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

CONCLUSIONS OF LAW

1. Respondent is, and at material times has been, an employer engaged in commerce within the meaning of the Act.
2. The record does not establish that Respondent has engaged in the unfair labor practices, or any of them, alleged in the amended complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record, it is recommended that the Board enter an order dismissing the complaint.

Local 378, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO *and* Waldbaum, Inc. *Case No. 29–CP–7. July 16, 1965*

DECISION AND ORDER

On April 21, 1965, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, 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, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, 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].

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

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 Recommended Order of the Trial Examiner, and orders that Respondent, Local 378, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, heard before Trial Examiner Frederick U. Reel at Brooklyn, New York, on March 8, 1965, pursuant to a charge filed November 30, 1964, and a complaint issued December 28, 1964, presents the question whether the picketing which the Respondent Union conducted at premises of the Charging Party in late November and December 1964, violated Section 8(b)(7)(A) of the Act.[1] Upon the entire record in this proceeding, including my observation of the witnesses, and after due consideration of the briefs filed by all parties hereto, I make the following

FINDINGS OF FACT

I. THE EMPLOYER AND THE LABOR ORGANIZATIONS INVOLVED

The Charging Party, herein called the Company, operates a chain of retail grocery stores in the New York City area, and maintains a warehouse in Garden City, Long Island, which services these stores. The value of the food products which are annually shipped to that warehouse from directly outside the State exceeds $50,000, so that the Company is engaged in commerce within the meaning of the Act. The Respondent Union, herein called Local 378, is a labor organization within the meaning of the Act, as are two other unions which figure in this proceeding: Local 174, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, herein called Local 174, and Local 338 of the Retail Wholesale and General Store Food Employees Union, AFL–CIO, herein called Local 338.

II. THE UNFAIR LABOR PRACTICES

A. *Background*

For many years prior to the fall of 1964, the Company operated a warehouse in Brooklyn, New York, from which it handled all the groceries sold in its retail stores, but no meat. The meat sold at the stores came through a warehouse located on 12th Avenue in New York City which was operated by Emerald Packing Company, a wholly owned subsidiary of the Company. At the meat warehouse, Emerald employees received the product shipped from the western part of the United States in forequarters and hindquarters. Emerald employees broke the meat down into "primal cuts" (loin, round, flank, hip, rib, shoulder, etc.), and it was then distributed either to the Company's retail stores or to hotel supply houses or to manufacturers of corned beef or hamburger patties. Employees at the Company's Brooklyn warehouse were represented by Local 338, under a contract which covered all the Company's warehouse and store employees except supervisors, office clerical employees, and meat department employees. The latest contract between Local 338 and the Company ran from October 1, 1962, to September 30, 1965. The employees at the Emerald warehouse are represented by Local 174 under a contract running from May 1963 to April 30, 1966. Article 1 of this contract recited that Emerald recognized Local 174 as the representative of all its employees (with statutory exclusions) in Emerald's plant "or any and all other plants . . . hereinafter acquired and operated . . . located in the State of New York . . . ." Article 36 of that contract provided:

> This Agreement shall be binding upon the parties herein, and their successors and assigns, and no provision herein contained shall be nullified or affected in any manner as a result of any consolidation, sale, transfer or assignment of the parties herein, or by any change to any other form of business organization, or by any change, geographical or otherwise, in the location of the parties herein. The parties agree that they will not conclude any of the above transactions unless an agreement has been entered into as a result of which this Agreement shall continue to be binding on the person or persons or any business organization continuing the business. It is the intent of the parties that this Agreement shall remain in effect for the full term hereof regardless of any change of any kind in the management, location, form of business organization or ownership.

