In view of the nature of the unfair labor practices committed, it is recommended that the Respondent be ordered to cease and desist from in any manner infringing upon rights guaranteed to its employees by Section 7 of the Act.

CONCLUSIONS OF LAW

1. Alton-Arlan's Dept. Store, Inc., is an employer engaged in commerce within the meaning of the Act.
2. Retail Clerks Local 149, Retail Clerks International Association, AFL–CIO, is a labor organization within the meaning of the Act.
3. All regular full-time and regular part-time employees of Alton-Arlan's Dept. Store, Inc., located at 613 St. Louis Avenue, East Alton, Illinois, including leased department employees, but excluding the store manager, the assistant store manager, office manager, assistant office manager, head cashiers, head receiver, head hard-line receiver, head soft-line receiver, leased department managers, guards, professional employees, and supervisors as defined in the Act constitute, and at all times material herein, constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. Retail Clerks Local 149, Retail Clerks International Association, AFL–CIO, was, on December 4, 1963, and at all times thereafter has been and now is the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By unilaterally subcontracting its janitorial work without bargaining with the above-named Union as the exclusive representative of the employees in the appropriate unit over its decision to do so, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
6. By discharging Ervin R. Hancock, Harold G. Mayhall, David L. Roberts, and William T. Stalp on December 4, 1963, thereby discouraging membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(3) 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 omitted from publication.]

Singer Sewing Machine Company *and* Retail, Wholesale, and Department Store Union, Local 101, AFL–CIO. *Case No. 6–CA–2569. January 27, 1965*

SUPPLEMENTAL DECISION AND ORDER

On August 14, 1964, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled matter, finding that 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 Trial Examiner's Decision. Thereafter, both General Counsel and Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs.

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

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 Trial Examiner's Decision, the exceptions, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as modified herein.[1]

At the start of the hearing, the Trial Examiner permitted Respondent to amend its answer to allege that the unit found appropriate in the representation hearing had been dissolved by the closing of four of the eight stores involved, and he admitted evidence regarding that issue. At the conclusion of the hearing, General Counsel moved to amend the complaint to allege a new violation of Section 8(a)(5) and (1) on the ground that the additional evidence introduced by Respondent disclosed a failure to bargain regarding the closing of the four stores. The Trial Examiner allowed the amendment and subsequently found the additional violation.

The only evidence in the record with regard to the closing referred to in the amended complaint was that introduced by Respondent and received by the Trial Examiner for the purpose of providing a current background for the formulation of any remedy which might have been required.[2] No other evidence regarding the circumstances surrounding the closings was introduced by either litigant. In this posture, we find, contrary to the Trial Examiner, that, without passing on Respondent's exceptions attacking the propriety of the amendment of the complaint, this issue was not sufficiently litigated or so fully developed in the course of the hearing as to provide the Board with a sufficient basis upon which to make a determination on the merits. A decision on this issue, under these circumstances, would not serve to further the objectives of the Act. We shall, therefore, reverse the Trial Examiner's Decision insofar as it finds that Respondent committed any additional violation of Section 8(a)(5) and (1) following the initial refusal to bargain found in the original Decision in this matter.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts, as its Order, the Order recommended by the Trial Examiner and orders

[1] The Board does not adopt the Trial Examiner's gratuitous personal observation in which he characterizes "compliance proceedings" as a "polite euphemism for a contempt action"

[2] Thus, as noted in the Trial Examiner's Decision, this matter did not go to the issue of whether an unfair labor practice was committed but applied rather to the "question what remedy, if any, should be applied in the light of circumstances occurring after the unfair labor practice"

[3] In the light of our disposition of this issue, we do not find it necessary to consider Respondent's motion to reopen the record to introduce certain additional evidence by way of defense to the added charges

that the Respondent Employer, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order with the following modifications:

1. Delete paragraphs 1(b), 2(b), and 2(c) and renumber the subsequent paragraphs in sections 1 and 2 accordingly.

2. Delete the second paragraph and the last paragraph of the text of the Appendix so that the notice will read in conformity with the modified Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding was reopened pursuant to a remand ordered by the United States Court of Appeals for the Fourth Circuit, and the hearing was held before Trial Examiner Frederick O. Reel at Pittsburgh, Pennsylvania, on June 16, 1964. Pertinent events prior thereto are summarized at 140 NLRB 1061 and 329 F. 2d 200, and will not be restated at length. Briefly summarized, on June 11, 1962, the Charging Party was certified as the collective-bargaining representative of the Respondent's employees in the stores comprising Respondent's Pittsburgh city district. The Company refused to bargain with the Union, and in the ensuing unfair labor practice proceeding challenged the validity of the certification, contending that the unit (Pittsburgh city district) was not appropriate, and that in finding this unit the Regional Director, in contravention of Section 9(c)(5), gave controlling force to the extent to which the employees had organized. At the previous hearing in the unfair labor practice case, Respondent was prevented from adducing evidence which it offered for the purpose of establishing that the unit finding was dictated by the forbidden consideration. The court of appeals remanded the case for the purpose of receiving the evidence Respondent had previously sought to present.

At the reopened hearing, Respondent moved to amend its answer to allege as a further defense to the complaint that the Pittsburgh city district had been dissolved. I granted this motion over the opposition of General Counsel. At the conclusion of the hearing, General Counsel moved to amend the complaint to allege that the Respondent was guilty of a further refusal to bargain insofar as it closed stores or transferred employees who were in the bargaining unit without prior notice to or bargaining with the Union. I granted this motion over the opposition of Respondent. The grounds for these procedural rulings are developed below.

Upon the entire record,[1] including my observation of the witnesses, and after due consideration of the briefs filed by Respondent and the General Counsel, I make the following supplemental.[2]

FINDINGS OF FACT

A. *The issue remanded by the court of appeals: Was the unit determination controlled by extent of organization?*

At the reopened hearing the Company introduced testimony which establishes that in the latter part of July 1961, after the hearing in the representation proceeding, and while the issue as to what unit would be found appropriate was pending in the Regional Office, some person in authority in that office directed Field Examiner Connerton to ascertain the names of the employees in three stores in the Pittsburgh Metropolitan area not included in the Pittsburgh city district. Although Connerton was not certain which of his office superiors directed him to obtain this evidence, the record is clear that it was not Regional Director Shore, who was then absent on vacation. About the same time the Union made some effort, largely unsuccessful, to organize the three stores in question, apparently in the belief that the Regional Office

[1] After the close of the hearing, General Counsel filed a motion to correct certain typographical errors in the transcript No response was filed. I hereby grant that motion except that as to page 71, line 2, the motion is denied, as to page 90, line 3, the correct word is "concede," and the corrected lines on pages 70, 113 and 219, are 10, 7, and 22, rather than 11, 8, and 23, respectively.

[2] The facts heretofore found under sections I, II, and III, A, of the Intermediate Report, are hereby reaffirmed except as expressly modified, *infra*.

was interested in including these stores in the bargaining unit. Meanwhile, Regional Office personnel were preparing a draft of a decision which, had it issued, would have found as an appropriate unit all the stores in Allegheny County (the stores in the Pittsburgh city district plus the three discussed above) rather than the units urged by the Company or the Union. A draft decision to that effect was submitted to Acting Regional Director Sherman for his approval. But before he had time to examine it, Regional Director Shore returned from his vacation on August 7, and the matter was turned over to him.

According to Shore's testimony, he carefully considered the entire case and came to the conclusion that his subordinates, who had prepared the draft decision, were in error, and that the Pittsburgh city district constituted an appropriate unit. He discussed the matter with them, and directed that a new decision be drafted, reflecting his view. After this was done, he further edited the draft, and eventually issued it as his decision. According to Shore's testimony, he was unaware at that time of Connerton's efforts to ascertain the names of the employees in the three stores discussed above, or of the Union's efforts to organize them. Shore explained that he gave the case unusually careful personal attention because it was one of the first in his region after the Board delegated certain decisional powers in representation cases to Regional Directors. Finally, Shore testified in categorical terms that he was not influenced in any degree, and did not take into consideration the extent to which the employees had organized.

