

[The Board clarified the certification by specifically including therein the job categories of research supervisor, research associate and senior research associate, and patent advisor, and by specifically excluding the job categories of project manager, project manager and research supervisor (dual capacity), analytical supervisor, senior patent advisor, superintendent of engineering services, engineering services supervisor, supervisor of automotive laboratory services, and librarian.]

Heights Thrift-Way, Inc. and Retail Clerks Union No. 7, Retail Clerks International Association, AFL-CIO. *Case No. 27-CA-1736. October 7, 1965*

DECISION AND ORDER

On June 18, 1965, Trial Examiner Alba B. Martin issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, with the General Counsel and Respondent represented by counsel, was heard before Trial Examiner Alba B. Martin in Denver, Colorado, on March 26, 1965, on complaint of the General Counsel and answer of Heights Thrift-Way, Inc., Respondent herein.¹ The issues litigated were whether Respondent violated Section 8(a)(1) of the Act by threatening and committing acts of violence and intimidation against the persons of union agents engaged in peaceful picketing at Respondent's premises in the presence of or in a manner so that such acts would

¹ The original charge was filed by the Union on December 21, 1964. The amended charge was filed by the Union on February 16, 1965.

come to the attention of Respondent's employees, and by relating such acts in the presence of and to its employees. At the conclusion of the hearing Respondent presented a short oral argument. After the hearing the General Counsel and Respondent filed helpful briefs which have been carefully considered. After the hearing the General Counsel also moved to correct the transcript of the hearing in two respects. As this motion corrects the transcript and as Respondent has filed no objection to the motion, it is hereby granted.

Upon the entire record and my observation of the witnesses, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Colorado corporation, at all times material herein has been engaged in Broomfield, Colorado, in the business of retail selling of groceries. During the 12 months prior to the issuance of the complaint, a representative period, Respondent sold and distributed products the gross value of which exceeded \$500,000. During the same period Respondent received goods valued in excess of \$10,000 transported to its place of business in interstate commerce directly from States of the United States other than the State of Colorado. Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Retail Clerks Local No. 7, Retail Clerks International Association, AFL-CIO, herein referred to as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The basic facts are in little dispute. Respondent operates with a few employees an independent retail grocery supermarket in Broomfield, Colorado, a town of about 4,500 to 5,000 people located some 15 miles northwest of Denver, Colorado. Respondent has no collective-bargaining contract with any labor organization, and there is no evidence that any of its employees belong to a labor organization. Respondent began doing business October 15, 1962.

According to the uncontradicted testimony of Respondent's president, Louis E. Hill, in the spring of 1964 during a strike of employees of a competitor two or three blocks from Respondent, the Union, which represented the employees of the competitor, came to Respondent's store several times and tried, with some vigor but unsuccessfully, to persuade President Hill to sign a contract with the Union.

On or about July 30, 1964, the Union sent Hill a letter advising him that his establishment was not observing the prevailing union standards in the area as to wages, hours, and other employee benefits; that this failure undermined and endangered the job security and employment conditions of union members employed by Respondent's competitors in the area; and that the Union had decided "to take all steps possible to correct this situation," including picketing and boycotting of the store. The letter stated that "we wish to make it clear to you that we do not represent these employees, nor do we seek such representation or a collective bargaining contract covering your employees," and that "our sole objection [sic] in this campaign is to secure observance on your part of the standard referred to." The letter also enclosed a copy of the applicable area contract, stated that Respondent would be given "a reasonable opportunity to meet these standards should this be your decision," and requested a reply.

Respondent did not reply to this letter but published a so-called answer to it in the August 13 edition of the local weekly newspaper, together with excerpts from the union letter. At the hearing Respondent offered no reason for not answering the Union's letter.

There was no further contact between the Union and Respondent until December 1964. The Union peacefully picketed Respondent's premises during the pre-Christmas period, from Friday, December 18, through Wednesday, December 23, and this picketing was countered by President Hill with profanity, violence, threatened violence, and a loudspeaker campaign of name calling and vilification.

