

Holyoke Cinema Shops, Inc.; Miracle Mart, Inc. (a Michigan corporation); Miracle Mart, Inc. (a Pennsylvania corporation); Miracle Mart, Inc. (an Indiana corporation); Miracle Mart, Inc. (a Virginia corporation); Miracle Mart of Kingston, Inc.; Miracle Mart of Detroit, Inc.; Miracle Mart of Joy, Inc.; Miracle Mart of Warren, Inc.; Miracle Mart of Johnstown, Inc.; Miracle Mart of Muskegon, Inc.; Miracle Mart of Muncie, Inc.; Allen Fur Company, Inc. d/b/a Miracle Mart; Riga, Inc. d/b/a Franklin Discount Department Store and Retail Clerks International Association, AFL-CIO

Amalgamated Clothing Workers of America, AFL-CIO; Central States Joint Board, Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL-CIO; Kentuckiana Joint Board, Amalgamated Clothing Workers of America, AFL-CIO (Holyoke Cinema Shops, Inc., *et al.*) and Local 1441, Retail Clerks International Association, AFL-CIO.
Cases Nos. 25-CA-1432 and 25-CB-467. November 12, 1965

SUPPLEMENTAL DECISION AND ORDER

On November 26, 1962, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,¹ finding that the Respondent, Holyoke Cinema Shops, *et al.*, herein called the Company, and the Respondent Unions, herein called Amalgamated, had not engaged in certain conduct in violation of the National Labor Relations Act, as amended, and dismissed the complaint in its entirety. Thereafter, on December 12, 1963, the Court of Appeals for the District of Columbia remanded the proceeding to the Board for the purpose of taking further testimony.² On March 6, 1964, the Board issued an order reopening the record in this proceeding and directing that a further hearing be held for the purpose of receiving further evidence in conformity with the court's remand.

On January 21, 1965, Trial Examiner C. W. Whittemore issued his Supplemental Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices as alleged in the complaint and recommending that they cease and desist therefrom and take certain affirmative action, as set out in the attached Trial Examiner's Supplemental Decision. Thereafter, Amalgamated filed exceptions to the Trial Examiner's

¹ 139 NLRB 1321.

² 326 F. 2d 663 (C.A.D.C.), cert. denied 377 U.S. 981.

155 NLRB No. 71.

Supplemental Decision and a brief in support thereof; the Charging Party filed an answering brief to Amalgamated's exceptions, and the General Counsel filed a brief in support of the Trial Examiner's Supplemental Decision.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman McCulloch and Members Brown and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the reopened hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this proceeding including the Trial Examiner's Supplemental Decision and the exceptions and briefs, and finds merit in certain of the exceptions of Amalgamated. Accordingly, the Board adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent that they are consistent with this Decision and Order.

The Company operates a chain of discount stores and, in early August 1961, was in the process of opening a new store in Muncie, Indiana. The Company hired a number of new employees prior to the opening of this store; on August 2 it hired one Howard, an organizer for Amalgamated, and, on August 7, it hired two other Amalgamated organizers, Ice and Denham. On August 15, on the basis of an independent card check which indicated that Amalgamated represented a majority of the employees at the Muncie store, the Company recognized Amalgamated as bargaining representative of these employees. On August 16 the Company signed a union-security contract with Amalgamated. During this same period of time the Retail Clerks, the Charging Party herein, contending that the Muncie store was an accretion to the unit represented by the Retail Clerks at the Company's Fort Wayne store, 65 miles from Muncie, requested recognition as representative of the Muncie employees and sought permission to "sign the employees." The Company, however, refused to grant these requests by the Retail Clerks.

On July 19, 1962, Trial Examiner Whittemore issued his original Intermediate Report, finding that on August 1, 1961, Breihof, the Company's general manager and labor relations director, agreed with Ungar, a representative of Amalgamated, that the Company would hire three women Amalgamated organizers to do "quiet, efficient organizing"; that pursuant to that agreement, Amalgamated Organizers Howard, Ice, and Denham were hired by Store Manager LaVictor; that although Breihof was aware of the organizing activity of these three employees, he did nothing to interfere with it; and that the Company refused "similar assistance" to the Retail Clerks. The Trial Examiner accordingly found that by the foregoing conduct and by entering into a union-security contract with Amalgamated "under

such conditions," the Company violated Section 8(a) (1), (2), and (3) of the Act; and that by entering into such contract with the Company, Amalgamated violated Section 8(b) (1) (A) and (2).