The Company argues that the Region's decision to include the three extra stores in the unit was final prior to Shore's return from vacation, and that he overturned it because of the Union's failure to organize the additional stores and to "cover up" what the Company alleges were irregularities in the activities of Shore's subordinates. The record is clear, however, that Shore's deputy, Sherman, had never approved, let alone issued, the draft decision prepared by the staff. Manifestly neither the Regional Director nor the Acting Regional Director were compelled to rubberstamp positions proposed by their subordinates in the office. The difference between Shore's view and that of his subordinates was that he believed, and they did not, that the manager of the Pittsburgh city district had sufficient autonomy or authority to warrant finding that district an appropriate unit. This difference of view, rather than the abortive attempt to organize the three additional stores, accounts for the difference between the proposed and the ultimate decision.[3]

I credit the testimony of Shore that he gave no weight in his unit determination to the extent of organization. As the court of appeals has already indicated that the unit was otherwise appropriate, it follows that the Company violated Section 8(a)(5) and (1) of the Act by its refusal to bargain with the Union in August 1962 after the certification.

B. *The new issues raised at the June 1964 hearing*

1. The Company's motion to amend its answer

When the hearing reopened in June 1964 pursuant to the remand, the Company moved to amend its answer to allege as a further defense that as the consequence of "economic factors" the unit found appropriate in the representation proceeding has been dissolved. General Counsel opposed the amendment on two grounds: first, that it raised issues outside the scope of the hearing which was limited to the questions remanded, and second, that even apart from the "remand" aspect of this case, an employer could not in an unfair labor practice case introduce evidence of dissolution of the unit which had been found appropriate in the underlying representation case. According to General Counsel, evidence of dissolution of the unit must be left to "compliance" proceedings.

I regard General Counsel's position on both points as untenable. Upon his theory, the Trial Examiner, the Board, and the court would be required to issue an order directing the Company to bargain, and then in "compliance proceedings" (a polite euphemism for a contempt action) the Company would be permitted to present evidence that during the entire period of litigation through the Board and the court, the subject matter of the case, the bargaining unit, was nonexistent. Commonsense and legal precedent reject such an approach. See, e g., *N.L.R.B.* v. *Grace Company*, 184 F. 2d 126 (C.A. 8), and 189 F. 2d 258 (C.A. 8). The settled rule against relitigating unit questions in unfair labor practice cases admits of a well-recognized exception for hitherto unavailable material evidence. And the general admissibility of

[3] Respondent points out that only a few weeks later in another case Regional Director Shore found a countywide unit of retail stores appropriate. But in that case the Company involved did not have a city division, which is the basis for Shore's decision here.

such evidence is not affected by the fact that the case is now on remand from the court of appeals on a different issue. See *Sprague* v. *Ticonic National Bank*, 307 U.S. 161, 168, In re *Sanford Fork & Tool Co.*, 160 U.S. 247, *Thornton* v. *Carter*, 109 F. 2d 316, 320 (C.A. 8); *Illinois Bell Tel. Co.* v. *Slattery*, 98 F. 2d 930, 932; 102 F. 2d 58, 63–64 (C.A. 7). As stated in *Sprague, supra*, at 168: "While a mandate is controlling as to matters within its compass, on the remand a lower court is free as to other issues."

2. Evidence introduced pursuant to the amendment of the answer

The evidence adduced by the Company in support of this amended defense established the following: [4]

In June 1962 when the Union was certified as the bargaining representative for the employees in the Pittsburgh city district, that district comprised eight stores: South Side, North Side, Homestead, East End, Wilkinsburg, Oakland, Gaufmann's (Pittsburgh), and Kaufmann's (Monroeville). Of these, two (Monroeville and Homestead) were outside the Pittsburgh city limits. Since the certification was issued the Company closed the following stores at the following dates:

South Side	June 1962
Oakland	October 1962
North Side	December 1962
Homestead	August or September 1963

Of the four remaining stores, the Company contemplates closing the Wilkinsburg store at the end of 1964. Meanwhile, the Company has opened two new stores just outside the city limits of Pittsburgh, Northway Mall in 1962 and Pleasant Hills in 1963.