A few moments after two union pickets started picketing near the two doors to the supermarket about 4:30 p.m. on December 18, President Hill, when it was called to his attention, immediately called the police and then went out and confronted the pickets. The pickets were wearing sandwich signs bearing legends addressed to the public saying this store is not a union store and that the wages, hours, benefits, and working conditions were below standard. The pickets were

passing out leaflets addressed to the public saying that the picket line "is for the sole purpose of letting the public residing in the area know that the Working Conditions, Wages and Hours in this establishment are below Union Standards." The leaflet stated further that its message was addressed to the public and not to any employer or any employees, there was no attempt to induce employees to cease work, no request that anyone cease doing business with any person, and no intent to seek recognition or start bargaining.

President Hill was described by one witness, who had served as one of his checkers, as a "nervous person . . . flighty . . . under a lot of pressure . . . quick tempered . . . nervous person." President Hill accosted the two pickets, both business agents of the Union, one at a time. With a "volley of oaths" and cursing he demanded that Melvin Johnson leave his property, his parking lot. Johnson refused. Hill then pushed Johnson with his hands on Johnson's shoulders the 45 feet to the street curb, telling him the while that he had called the police and that he was going to get an injunction. Then, on the parking lot, Hill confronted Robert Vallero with a similar demand that Vallero get off his property and proceeded to push him also to the curb. While doing so he interrupted himself to go into the store and bring out Respondent's vice president. Hill also told Vallero he was going to get an injunction. While accosting Vallero, Hill tore the picket sign off Vallero, breaking one corner of it. Hill hit Vallero twice with his fist, once on the chin and once on the side of his head, breaking the skin. While Johnson was on or just off the curb on the street, Hill kicked him in the groin, sending him to the ground in pain. About this time a local police car arrived and Hill told a policeman that if the pickets did not get off his property he would kill them. The policeman explained that he could not get an injunction until Monday and that meantime the pickets could picket.

During Hill's encounters with Johnson and Vallero and during the presence of the police car, a small crowd gathered on the parking lot. Johnson and Vallero both credibly testified that they glanced up at the front of the store and saw people looking out at them through the plate-glass windows, including some men and women and boys dressed in aprons and smocks such as were worn by Respondent's employees. Respondent employed men and women and boys who wore smocks. Checker Helen Watkins, who was on duty at the time, testified that she saw pushing and shoving on the parking lot and saw a man fall. Later that day she heard that the Union had come to picket and that Hill had hit the pickets. Checker Viola Nace credibly testified that as she returned from lunch (her luncheon hour was 3:30 to 4:30 p.m.) she noticed Hill and Vallero in the crowd near the police car and that a few minutes later, after the crowd had dispersed and the police gone, she heard Hill telling a customer in the supermarket that the Union was picketing, that he was aggravated, and that he had hit one of the pickets. Hill also directly told employee Nace that pickets had been out there and he had hit them, that he was going to get an injunction against them, and "since he had hit this fellow he was afraid they were going to swear out a warrant for him so he was going to leave the store." Nace testified further that Hill told other people in the store, friends and customers, about the incident and that the incident was discussed among the store's employees.

Beginning the following day and continuing until the Union ceased picketing December 23, President Hill spent much of his time speaking over a loudspeaker which was on the outside of the building. On Saturday, December 19, interspersed with legitimate advertising, Hill kept up a more or less continuous tirade against the pickets, calling their activity un-American and communistic, and referred to them as Larimer Street (skidrow) winos. He and the market manager of the store, over the loudspeaker into the parking lot area where customers parked, referred to one of the pickets as "Baldy," to another as "Smiley," and referred to the Union's agent who had written Hill the July 30, 1964, letter as the "Little Tin God." These epithets and this vilification of the pickets continued intermittently as long as the pickets continued picketing, although at all times after the first day the picketing was conducted on the curblin or just inside it on the blacktop parking lot. On the other side of the curb was the street.