The Board reversed the Trial Examiner's findings and dismissed the complaint. The Board found that, even assuming that the Company entered into an agreement to hire the Amalgamated organizers, the record did not establish that the organizers were hired pursuant to such agreement; that instead the organizers were hired in the normal course of the Company's business; and that the agreement to hire the organizers, even if it existed, would not in itself be unlawful since, at most, it indicated an intent by the Company to violate the Act, which under Board precedent was not unlawful.³ The Board further found that the record did not establish that the Company had knowledge of any organizing activity by employees on behalf of Amalgamated either during working time or on company premises; that the Company did not unlawfully refuse access to Retail Clerks to its Muncie employees; and that, in view of the foregoing and as the record established that Amalgamated represented a majority of the Company's employees when the Company and Amalgamated entered into a union-security contract, the Respondents did not violate the Act by entering into such agreement. In view of these findings the Board deemed it unnecessary to decide whether in fact on August 1 Breihof and Ungar entered into an agreement to hire union organizers.

In its remand of this proceeding to the Board, the court of appeals stated that, if a conspiracy to organize the store existed, "further proof of its effectiveness is not required to establish violations of Sections 8(a) (1), (2), and (3), and 8(b) (1) (A)," since "such a conspiracy would inevitably, in some degree at least 'interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7,' and 'interfere with the formation or administration of any labor organization.'" The court accordingly directed the Board to take the testimony of Ungar and LaVictor, who had not testified at the original hearing, and "any other testimony which may assist the Board in determining whether or not a conspiracy . . . did in fact exist." The court did not otherwise disturb any of the findings in the Board's original Decision and Order.

Pursuant to the court's remand, a reopened hearing was held on July 19, 1964, during which Ungar and LaVictor testified. The Trial Examiner in his Supplemental Decision found that an "arrangement" existed between Breihof and Ungar to hire three Amalgamated organizers and he therefore reaffirmed his original conclusion that the Company violated Section 8(a) (1), (2), and (3) of the Act and that Amalgamated violated 8(b) (1) (A) and (2).

³ *B. M. Reeves Company, Inc.*, 128 NLRB 320.

As noted, the court remanded this proceeding to the Board to determine whether in fact the Company and Amalgamated conspired that the Company would hire three Amalgamated organizers who would engage in organizing activity among the Company's employees. The only evidence tending to establish that such conspiracy existed was the testimony of Breihof and LaVictor. Thus, at the original hearing, Breihof testified that: On August 1, 1961, he met with Ungar who told him that Amalgamated was going to try to organize the Muncie operation; Ungar requested that Breihof hire three women organizers who were experienced discount girls and who would do a quiet, efficient job of organizing the store; Breihof told Ungar to arrange that the girls come to him personally when they reported to the store; at that time Ungar told him that the name of one of these girls was Howard and on the following day he gave him the names of Denham and Ice; and Howard was hired without Breihof's knowledge and when the other two girls reported, Breihof sent them to LaVictor who hired them. At the reopened hearing, LaVictor testified that: Breihof told him "to hire three specific people [Howard, Ice, and Denham] by name"; Breihof never gave him instructions to hire any other employees by name; Breihof did not tell him why these persons were to be hired, but that he "assumed they were union organizers"; and he interviewed and hired each of the three Amalgamated organizers.

Although Ungar at the reopened hearing denied that he entered into any agreement with Breihof, or indeed that he had seen Breihof during the period in question, the Trial Examiner in effect credited the testimony of Breihof and LaVictor and discredited the testimony of Ungar. These credibility resolutions were, except in part with respect to the discrediting of Ungar,⁴ not based on the demeanor of the witnesses. Thus, in his original Intermediate Report, the Trial Examiner credited Breihof's testimony on the ground that it was "undisputed" and that it was "corroborated by certain sworn statements . . . properly characterized as admissions against interest," and in his Supplemental Decision, the Trial Examiner credited LaVictor's testimony as being "consistent with the undisputed testimony of Breihof at the original hearing."

While Breihof's testimony at the hearing was consistent with an affidavit given by Breihof to a Board agent on November 7, 1961, his testimony was inconsistent in relevant respects with the earlier affidavit which Breihof gave to a Board agent on September 13, 1961, less than a month after the contract between the Company and Amalgamated was signed. Thus, Breihof's first affidavit states that no agreement was made with Amalgamated "which permitted them to

⁴The Trial Examiner discredited Ungar's denial on the grounds that the "perfunctory delivery of his denial was far from persuasive"; and that the fact that Ungar was not called at the original hearing to dispute Breihof's testimony "militates against crediting his belated denial."