Prior to November 1961, the territorial jurisdiction of Local 174 included not only the Manhattan area of New York but also all of Nassau and Suffolk Counties on Long Island. At that time, however, Local 378 was chartered and given as its jurisdiction

[1] The complaint alleges a violation of Section 8(b)(7). General Counsel in his brief limits the scope of the complaint to Section 8(b)(7)(A).

the two Long Island counties just named. Existing Long Island contracts which at that time were in the name of Local 174 were taken over and administered by Local 378. Thereafter when an employer under contract with Local 174 moved his plant to an area within the jurisdiction of Local 378, that local "serviced" the contract until its expiration

In the fall of 1964, the Company moved its Brooklyn warehousing operations to a new warehouse in Garden City, Long Island, where it also handled meat products, theretofore warehoused at Emerald, which closed its doors. Local 338 continued to represent the warehouse employees, including those now handling meat, and the Company has recognized it as their representative, but Local 378 claims the right to represent the latter, arguing that it succeeds to the rights of Local 174 under its contract This gives rise to the controversy before us, and as we have now passed from "background" to "foreground," the details of the moves to Long Island and the closing of Emerald are set forth in the next section

B. *The opening of the Garden City warehouse and the closing of Emerald*

In the summer of 1964, the Company erected a new warehouse at Garden City, designed to house not only the materials previously warehoused in Brooklyn, but also to handle meat, which had theretofore been handled through Emerald. The new Garden City facility included a meat storage cooling unit to that end Early in the fall of 1964, the Brooklyn operation was moved to Garden City, and 45 of the 50 Brooklyn employees transferred to the new location

The imminent closing of the Emerald plant, and the ensuing transfer of the meat warehousing function to Garden City was widely known in the industry. As early as October 5, 1964, Local 378 wrote the Company that "effective on the transfer to your new warehouse in Nassau County of your meat operations, currently being performed within the jurisdiction of Local 174, this Union shall commence to represent the butchers and other meat workmen so employed by you " The Company did not respond to this letter. On November 13, 1964, however, it wrote Local 174 as follows:

> As you have been advised for some time Emerald Packing Corp. is terminating all business operations as of the close of business on November 27, 1964. The corporation will be dissolved without any further business activities
>
> We appreciate the efforts of your Union on behalf of its members in the many discussions that we have had since you were notified of this company's intentions. However, as we stated from the outset, we are constrained to end all business operations.
>
> Therefore, as of the end of business on November 27, 1964, the agreement existing between us will be deemed cancelled for all purposes.

A few days prior to the closing of the Emerald plant, Aaron Freedman, an official of the Company and of Emerald, spoke to the assembled Emerald employees and advised them that if they desired work at the new Garden City warehouse they should go there to fill out application forms. Only a few Emerald employees filed such applications; the others were apparently dissuaded from doing so by Frank Kissell, secretary-treasurer of Local 174, who told the Emerald employees that Freedman did not want them at the new warehouse. The record does not indicate that Freedman authorized or knew of Kissell's statement to that effect. Only six Emerald employees found employment at Garden City This group included two office clerical employees, the manager and the comanager of the meat operation at Garden City, and two rank-and-file employees, whose duties at Emerald and at Garden City are described below. Some Emerald employees applied for and received "severance pay" through Local 174.

C *Comparison of the Emerald and Garden City warehouses*

Although the Company's retail stores which formerly received meat from the Emerald warehouse now receive it from Garden City, substantial differences exist between the old and new warehouse with respect to meat handling. At Emerald, as noted above, some meat was destined for sale to hotel supply houses, and to manufacturers of corned beef and of hamburger patties. All the meat handled at Garden City is destined for the Company's retail stores. Of more importance is the fact that at Emerald meat arrived in forequarters and hindquarters, and was cut into large cuts, but the meat handled at Garden City has already been cut into primal cuts before it is shipped to the warehouse from the West. One "bandsaw" was brought from Emerald to Garden City and installed there about 2 months after the meat facility

opened, or about 1 month before the hearing. This bandsaw had not yet been used to cut meat at the new location, and in any event is not suitable for cutting meat into primal cuts but only for smaller operations.