At the time of the certification, the Pittsburgh city district was one of six districts in the larger administrative area known as the Pittsburgh Agency. In October 1963, Arthur Koller, who was in charge of that Agency, recommended elimination of the Pittsburgh city district. His recommendation was adopted, and the remaining stores were realigned. The Wilkinsburg and East End stores were moved to the Penn Central district, which also included, *inter alia*, the new store at Pleasant Hills; the new Northway Mall store was in the West Penn district. The two Kaufmann stores were not put in any district, and instead of reporting to a district manager, they now report directly to Koller.

Of the 30 employees in the 8-store bargaining unit at the time of the certification, 5 or 6 are still employed in the 4 remaining shops which were in the original unit of 8, while some are employed at other company stores, some were promoted to managers, some designed, and some were laid off. The 4 remaining stores now have 16 employees. The 4 closed stores had 10 employees.

As noted above, the South Side store was closed in late June 1962, after the certification of the Union, but a few days prior to the Union's initial bargaining request. The other store closings and the elimination of the Pittsburgh city district as an administrative unit occurred after the refusal to bargain, and indeed after the issuance of the complaint in this case. Prior to that time the Company had advised the Union that the Company "does not intend to recognize [the Union] as the bargaining agent for its employees" because in the Company's "opinion . . . the unit of employees which the Union seeks to represent is not a unit appropriate for the purposes of collective bargaining." Consistent with this position, the Company did not advise, notify, consult with, or bargain with the Union concerning the closing of any of the stores or the transfer or termination of any of the employees, or any other aspects attendant on the changes in, and eventual elimination of, the Pittsburgh city district. The Union made no request to bargain after the Company's refusal, quoted above, and the issuance of the complaint herein.

3. General Counsel's motion to amend the complaint

In the light of the foregoing evidence, General Counsel moved at the conclusion of the hearing to amend the complaint to allege that the Company violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union regarding the decision to close certain stores in the Pittsburgh city district and regarding the effect of such closing on the employees. The original complaint alleged that the Company had violated those sections in that "Since July 3, 1962, and at all times thereafter, the Respondent has failed and refused to bargain in good faith with the

[4] The facts set forth in the following paragraphs amend the original finding in paragraph III, A, of the Intermediate Report insofar as that finding recites: "One of these districts, known as the Pittsburgh City District, comprises eight stores." In all other respects the findings in that paragraph are reaffirmed.

Union as the duly certified exclusive collective-bargaining representative . . . by refusing to recognize the Union as such and by failing and refusing to meet with the Union for the purpose of collective bargaining concerning . . . terms and conditions of employment . . . ."

The Company objected to the amendment on the ground that it should have 10 days to answer, that the amendment was "unrelated to the cause of action stated in the complaint, and that the 6-month period of limitations had run since the events complained of." I permitted the amendment over these objections. The matter seems to be encompassed by the holdings on *National Licorice Company* v. *N.L.R.B.*, 309 U.S. 350, 369, and *N.L.R.B.* v. *Fant Milling Company*, 360 U.S. 301, 306–309. Indeed, as I view the matter, the amendment was unnecessary as the original complaint was sufficiently broad to embrace the further refusals to bargain alleged in the amendment, all but one which (the closing of the South Side store) followed the issuance of the complaint. Finally, I see no prejudice to the Company either in permitting the amendment or in ruling on all the issues raised by the evidence which the Company itself introduced. The facts are undisputed and were fully developed. See *Fort Wayne Corrugated Paper Company* v. *N.L.R.B.*, 111 F. 2d 869, 873 (C.A. 7).