enter the store and organize employees." At the hearing, on the other hand, he testified that he agreed with Ungar that the Company would hire three Amalgamated organizers who would engage in organizing at the store. Further, in his first affidavit, Breihof denied that the Company had knowledge that any employee was an agent of a labor organization at the time she was hired, while at the hearing he testified that he sent Denham and Ice to Store Manager LaVictor who hired them. At the hearing, Breihof testified that those portions of his first affidavit inconsistent with his testimony were not true, and he offered no explanation for having made false statements in his first affidavit.⁵

Breihof's testimony, as amplified by his second affidavit, which he reaffirmed at the hearing, was also inconsistent with LaVictor's testimony. Breihof testified that he did not tell LaVictor of the conspiracy, that he did not give him the names of the three organizers, and that except to tell Dunham and Ice to see LaVictor, he did not interpose himself in the hiring process in order to make certain that any of the three organizers be hired. LaVictor, on the other hand, testified that Breihof told him the names of the three organizers and instructed him to hire them. Breihof's testimony is also inconsistent with that of Union Organizers Ice and Denham. Breihof testified that Ice and Denham came into the store on August 7, that they introduced themselves by name to Breihof who sent them to LaVictor, and that LaVictor hired them without any word from Breihof. Ice and Denham, on the other hand, testified that they did not speak to Breihof prior to their being hired by LaVictor.⁶

⁵ As noted, the Trial Examiner stated that Breihof's testimony was corroborated by Breihof's sworn statements, "properly characterized as admissions against interest." The Trial Examiner presumably referred to Breihof's affidavit of November 7, 1961, in which he admitted that the Company had engaged in unfair labor practices by entering into a conspiracy with Amalgamated. We note, however, that the record establishes that in July 1961 counsel for the Company agreed with a representative of the Retail Clerks that the Company would recognize the Retail Clerks as representative of the Muncie employees but that Breihof did not know of this agreement when he signed the contract with Amalgamated; on September 27, 1961, approximately 1 month after he had entered into the agreement with Amalgamated, Breihof sent a letter to Amalgamated requesting it to void its contract with the Company and to ask for an election at the Muncie store; and the Company did not file exceptions to the original Intermediate Report in which the Trial Examiner found that it violated Section 8(a)(1), (2), and (3), it was not represented at the reopened hearing, and it filed no exceptions to the Trial Examiner's Supplemental Decision reaffirming his earlier findings that the Company had committed unfair labor practices. In view of these circumstances, although technically Breihof may have admitted that the Company had engaged in an unfair labor practice, we are not convinced that it was against what Breihof considered to be his and the Company's interest at the time he gave the second affidavit for Breihof to admit that he had acted unlawfully in conspiring with Amalgamated and in granting it recognition.

⁶ In connection with a related incident, Breihof testified that in order to further fulfill his agreement with Ungar, he ordered LaVictor not to lay off Howard during a temporary layoff, which occurred around August 4, prior to the hire of the other two organizers. Ice and Denham and a third organizer testified, however, that Howard told them that she had been laid off, that Howard was with them away from the store during working hours during the layoff, and that Howard returned to work after the layoff.

The Trial Examiner, as noted, credited LaVictor's testimony at the reopened hearing on the grounds that it was "consistent with the undisputed testimony of Breihof at the original hearing." LaVictor's testimony tends to corroborate that of Breihof only to the extent that LaVictor's testimony presupposes that Breihof had entered into a conspiracy with Amalgamated.⁷ However, for the reasons already stated, LaVictor's testimony is inconsistent in material respects with the testimony of Breihof. Further, LaVictor's testimony was inconsistent with the testimony of Ice and Denham in that LaVictor testified that he was told by Breihof to hire Howard, Ice, and Denham and that he interviewed and hired each of the three Amalgamated organizers. Ice and Denham, on the other hand, denied that they mentioned their names to LaVictor, prior to their being hired. In addition, LaVictor testified at the reopened hearing that prior to the original hearing he had given affidavits to a Board representative on September 29 and October 31, 1961;⁸ that nowhere in these affidavits did he state, as he testified at the hearing, that Breihof instructed him to hire three named individuals and that he first told a Board representative that Breihof had given the names to him shortly before the reopened hearing.⁹

To summarize: The only evidence establishing that the Company and Amalgamated entered into an unlawful conspiracy was the testimony of Breihof and LaVictor; the Trial Examiner did not credit this testimony on the basis of the demeanor of these witnesses but rather because the testimony was "undisputed"; however, the testimony of Breihof and LaVictor was not only mutually inconsistent but was also inconsistent in significant respects with respective prehearing affidavits and with the testimony of Union Organizers Ice and Denham; and the Trial Examiner did not deal with these inconsistencies in either his original Intermediate Report or his Supplemental Decision.