The duties of the employees have also changed somewhat in the course of the move from Emerald to Garden City. At the new location meat is not physically lifted as was the case at Emerald. The meat is now received on rolling hooks and is pushed on rails from the delivering vehicle into the warehouse The meat is not taken off the hook even to be weighed. Hence the term "lugger," which describes a man who pushes, carries, and helps unload meat, is not used at Garden City although it was used at Emerald.

About 13 or 14 luggers, including one McDonald, were employed at Emerald; McDonald and 5 newly hired men are engaged in moving meat in and out of the Garden City warehouse. One Lyons, who was employed as a "scaler" at Emerald, performs a similar function at Garden City, his job is to weigh the meat. McDonald's pay was cut from $113 per week to $90 per week in the move, whereas Lyons' pay which was $135 per week at Emerald and was cut to $120 when he moved to Garden City has now been raised to $175 per week, as his duties have expanded. The minimum wage in Local 338's contract is $60 per week, with provision for annual increases for each employee of $4 in 1962, and $3 in 1963 and 1964.

About 15 percent of the space at Garden City is devoted to meat. Certain employees are engaged primarily in handling meat, but as need arises they will also work in other sections of the warehouse. Although most of their time is spent on meat, and in some weeks all their time is so devoted, it has happened that as much as half their time in a particular week was spent on other matters.

D. *The picketing*

Promptly upon the opening of the meat operation at Garden City, Local 378 commenced picketing that warehouse and several of the Company's retail stores. Although some of the picketing was done by former employees of Emerald, and although the picket signs proclaimed that the Company had "locked out" its employees, the record is clear that the purpose of the picketing was to have the Company recognize Local 378 as the bargaining representative of the employees handling meat at the warehouse, under the theory that Local 378 succeeded to the rights of Local 174 and could administer on behalf of those employees Local 174's contract with Emerald. When the picketing commenced, a company official apprised Larry Burke, business agent of Local 174, who expressed disapproval of Local 378's action and promised that Local 174 men would cross the picket lines to deliver meat to the warehouse. Local 174 men did cross the picket lines of its sister local, although the parent International gave support to the strike. The picketing was enjoined in a Section 10(l) proceeding, the decision in which is reported at 236 F. Supp. 709 (D.C E.N Y.).

E. *Concluding findings*

As Local 378 was admittedly picketing for recognition as the bargaining representative of the employees handling meat at the Garden City warehouse, and as the Company is recognizing Local 338 as the representative of those employees, the issue in this case is whether the Company "has lawfully recognized" Local 338 as representing these employees and whether a question concerning their representation may appropriately be raised Local 378 contends that the recognition of Local 338 is not lawful because Local 378 has a contractual right in this area as successor to Local 174. As I view the facts, however, Emerald's contractual obligations to Local 174 (which obligations would have been binding on Waldbaum as successor to, or *alter ego* of, Emerald) do not extend to according either Local 174 or Local 378 any status at Garden City. In my view, the contract at Emerald was terminated when Emerald's business was terminated. The successor clause in that contract recites that the contract shall not be affected by "consolidation, sale, transfer or assignment of the parties herein, or by any change to any other form of business organization, or by any change, geographical or otherwise, in the location of the parties . . ." That clause further provided that in the event of such change the contract would be binding on "any business organization continuing the business" and that it would remain in effect for its full term "regardless of any change of any kind in the management, location, form of business organization, or ownership." But none of these recitals encompasses what actually happened to Emerald, for its business was discontinued. Emerald's business had been receiving meat in forequarters and hindquarters, cutting it into primal cuts, and distributing it to company stores and to hotel supply houses, to manufacturers of corned beef, and to manufacturers of hamburger patties. This business was not sold or moved to Garden City. It was terminated. As a result of