On Sunday, December 20, the Union had only one picket. Edward Grisham, who was walking on the parking lot blacktop near the street. The store was open for business. President Hill testified that "we were using automobiles as the best we could to prevent any pickets from being seen." The record showed that employees' cars were so used. Using cars for this purpose continued the rest of the days there was picketing. He explained that the idea was to block the pickets from being seen by passers-by in the street. Cars in the parking lot tended to hide the pickets from people at the store entrances 45 feet away. Early Sunday afternoon Hill moved his small truck, allegedly for this purpose, from one position on the street next to the curb to another position nearer to where Grisham was picketing. In doing so he

twice drove so close to Grisham, according to the latter's credible and credited testimony, that Grisham had to step quickly to the side to avoid being hit. When Hill got out of the truck he told Grisham he ought to kick the stuffing² out of him. He added that he was going to lunch and that if Grisham was still there when he returned "that is what I think I will do." When Hill returned from lunch Grisham called the Union for instructions and then quit picketing for the day.

One other day after Hill moved a vehicle down to the curb area near the pickets he got out, walked over to picket Johnson, and told him "he should stomp me down into the ground."

Through its testimony Respondent contended in substance that President Hill's actions and statements were motivated by the necessity of self-defense and to evict trespassers from his private property, rather than by hostility towards the Union. The record did not support this contention. Hill testified that he struck Vallero when "Mr. Vallero turned to me like he was coming towards me and this is when I took the first swing at him"; and that "he stepped back up on the curb like he was coming towards me, and this is where the second blow took place." Hill made no attempt to explain, in terms of alleged self-defense or otherwise, his violent grabbing of Vallero's picket sign and tearing it off him; violent to the extent that he broke off a corner of the composition board sign. Hill testified that "Mr. Johnson started back up on my property at exactly the same time that I took the second blow at Mr. Vallero, and I raised my left foot and shoved him back into the street." There was no proof that anything Vallero or Johnson allegedly said or did was of a character or done in a manner which reasonably should have incited even the excitable Hill to the violence he indulged in. Hill did not even testify that Johnson came toward him but simply that Johnson started back from the street onto Hill's property. There was no evidence of any statement or action by Vallero or Johnson which gave Hill cause to do anything in self-defense. Pursuant to leading questions calling for "yes" or "no" answers, Hill testified that he was in fear of physical violence toward him when he hit Vallero and kicked Johnson. But when asked for his own statement as to what was in his mind just before he kicked Johnson, President Hill testified, "Well, in my mind at that moment was my rights to protect my business and my customers and my clientele, which is very hard fought for, to protect my money and my general business scope." In this testimony Hill was saying in other language, "I wanted to keep the Union out." Then, prodded by counsel's leading questions, Hill stated that he had fear for his physical well-being.

Upon the testimony in the above paragraph, in view of his name-calling antiunion loudspeaker campaign, and upon the entire record considered as a whole, I believe and find that in hitting Vallero with two blows of the fist and violently grabbing his picket sign, in kicking Johnson; and in threatening to kill them both, Hill was primarily motivated with hostility toward the Union and the possible organization of his employees, and he was not acting in self-defense. It follows that Hill's actions and statements were not necessary in self-defense or to evict trespassers from Respondent's parking lot.

In the absence of the private property issue, Respondent's assaults and threats were a clear violation of Section 8(a)(1) of the Act. *H. R. McBride d/b/a H. R. McBride Construction Company*, 122 NLRB 1634, enfd. 274 F. 2d 124 (C.A. 10). As in *McBride* the pickets were engaged in lawful "standards" picketing of a non-union employer, and there was no evidence of present organizational effort by either the Union or any of Respondent's employees. The Union's letter to Hill, the language of the placards and the handbills, and the entire record all demonstrate clearly that the Union's objective was to induce Respondent to meet union standards. I do not credit the suggestion in President Hill's testimony that the pickets interfered with ingress to or egress from the store. The record contained no suggestion that the picketing was anything other than peaceful and orderly. The record proved that the Union was not attempting to, and did not, give false and misleading information to the public.

President Hill's conduct, his cursing, his violence, his loudspeaker name-calling, his threats to stomp and to kill and to kick the stuffing out of the pickets, and his attempt to hit or frighten a picket with his truck were of much the same character as that termed "outrageous" by the circuit court in *McBride*. To be noted is that this conduct continued over a period of days and revealed a bitter antiunion attitude. That his real motive was to put an end to or render completely ineffectual the picketing was his admission that he moved cars around in order to block the pickets from being seen.

