

own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other material aid or protection, or to refrain from any or all such activities.

RON KVARFORDT, d/b/a FRED & SONS O.K. RUBBER WELDERS,
Employer.

Dated----- By-----
(Representative) (Title)

NOTE.—We will notify any of the above-named employees if presently serving in the Armed Forces of the United States of their 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, 327 Logan Building, 500 Union Street, Seattle, Washington, Telephone No. 682-3300, if they have any questions concerning this notice or compliance with its provisions.

Frisch's Big Boy Ill-Mar, Inc. and Hotel, Motel, Cafeteria & Restaurant Employees' and Bartenders Union, Local No. 58, AFL-CIO. *Case No. 25-CA-2010. March 5, 1965*

DECISION AND ORDER

Upon a supplemental charge duly filed on October 6, 1964, by Hotel, Motel, Cafeteria & Restaurant Employees' and Bartenders Union, Local No. 58, AFL-CIO (hereinafter called the Union), the General Counsel of the National Labor Relations Board, by the Director for Region 25, issued a complaint and notice of hearing on November 30, 1964, alleging that Frisch's Big Boy Ill-Mar, Inc. (hereinafter called Respondent) had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing, were duly served upon the Respondent.

The complaint alleged in substance that since on or about September 4, 1964, the Union has been certified as the exclusive representative for collective-bargaining purposes, of "all regular and all regular part-time employees, at the Respondent's restaurant at 51 North Illinois Street, Indianapolis, Indiana, including cashiers, exclusive of all office clerical employees, managers, assistant managers, professional employees, guards, and supervisors as defined in the Act"; and that on September 12 and 21, 1964, and at all times thereafter Respondent has refused to bargain with the Union as the exclusive representative of the employees in the above-described unit. Respondent's answer admitted the complaint's allegations relating to the Union's certification, the Union's request for bargaining, and Respondent's refusal to bargain with the Union. Respondent denied, however, that the Union is the exclusive representative

of its employees within the meaning of Section 9(a) of the Act, and that the unit for which the Union was certified is appropriate for purposes for collective-bargaining within the meaning of Section 9(b) of the Act.

On December 9, 1964, all parties to this proceeding entered into a stipulation of facts. They agreed that the formal papers and the stipulation of facts, together with the documents incorporated by reference therein, constitute the entire record in the case, and that no oral testimony would be necessary or desired by any of the parties. They further waived a hearing before a Trial Examiner and agreed to submit this case directly to the Board for findings of fact, conclusions of law, and an order.

By Order dated December 18, 1964, the Board approved the stipulation and made it part of the record herein. The Board fixed a time for the filing of briefs, and thereafter the Charging Party and the Respondent filed briefs in support of their contentions. None of the parties requested oral argument.

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

Upon the basis of the aforesaid stipulation and the entire record in the case, including the charge, the complaint, the answer, and the briefs, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint alleges and Respondent admits that Respondent, and 11 other corporations which operate Frisch's stores, are now, and at all times material herein have been, a single employer engaged in commerce within the meaning of the Act, that during 1964, this Employer sold and distributed products, the gross value of which exceeded \$500,000, and that this Employer received goods valued in excess of \$50,000, which were transported in interstate commerce directly from States of the United States other than the State of Indiana.

Accordingly we find that the 12 corporations constitute a single employer for jurisdictional purposes, that their combined operations meet the Board's jurisdictional standards, and that it will effectuate the purposes of the Act to assert jurisdiction over the Respondent herein.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and we find, that the Union is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

The complaint alleges that: on or about July 14, 1964, in a representation proceeding, a majority of the employees in an appropriate bargaining unit consisting of all regular and all regular part-time employees at the Respondent's restaurant at 51 North Illinois Street, Indianapolis, Indiana, including cashiers, exclusive of assistant managers, professional employees, guards, and supervisors as defined in the Act, designated or selected the Union as their representative for the purposes of collective bargaining in a secret election conducted under the supervision of the Regional Director for Region 25 of the Board; on or about September 4, 1964, the Union was certified by the Board as the representative of the employees in said unit; and on or about September 12 and 21, 1964, the Union, in writing, requested Respondent to bargain collectively with the Union as the exclusive bargaining representative of all the employees in said unit with respect to their working conditions, but that, at all times since on or about September 19 and 22, 1964, Respondent has refused to honor the request.