this termination, the hotel supply houses and manufacturers to whom it had sold had to go elsewhere for their source of meat The Company's stores also had to look elsewhere, and they are now supplied from the Garden City warehouse. In view of the close relationship between the Company and Emerald this fact alone would not establish a real termination of Emerald. But added thereto is a significant change in the operation, for Emerald cut meat into primal cuts, and that process is not performed at Garden City which serves purely as a warehouse, receiving and shipping products without altering their appearance.[2] Furthermore, even if Local 174's contract with Emerald were not terminated (and the parties thereto appear to have so regarded it, as witness the payment of severance pay thereunder, and Local 174's refusal to respect the picket lines), it would not follow that Local 378 acquired any status at Garden City. Local 378 had apparently taken over the Long Island territory which some years ago was within the jurisdiction of Local 174, but this means no more than that for purposes of organization the parent International has determined that a separate local should handle that territory. An employer who while under contract with one local moves his business to another area does not automatically transfer the contract to another local of the same International, and employees at the new location (whether they have moved from the former location or are newly hired) are not automatically and without any voice in the matter placed under a new collective-bargaining representative they have never selected, merely because another local affiliated with the same International represented the employees at the prior location. See *Graphic Finishers, Inc*, 119 NLRB 374, 378–379; *Cleveland Decals, Inc*, 99 NLRB 745; *Lenscraft Optical Corporation and Rayex Corporation,* 128 NLRB 836, 854.

The finding that Local 378 is not the bargaining representative of the employees in question at Garden City, however, does not conclude our inquiry or automatically establish a violation of Section 8(b)(7)(A) on its part. There remains for consideration whether "a question concerning representation may not appropriately be raised . . . ." The short answer proffered by General Counsel is that the Company's contract with Local 338 constitutes a bar to the raising of such a question. This would be true under familiar principles if the contract was properly extended to the employees handling meat. If, on the other hand, those employees constitute a separate unit, the contract would not be a bar, a question concerning representation could be raised with respect to that unit, and the picketing would not violate Section 8(b)(7)(A). The question whether Local 338's contract was properly extended to cover the employees here in issue turns upon whether the meat warehousing at Garden City is properly to be considered a mere accretion to the general warehousing unit which predated the move from Brooklyn to Garden City. If it is an "accretion," the contract is a bar and the violation is established.

Local 378 argues that the meat warehousing is not an accretion. It points to the existence of separate supervision, to the physically separated refrigerated area, to the fact that these employees are primarily engaged in handling meat, to the substantial discrepancy between their wages and the wages of employees covered by Local 338's contract, and to the exclusion of "meat department employees" from the Local 338 contract. Although these considerations are not without weight, I find that they are overbalanced by the similarity of working conditions and the existence of interchangeability of duties, prevailing at the warehouse as a whole. See *A. Harris & Co.,* 116 NLRB 1628, 1632–1633; *Grand Union Co.,* 118 NLRB 685, 688; *Cupples Company Manufacturers,* 127 NLRB 1457, 1458; *Jay Kay Metal Specialties Corporation,* 129 NLRB 31, 34–35; *Lily-Tulip Cup Corporation,* 124 NLRB 982, 984 The exclusion of "meat department employees" from the contract is occasioned by the contract's applicability to retail outlets as well as to the warehouse. At the time the contract was executed, the Company had no meat department in its warehouse, and the exclusion of meat department employees had no significance so far as the warehouse was concerned. See *The Cessna Aircraft Company,* 123 NLRB 855, 857. In the retail stores, Local 338 did not purport to represent the butchers, who were represented by Local 342 of the Amalgamated Meat Cutters The exclusion of meat department employees might be given more significance for present purposes if the functions of that department at the Garden City warehouse resembled more closely those at the Emerald warehouse But the change from Emerald to Garden City involved not only a shift in location and an abandonment of sales to outsiders but also a significant change in the operation itself. What had been at Emerald a combination processing and warehousing now became at Garden City purely a warehousing function. The elimination of the cutting operation removed the feature which distinguished meat warehousing from general warehousing. I find, therefore, that the meat warehousing

[2] This change of function suffices to distinguish the "successorship" cases relied on by Local 378.

operation at Garden City was an accretion to the preexisting warehouse work there and at Brooklyn, so that Local 338's contract applies and constitutes a bar to a representation proceeding. It follows, of course, that Local 378's picketing violated Section 8(b)(7)(A).