² Witness Grisham used the word "stuffing" and then added, "only he didn't use that word. He used profanity, and he used quite a lot of profanity against me."

Respondent contended in substance that President Hill's outrageous conduct and language toward the pickets was something less than unlawful because the pickets were trespassers on Respondent's private property. Respondent did not own the property but rented it. All the shares of stock of Respondent were owned by President Hill and Respondent's vice president and their families. The store, which was not a part of a shopping center, faced west, and was surrounded on three sides by parking areas. Beyond the parking areas to the west and north were streets, separated from parking areas only by a narrow concrete curb. There were no sidewalks. After President Hill forced them off the parking lot the first day, the pickets thereafter picketed on the curb and just inside it on the edge of Respondent's parking lot to the west in front of the store. This is the area where President Hill threatened to kill and stomp and kick the pickets and kicked Johnson and to hit or frighten Grisham with the truck. Beyond the curb was the street, and along the curb cars were permitted to and in fact did park on the street. If the pickets were not lawfully permitted to do their picketing along the curb and just inside it on Respondent's property, where by his actions President Hill had forced them to be, the only other place they could have picketed with any degree of effectiveness was in the street beyond the cars and in the stream of traffic at the risk of their lives. Of course they could have picketed in the vacant land behind the store or in the vacant land across the streets to the west and north or in the bowling alley parking lot to the south, but in any of these places the picketing would have been totally ineffectual. As the store was not a part of a shopping center and there were no sidewalks, presumably most of its customers visited the store by automobile. The customers' cars in the parking area in front of the store would have blocked the view toward the pickets of many customers. Thus by his actions in forcing the pickets away from the entrances to the store and down to the curb President Hill effectively insulated Respondent from handbilling and effective picketing.

Of course the parking lot was open to the general buying public. In addition President Hill testified that he has permitted sales of tickets by approved groups inside the store, that he "supposed" that "gas stations" have placed leaflets in the cars parked in the parking lot. Hill's testimony suggested that other business organizations had put leaflets in the cars, but not with his express permission. Hill testified further that he had never found people putting leaflets in the cars and had never run anybody off the parking lot for doing that. He volunteered, "It would depend upon the cause whether I would or not [run them off]. I am civic minded and I believe in doing what I can in a civic way. If it was such as that, this would have my blessing and my permission." It thus appears that approved causes were permitted to be on the parking lot for their own purposes, and that only the Union was deemed to be a trespasser because Hill did not believe it to be making a proper civic contribution, and because, as the entire record proved, Hill was bitterly hostile to the Union.

Respondent had not posted its parking lot as private property and had no sign restricting the use of the parking lot in any fashion. There was no evidence that Respondent had ever before even considered denying access to the property.

From the above it appears, and I find, that Respondent discriminated against the Union in denying it access to its parking lot while permitting the public and other groups such access; and that by its actions in evicting the pickets from Respondent's property and then using automobiles to screen the pickets from the vision of people on the street, Respondent made it almost impossible for the pickets to display their placards and distribute their handbills anywhere else where they could be effective.

Conclusions

The issue in this case is whether Respondent violated the Section 7 rights of its employees to join, form, or assist the Union, if and when they ever wanted to, by the actions of President Hill within their vision and by his relating these actions shortly thereafter to them and within their hearing. As the United States Court of Appeals for the Tenth Circuit said in enforcing the *McBride* case (*supra*), the violent conduct there, although not directed primarily at McBride's employees, was nevertheless violative of the employees' rights protected by the Act in that:

[I]n all probability it would be viewed by them as an indication of the dangers and obstacles awaiting them should they in the future show any interest in a union organization. It is a reasonable inference that the normal effect of respondent's conduct would be to cause his employees to weigh the possibility of incurring reprisals or other hostile employer reaction before undertaking to exercise their rights secured by the Act. Such conduct displayed to the employees McBride's bitter opposition to unions and the extent of the measures he would resort to in resisting them.