As has been indicated above, Respondent defends its refusal to bargain on basically the ground that the Board's appropriate unit finding in the representation proceeding was erroneous.¹ We reject this defense as without merit. It is well established that absent newly discovered evidence, the issues as to the appropriateness of a bargaining unit that have been raised and determined in a prior representation proceeding may not be relitigated in a subsequent related complaint proceeding.² Respondent in this proceeding has presented no new or material evidence which would warrant our reconsideration of our unit findings in the representation proceeding. We adhere to our finding in the representation proceeding with regard to the appropriate unit.

Upon our review of the entire record in this case, we conclude that the Union was selected on or about July 14, 1964, by a majority of employees in the appropriate unit described above as their representative for the purposes of collective bargaining; that at all times since September 4, 1964, the Union has been the duly certified representative of the employees in the above-described appropriate unit, and by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of the employees in the appropriate unit for the purposes of collective bargaining. Accordingly, we find that by refusing to bargain collectively with the

¹ See *Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551.

² *S. D. Warren Company*, 150 NLRB 288.

certified representative of its employees, the Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, we shall order it to cease and desist therefrom, and to take certain affirmative action designed to effectuate the purposes of the Act.

Upon the foregoing findings of fact, and upon the entire record in this case, the Board makes the following:

CONCLUSIONS OF LAW

1. Hotel, Motel, Cafeteria & Restaurant Employees' & Bartenders Union, Local No. 58, AFL-CIO, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Frisch's Big Boy Ill-Mar, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By refusing, and by continuing to refuse, to bargain collectively with the Union as the certified representative of its employees in the above appropriate unit, the Respondent did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

4. By refusing, and by continuing to refuse, to bargain collectively with the Union as the representative of its employees in the unit described above, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Frisch's Big Boy Ill-Mar, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning wages, rates of pay, hours, and other terms and conditions of employment, with Hotel, Motel, Cafeteria & Restaurant Employees' & Bartenders Union Local No. 58, AFL-CIO, affiliated with Hotel & Restaurant Employees' and Bartenders International Union, AFL-CIO, as the exclusive representative of its employees in the following appropriate unit:

All regular and all regular part-time employees at the Respondent's restaurant at 51 North Illinois Street, Indianapolis, Indiana, including cashiers, exclusive of all office clerical employees, managers, assistant managers, professional employees, guards, and supervisors as defined in the Act.

(b) Interfering with the efforts of the above-named labor organization to negotiate for or represent the employees in the said appropriate unit as the exclusive bargaining agent.

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Upon request, bargain collectively with the above-named labor organization in the above-described appropriate unit, and embody in a signed agreement any understanding reached with respect to the employees in said unit.

(b) Post at its 51 North Illinois Street, Indianapolis, Indiana, plant, copies of the attached notice marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the Region 25, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof, and be maintained by it for 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 said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 25, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith.

³ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Hotel, Motel, Cafeteria & Restaurant Employees and Bartenders Union, Local No. 58, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL, upon request, bargain with Hotel, Motel, Cafeteria & Restaurant Employees and Bartenders Union, Local No. 58, AFL-CIO, as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours, 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 regular and all regular part-time employees at the Respondent's restaurant at 51 North Illinois Street, Indianapolis, Indiana, including cashiers, exclusive of all office clerical employees, managers, and supervisors as defined in the Act.

WE WILL NOT interfere with the efforts of Hotel, Motel, Cafeteria & Restaurant Employees and Bartenders Union, Local No. 58, AFL-CIO, to negotiate for or represent as exclusive bargaining agent the employees in the bargaining unit described above.

FRISCH'S BIG BOY ILL-MAR, 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, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. ME 3-8921, if they have any question concerning this notice or compliance with its provisions.