds no merit in the contention that Hertz was selected for layoff because of an "understanding" which so easily might have been checked by those responsible for the selection.

The proferred excuse for the selection of Morris is equally unreasonable. No management witness offered any evidence to rebut her credible testimony that she was fully capable of doing her work from October 30 to the latter part of January, when others were recalled. Her baby was not born until March 4, 1963. Even if either Wright or Chard was actually aware of her pregnancy as early as October 1962, neither made any claim that she was not then able to perform her duties.

In short, the Trial Examiner concludes and finds that the Respondent's unsupported claims of its reasons for the layoffs are without merit and fall far short of adequately meeting General Counsel's *prima facie* case. The preponderance of credible evidence fully sustains the allegations of the complaint as to the unlawful nature of the layoffs of October 30—including that of Hays, to the effect that they were of the design and for the purpose of curbing and discouraging union membership and activity. General Counsel's failure to call Hays as a witness or to introduce other competent evidence as to his union activity might well, were his case to be considered alone, bar the inference that his layoff was unlawful. Here, however, he was but one of a group laid off the same day and for a single reason. The conclusion is reasonable that management at least believed he was one of the organizing group. As noted, he was named in the charge and was shortly thereafter recalled with others of the union group.

The Trial Examiner further concludes and finds that the unlawful discrimination against the seven employees on October 30, 1962, and Wright's interrogation of employee Lockard as to the union activity of other employees, constituted interference, restraint, and coercion of employees in the exercise of rights guaranteed by Section 7 of the Act.[4]

Neither Morris nor Jackson had been recalled at the time of the hearing in these proceedings. Manager Chard claimed that Jackson was not recalled because he "did have other employment at the time" (in January 1963), and "there were some personal reasons why at that time we wouldn't have hired him back." Such vague and unsupported assertions clearly do not fulfill the Respondent's obligation, under the Act, to offer Jackson immediate and full reinstatement. As to Morris, Wright testified that he had no objection to reemploying her, "if more help is needed

[4] In his brief General Counsel urges that the Trial Examiner find that one Clyde Brooks is a supervisor within the meaning of the Act, as alleged in the complaint While the considerable amount of testimony on the point might support this allegation, it appears needless to appraise such evidence and resolve the issue So far as the record reveals, the one remark attributed to Brooks is to the effect that after the January recall of employees he told employee Wood that Hertz would not have been laid off had he not started the union organization Brooks' anticipation of precisely the same conclusion as that reached here by the Trial Examiner, and his voicing of it, seems an insufficient basis for finding it an unprivileged and unlawful remark, whatever his position at the plant.

and she would present herself." His negative "willingness" does not meet the positive remedial requirement that the Respondent offer her full reinstatement.

D. *The wage increase*

The Respondent's general wage increase in December, shortly after being notified of the Union's petition for certification, in the context of other unlawful conduct found here, is reasonably inferred as having been motivated by the same intent to discourage further organizational efforts—a lawful employee activity to which Wright, in his letter shortly thereafter, candidly stated: "I am very strongly opposed." The Trial Examiner therefore concludes and finds that under the circumstances described above, the granting of the wage increase interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.[5]

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

It has been found herein that the Respondent unlawfully discriminated in regard to the employment of employees Jackson, Hays, Hertz, Marchant, Moore, Morris, and Wood. It has also been found that all but Jackson and Morris have been recalled to work. It will therefore be recommended that the Respondent offer immediate and full reinstatement to Jackson and Morris, to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make all seven employees whole for any loss of earnings they may have suffered by reason of the discrimination against them, by the payment to each of a sum of money equal to that which he or she normally would have earned during the period of discrimination, with backpay and interest thereon computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

In view of the serious and continued nature of the Respondent's unfair labor practices, it will be recommended that it cease and desist from in any manner infringing upon the rights of employees guaranteed by Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. 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. By discriminating in regard to the hire and tenure of employment of its employees, thereby discouraging membership in and activity on behalf of the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices 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, it is recommended that the Respondent, Beaver Valley Canning Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union adherence in a manner violative of Section 8(a)(1) of the Act.

(b) Discouraging membership in Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, or in any other labor organization, by discharging,

[5] *Holland Manufacturing Company*, 129 NLRB 776, 786.

laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named 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 such activities.

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

(a) Offer Donald M. Jackson and Phyllis Morris immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them and Richard Hays, Donald Hertz, Opal Marchant, Marilyn Moore, and Norman Wood whole for any loss of pay they may have suffered by reason of the unlawful discrimination against them, in the manner set forth in the section above entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the right of reinstatement under this Recommended Order.

(c) Post at its plant in Grimes, Iowa, copies of the attached notice marked "Appendix."[6] Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by an other material.

(d) Notify the Regional Director for the Eighteenth Region, in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.[7]

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[6] 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 Circuit Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order"

[7] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the 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 you that:

WE WILL NOT interrogate employees concerning their union adherence in a manner violative of Section 8(a)(1) of the Act.

WE WILL NOT discourage membership of any employee in Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, or in any other labor organization, by discharging, laying off, and refusing to reinstate any employee, or in any other manner discriminating against any employee in regard to hire, tenure of employment, or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named 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 such activities.

WE WILL offer Donald M. Jackson and Phyllis Morris immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them and Richard Hays, Donald Hertz, Opal Marchant, Marilyn Moore, and Norman

Wood whole for any loss of pay they may have suffered by reason of our discrimination against them.

BEAVER VALLEY CANNING COMPANY,
Employer.

Dated_____ By_____
(Representative) (Title)

NOTE.—We will notify Donald M. Jackson, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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, 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.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 71; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 55; General Drivers, Warehousemen and Helpers, Local Union No. 509, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 728 *and* Overnite Transportation Company.
Case No. 11-CC-16. August 13, 1963

SUPPLEMENTAL DECISION AND ORDER

On March 1, 1961, the Board issued a Decision and Order in the above-entitled case, 130 NLRB 1007, finding that Respondent Locals 55, 71, 509, and 728 had engaged in certain unfair labor practices as alleged in the complaint, and ordering them to cease and desist from such violations and to take certain affirmative action. Thereafter, Respondent Local 728 filed in the United States Court of Appeals for the District of Columbia, a petition to review the Board's Decision, insofar as it was affected thereby, and the Board petitioned that court for enforcement insofar as the Decision pertained to Respondent Local 728. Subsequently, while these petitions were pending before the court, the Board moved the court to remand the case for further consideration.[1] On February 12, 1962, the court remanded the case to the Board.

[1] The Board's Decision was based on the *Washington Coca Cola* doctrine, *Brewery and Beverage Drivers and Workers, Local No. 67, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL,* 107 NLRB 299, which was overruled by *I.B.E.W., Local Union 861, etc. (Plauche Electric, Inc.),* 135 NLRB 250. The Board accordingly requested the case be remanded for reconsideration in the light of *Plauche Electric.*