CONCLUSION OF LAW

By picketing the Company's warehouse and retail stores with an object of forcing the Company to recognize it as representative of the warehouse employees handling meat at a time when the Company lawfully recognized another labor organization as bargaining representative of those employees and a question concerning representation could not appropriately be raised, Local 378 engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(A) and Section 2(6) and (7) of the Act.

THE REMEDY

I shall recommend that Local 378 cease and desist from its unlawful picketing and that it post an appropriate notice.

RECOMMENDED ORDER

Accordingly, upon the foregoing findings and conclusions and the entire record, I recommend, pursuant to Section 10(c) of the National Labor Relations Act, as amended, that the Respondent, Local 378, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, its officers, agents, and representatives, shall:

1. Cease and desist from picketing, or causing or threatening to picket any premises of Waldbaum, Inc., where an object thereof is to force or require that employer to recognize or bargain with said Local 378 as representative of any employees in the Garden City warehouse of Waldbaum, Inc., during any period when Waldbaum is recognizing another union as bargaining representative of such employees and a question concerning representation may not appropriately be raised.

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

(a) Post at its offices and meeting halls, copies of the attached notice marked "Appendix."[3] Copies of said notice, to be furnished by the Regional Director for Region 29, shall, after being duly signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Forthwith mail copies of the said notice to the said Regional Director at the Regional Office of the National Labor Relations Board in Brooklyn, New York, after such copies have been signed as provided above, for posting by Waldbaum, Inc., if it so chooses, at the places where it customarily posts notices affecting its employees.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply herewith.[4]

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[3] In the event that this 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 is 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".

[4] In the event that this Order is 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 MEMBERS OF LOCAL 378, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AND TO EMPLOYEES OF WALDBAUM, INC

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 picket, or cause to be picketed, or threaten to picket Waldbaum, Inc., where an object is to force or require Waldbaum, Inc , to recognize or bargain with us as the representative of Waldbaum's employees or to force or require

the employees of Waldbaum, Inc., to accept or select us as their collective-bargaining representative, where Waldbaum, Inc., has lawfully recognized, in accordance with the National Labor Relations Act, another labor organization and a question concerning representation may not appropriately be raised under Section 9(c) of the said Act.

LOCAL 378, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL–CIO,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Brooklyn, New York, Telephone No. 596–5386.

The Greyhound Corporation (Southern Greyhound Lines Division) and Floors, Inc. of Florida *and* Amalgamated Transit Union, AFL–CIO.[1] *Case No. 12–CA–2987. July 19, 1965*

DECISION AND ORDER

Upon charges filed by Amalgamated Transit Union, AFL–CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for Region 12, issued a complaint and notice of hearing dated August 4, 1964, against The Greyhound Corporation (Southern Greyhound Lines Division), herein called Respondent or Greyhound, and Floors, Inc. of Florida, herein called Respondent or Floors, alleging that said Respondents had engaged in and were engaging in unfair labor practices 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 before a Trial Examiner were duly served upon the Respondents and the Union.

On October 5, 1964, all parties to this proceeding entered into a stipulation wherein they waived a hearing before a Trial Examiner and the issuance of a Trial Examiner's Decision, agreeing to submit the case directly to the Board for its findings of fact, conclusions of law, and a Decision and Order. By order of the Board dated October 9, 1964, the parties' stipulation was approved by the Board and made part of the record herein, and this proceeding was transferred to the Board. Thereafter, Respondents Greyhound and Floors and the Union filed briefs with the Board.

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[1] Prior to July 1, 1964, known as Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL–CIO.