4. Concluding findings on the issues raised by the amended pleadings

As noted above, the Company's refusal to bargain with the Union in the summer of 1962 when the Pittsburgh city district was in existence violated Section 8(a)(5) and (1) of the Act. The alleged subsequent dissolution of the unit goes, therefore, not to the question whether an unfair labor practice was committed but rather to the question what remedy, if any, should be prescribed in the light of circumstances occurring after the unfair labor practice. Of course, insofar as the changed circumstances reflect merely a turnover of employees in the unit, or some accretion to or diminution of the unit in terms of adding to, or subtracting from some of its components, the law is settled that the duty to bargain is unimpaired. But the Company's position is that the unit has been totally dissolved. Admitting that 4 of the original 8 stores still exist, employing 16 persons, the Company argues that the unit as such has disappeared because the sole factor which gave rise to its existence as a separate unit was the separateness inherent in the Company's administrative organization, and it is precisely this factor, including the element of control by a particular district manager, which has vanished.

Complicating the picture is the General Counsel's countercontention that the changes in the unit, culminating in the Company's decision to dispense with that district administratively, were unfair labor practices because, even though economically motivated, they were all made without notice to, or bargaining with, the statutory bargaining representative. The General Counsel's position is squarely supported by *East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL–CIO (Fibreboard Paper Products Corp.)* v. *N.L.R.B.*, 322 F. 2d 411 (C.A.D.C.), cert. granted, 375 U.S. 963. To be sure, this unilateral action violative of Section 8(a)(5) and (1) was a necessary byproduct of the Company's determination to refuse to recognize the Union, a determination which arose out of the Company's belief that the unit found was inappropriate and that the only appropriate unit was the Pittsburgh Agency, covering all stores in an area of some 27,400 square miles. But the fact that the Company was in good faith in litigating its position does not change the character of its acts, committed in pursuance of its legal position, as unfair labor practices. Cf. *Old King Cole, Inc.* v. *N.L.R.B.*, 260 F. 2d 530, 532 (C.A. 6).

I find, therefore, that the Company committed further refusals to bargain, violative of Section 8(a)(5) and (1) of the Act when, following certification of the Union, the Company closed various stores in the unit and as a result transferred or laid off various employees in the unit, without notice to or bargaining with the Union. As stated above, the issue raised by the Company's claim of dissolution of the unit goes not to the question of whether unfair labor practices were committed but to the appropriate remedy therefore, and hence is further treated in the section of this Decision entitled "The Remedy."

THE REMEDY

The conventional remedy for an unlawful refusal to bargain is that prescribed in the earlier Board Decision in this proceeding. The question now is to what extent that remedy is inappropriate because of the administrative dissolution of the Pittsburgh city district, and to what extent that remedy is inadequate because of the *Fibreboard* aspects of the Company's refusal to bargain developed at the recent hearing.

The purpose of the remedy is to restore, as nearly as possible, the *status quo ante*. On the other hand a remedy cannot require the doing of the impossible. Clearly, the remedy must not be punitive. Equally clearly, it should not permit a wrongdoer to

benefit from his wrong, or withhold from innocent parties benefits and rights conferred on them by statute. Within these occasionally conflicting generalizations, the Board must do equity and so effectuate the policies of the Act.

The Company's contention that no order should issue because of the administrative dissolution of the unit goes too far. That very dissolution was itself the culmination of a series of unfair labor practices, committed in a good-faith but erroneous view that the only appropriate bargaining unit was the 27,400-square-mile Pittsburgh Agency rather than the certified unit. To issue no bargaining order would not only permit the violation to go unremedied, but would permit it because of further violations, leaving the Company to profit by its wrong, and leaving the employees who selected the Union deprived of the very bargaining rights, which—had the Company not violated them—might have protected the employees from the economic consequences which befell them. Moreover, although the administrative district has been dissolved, 4 of the stores, with 16 employees, are still operating. These employees (or their predecessors in a normal turnover of employment) were among those for whom the Union would have been bargaining but for the unfair labor practices.