Here, as in McBride, it is reasonable inference that, regardless of whether President Hill's treatment of the Union's representatives occurred on private property or on the street outside the curb, the normal effect of his conduct upon the minds of his employees who saw it or who soon thereafter were told about it by him or employees or others, was to cause them to weigh the possibility of incurring Hill's reprisals or other hostile reaction against them if they ever undertook to exercise their rights secured by the Act. Of note is the fact that in relating the incidents to employees afterwards Hill said nothing about private property or evicting trespassers. By Hill's actions and statements Respondent's employees learned of, if they had not known it before, Hill's bitter opposition to unions and the extent of the measures he would resort to in resisting them. Thus by his actions and statements Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent thereby violating Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of 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

Having found that Respondent has engaged in the unfair labor practices set forth above, I recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

The violations of the Act committed by Respondent are persuasively related to other unfair labor practices proscribed by the Act and the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the order is coextensive with the threat. In order, therefore, to make more effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce and thus effectuate the policies of the Act, I recommend that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and the entire record in the case, I hereby make the following:

CONCLUSIONS OF LAW

1. Heights Thrift-Way, Inc., of Broomfield, Colorado, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Retail Clerks Local No. 7, Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to and committing acts of violence and intimidation against the persons of agents of the Union while said agents were engaged in peaceful picketing at Respondent's premises, in view of or in a manner so that it would come to the attention of Respondent's employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By relating to employees and in their presence the threatening and violent acts it had committed against agents of the Union while they were engaged in peaceful picketing at Respondent's premises, Respondent has further engaged in and is further engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case considered as a whole, I recommend that Heights Thrift-Way, Inc., of Broomfield, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to commit and committing acts of violence and intimidation against the persons of agents of the Union while said agents are engaged in peaceful picketing at Respondent's premises, in view of or in a manner so that it will come to the attention of Respondent's employees.

(b) Relating to employees and in their presence the threatening and violent acts it has committed against agents of the Union while they were engaged in peaceful picketing at Respondent's premises.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Retail Clerks Local No. 7, Retail Clerks International Association, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection; or to refrain from any and all such activities.

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

(a) Post at its plant in Broomfield, Colorado, copies of the attached notice marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for Region 27 (Denver, Colorado), shall, upon being signed by the representative of Respondent, be posted by Respondent and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to all employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.⁴

³ If this Recommended Order is 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. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will further be amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order"

⁴ If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 27, 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 our employees that:

WE WILL NOT kick down any union agent while he is picketing peacefully at our premises.

WE WILL NOT threaten to kill any union agent while he is picketing peacefully at our premises.

WE WILL NOT with profanity and violence force a union agent, who is picketing peacefully, off our premises

WE WILL NOT strike any union agent with a blow of the fist or otherwise, while he is picketing peacefully at our premises.

WE WILL NOT tear off the picket sign of any picket while he is picketing peacefully at our premises.

WE WILL NOT tell any of our employees or say in their presence that we have said or done any of the things prohibited above

WE WILL NOT, over the loudspeaker or otherwise, degrade or belittle union agents with name-calling, or refer to peaceful picketing and handbilling as un-American or communistic.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights to self-organization, to form labor organization, to join or assist Retail Clerks Local No. 7, Retail Clerks International Association, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

All our employees are free to become, remain, or refrain from becoming members of the above-named labor organization except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

HEIGHTS THRIFT-WAY, 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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. 534-4151, Extension 513.

**Worthington Corporation and United Steelworkers of America,
AFL-CIO, Petitioner. Case No. 22-RC-2897. October 7, 1965**

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Gordon L. Fine. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the 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 Jenkins].

Upon the entire record in this case,¹ the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.
4. The appropriate unit:

The Petitioner is seeking a unit of all office clerical, plant clerical, and technical employees of the Employer's pump and heat transfer division,² Harrison, New Jersey. Alternately, it requests separate units of clerical and technical employees at the Employer's P. & H.T. division, or a unit comprised of all clerical and technical employees located at both the Employer's P. & H.T. division and its administrative offices in Harrison, New Jersey. The Employer contends that the first two units requested by Petitioner are inappropriate. It agrees

¹ The Petitioner and the Employer filed briefs with the Board which have been duly considered.

² Hereinafter referred to as P. & H.T. division.