It is arguably within the Board's power, in restoring the *status quo ante,* to order reemployment of persons discharged, reopening of closed departments, and reopening of closed stores. But I am disinclined to recommend such drastic relief for unfair labor practices which, so far as this record shows, were not committed for the purpose of defeating statutory rights, but out of a good-faith belief that no such rights were involved. To require the Company to reconstitute its Pittsburgh city district would also be within the Board's remedial powers (the Company would then be free, of course, to bargain with the Union over discontinuance of the district), but in the light of the Company's claimed economies through the elimination of that district, I see no useful purpose to be served in resurrecting it. So far as the bargaining order is concerned, I deem it sufficiently restores the *status quo ante* to require the Company to bargain with the Union as the representative of the employees in the four remaining stores (East End, Wilkinsburg, and the two Kaufmann stores) which survive from the erstwhile Pittsburgh city district. To the extent that this requires the Company to bargain with the Union for two stores which are now part of another district, the unit thus created differs from that found appropriate in the earlier proceeding. The adjustment, however, seems to me more equitable to the Company than requiring it to reconstitute its old administrative district, and more equitable to the employees and the Union than to enable the Company to profit by its cumulative failures and refusals to bargain by issuing no order at all. The unit of four stores embraces all the stores now operating within the city limits of Pittsburgh plus the Kaufmann Monroeville store, which belongs in the group because that "store" located in Kaufmann's suburban department store is an adjunct of the "store" located in Kaufmann's downtown Pittsburgh store.

Finally, the question arises as to what relief, if any, should be given the employees who lost their jobs in connection with the closing of the stores. Under the *Fibreboard* line of cases, the Board could order their reinstatement with backpay, for the economic consequences they suffered might well have been prevented, or mitigated, had the Company observed its statutory bargaining obligation. On the other hand, their discharges were not motivated by union animus, and the Company's position in this matter was inextricably tied to its good-faith belief that the only appropriate unit was the Pittsburgh Agency. The Company cannot maintain that position in the light of subsequent events, including the Fourth Circuit's rejection of the Company's contention in the court's decision, but this was handed down February 17, 1964, after the administrative dissolution of the Pittsburgh city district. To be sure the Company's good faith is no defense to the unfair labor practice, but it is a circumstance to be weighed in framing the remedy.[5] In my judgment it will best effectuate the policies of the Act if the Company now remedies the unfair labor practice inherent in the unilateral action which led to the termination of these employees by placing them on a preferential hiring list at its stores within the Pittsburgh Metropolitan area. (I note that some of the employees formerly employed within the bargaining unit are now employed at other stores in the Pittsburgh area.) Although as an equitable matter, I am not recommending any backpay to the terminated employees, I shall recommend that if they are not placed on a preferential hiring list, and so notified, within 10 days from the date of this Decision, backpay should start to run henceforward, to be computed under the formulas approved in *F. W. Woolworth Company,* 90 NLRB 289, and *Isis Plumbing & Heating Co.,* 138 NLRB 716. To be sure, the Company is free to

[5] In *Winn-Dixie Stores, Inc.,* 147 NLRB 788, on which General Counsel relies in urging a backpay remedy, the company was guilty of "opposition to the policies of the Act" as evidenced by "interrogation, threats, interference, and coercion."

continue litigating this matter, and *Fibreboard* itself is now pending in the Supreme Court. But one who litigates may do so at his own risk. My backpay *in futuro* recommendation is not intended as an *in terrorem* order. The Company may place these employees on a preferential list now, without any other liability to itself, and still maintain its legal position before the Board and the courts. If it chooses to give them preferential listing *and wins,* it suffers no loss. If it chooses not to give them preferential listing *and loses* (i.e., the findings of violations here made are sustained), the employees already disadvantaged by the Company's invasion of their statutory rights will have suffered continued and greater harm. For those reasons, I am recommending preferential listing at this time, together with backpay henceforward to protect the employees if preferential listing is denied.

CONCLUSIONS OF LAW

1. At the time of the Union's certification and of the Respondent's initial refusal to bargain with the Union, all the employees employed in Respondent's retail shops within the Pittsburgh city district, including assistant store managers, but excluding clerical employees of the Central Agency, guards, professional employees, store managers, district manager, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining.
2. The Union, at the date of its certification, June 11, 1962, was the exclusive representative of all employees in the aforesaid appropriate unit for purposes of collective bargaining, and continued to be such exclusive representative at the time the Pittsburgh city district was discontinued.
3. By refusing, on August 10, 1962, to bargain collectively with the Union as the representative of the above employees, Respondent engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.
4. By taking action directly affecting the terms and conditions of employees in the aforesaid bargaining unit including the closing of certain of the stores therein and the attendant transfer or termination of some employees, without notifying or bargaining with the Union, Respondent engaged in a further unfair labor practice affecting commerce within the meaning of Section 8(a)(5)and (1) and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Accordingly, on the basis of the foregoing findings and conclusions and on the entire record, I recommend, pursuant to Section 10(c) of the Act, that the Respondent, Singer Sewing Machine Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning rates of pay, wages, hours of employment, or other conditions of employment with Retail, Wholesale, and Department Store Union, Local 101, AFL–CIO, as the exclusive representative of the employees of the following stores in the Pittsburgh, Pennsylvania, Metropolitan area: Wilkinsburg, East End, Kaufmann's (Pittsburgh), and Kaufmann's (Monroeville), including assistant store manager, but excluding clerical employees of the central agency, guards, professional employees, store managers, district manager, and all other supervisors as defined in the Act.

(b) Closing any of the stores in the above bargaining unit without giving the above-named Union notice thereof and an opportunity to bargain with respect thereto.

(c) In any manner interfering with the efforts of the above-named Union to bargain collectively on behalf of the employees in the above unit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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

(b) Within 10 days of the date of the Trial Examiner's Decision herein, notify in writing each employee who lost employment as a result of the closing of the South Side, Oakland, North Side, or Homestead stores that such employees will be given preference in the filling of any vacancies which may occur in any stores in the Pittsburgh Metropolitan area, and maintain such a preferential list until each affected employee shall have been reemployed or shall have refused reemployment.

(c) Make whole any employees not notified as provided in the foregoing paragraph in accordance with the formula prescribed in the section of the Trial Examiner's Decision entitled "The Remedy."

(d) Post at each of the four stores in the above-described unit, copies of the attached notice marked "Appendix." [6] Copies of such notice, to be furnished by the Regional Director for Region 6, shall, after being signed by an authorized representative of the Respondent, be posted immediately upon the receipt thereof, and be maintained by it 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 by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(e) Notify the said Regional Director, in writing, within 20 days from the date of this Decision, what steps the Respondent has taken to comply herewith.[7]

[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 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 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, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Retail, Wholesale and Department Store Union, Local 101, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT close any of the stores in that bargaining unit without notifying said Union of our intention to do so and affording said Union an opportunity to bargain with respect thereto.

WE WILL NOT in any manner interfere with the efforts of Retail, Wholesale and Department Store Union, Local 101, AFL–CIO, to bargain collectively as the exclusive representative of the employees in the bargaining unit described below.

WE WILL, upon request, bargain with Retail, Wholesale and Department Store Union, Local 101, AFL–CIO, as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody, such an understanding in a signed agreement.

The bargaining unit is:

All the employees in our retail shops in Wilkinsburg, East End, Kaufmann's (Pittsburgh), and Kaufmann's (Monroeville), including assistant store managers, but excluding clerical employees of the central agency, guards, professional employees, store managers, district manager, and all other supervisors as defined in the Act.

We have notified persons whose employment was terminated by the closing of our South Side, Oakland, North Side, or Homestead stores that they will be given preference in the filling of vacancies which may occur at any of our stores in the Pittsburgh Metropolitan area.

SINGER SEWING MACHINE COMPANY,
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, 2107 Clark Building, Pittsburgh, Pennsylvania, Telephone No. Grant 1–2977, if they have any question concerning this notice or compliance with its provisions.

775–692—65—vol. 150——85