On the basis of the foregoing and the record as a whole, and unlike the Trial Examiner, we believe that neither Breihof nor LaVictor is a credible witness.¹⁰ As there is no other credible evidence upon which

⁷ We note, however, that LaVictor was not present when Breihof allegedly entered into the conspiracy and that he did not testify that Breihof told him that Breihof had entered into a conspiracy with Amalgamated.

⁸ These affidavits are not in evidence.

⁹ We also note that LaVictor's testimony is also inconsistent in other respects with that of Lewis, a representative of the Retail Clerks. Thus, LaVictor denied that he had a discussion with anyone regarding union organization at the Muncie store. Lewis, however, testified that on August 15 he spoke to LaVictor at the Muncie store regarding the Retail Clerks' assertion that the Muncie store was an accretion to the Fort Wayne contract and "requested permission to sign the employees", and that when he returned to the store the next day about the same matter he again talked to LaVictor who turned him over to another company official.

¹⁰ The Trial Examiner, as noted, discredited, partly on grounds of demeanor, the testimony of Ungar who denied that Breihof and he entered into a conspiracy to hire Amalgamated organizers. Although we do not reverse this credibility resolution by the Trial Examiner, the discrediting of Ungar does not establish the credibility of the witnesses who gave testimony contrary to his (*Que Enterprises, Inc.*, 140 NLRB 1001, 1003); nor does it constitute affirmative proof of a conspiracy upon which a finding of a violation of the Act could be based.

an affirmative finding of a conspiracy could be based, we find that the General Counsel has failed to establish by a preponderance of the credible evidence that the Company conspired with Amalgamated in violation of the Act. Since we find that there was no conspiracy between the Company and Amalgamated that the Company would hire Amalgamated organizers, we further find that by hiring these organizers, the Company did not violate the Act. We shall also reaffirm, for the reasons stated in our original decision, our original findings, which were not disturbed by the court of appeals, that the Company did not otherwise engage in conduct violative of the Act. As we have found that the Respondents did not violate the Act, we shall reaffirm our original Order dismissing the complaint in its entirety.¹¹

[The Board dismissed the complaint.]

¹¹In view of our disposition of this case, we find it unnecessary to rule on the Amalgamated's contentions that the Trial Examiner was in error in rejecting certain of Amalgamated's exhibits at the hearing and by refusing to grant in full Amalgamated's motion to correct the transcript.

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

On July 19, 1962, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-cited cases, finding that the Respondents had violated Section 8(a)(1), (2), and (3) and 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended. On November 26, 1962, the National Labor Relations Board issued its Decision and Order, reversing the Trial Examiner and dismissing the complaint in its entirety.¹ (139 NLRB 1321, 1324).

On December 12, 1963, the United States Court of Appeals for the District of Columbia remanded, directing that the Board take "testimony of Ungar and LaVictor, together with any other testimony which may assist the Board in determining whether or not a conspiracy to violate the sections of the Act in suit did in fact exist. If the Board finds that such a conspiracy did exist, it will provide appropriate remedies." (326 F. 2d 663)

On March 6, 1964, the Board issued its order reopening record and remanding proceeding to Regional Director for further hearing, directing that a "further hearing be held before a Trial Examiner for the purpose of receiving additional evidence consistent with the Court's decision" and that "upon conclusion of such further hearing, the Trial Examiner shall prepare and serve upon the parties a Trial Examiner's Supplemental Decision, containing findings of fact upon the evidence received pursuant to the provisions of this Order, conclusions of law, and recommendations."

On October 8, 1964, the Regional Director for Region 25 issued his order and notice of hearing. On October 22, 1964, he issued an order rescheduling hearing Pursuant to the last-mentioned order, a hearing was held on December 7, 1964, in Indianapolis, Indiana, before me.

At the reopened hearing all parties except the Respondent Company were represented by counsel and were afforded full opportunity to present evidence consistent with the court order, cited heretofore, to argue orally, and to file briefs. Oral argument was waived. Briefs have been received from all parties appearing at the reopened hearing and have been fully considered.²

¹On February 4, 1963, the Board modified its decision, disavowed the Trial Examiner's finding that three women organizers for the Amalgamated were hired to organize pursuant to an agreement between Ungar (an Amalgamated representative) and Breihof, then the Respondent Company's labor relations director. On the contrary, the Board specifically found that "these three individuals were hired by Store Manager Lester LaVictor in the normal course of the Company's business."

²Accompanying the brief from the Respondent Unions was a motion to correct the transcript in minor particulars. No objection having been received from other parties, said motion is hereby granted.

Upon the record thus made, and from his observation of the witnesses, I make the following:

FINDINGS OF FACT

The single question now before me for resolution appears to be whether or not "a conspiracy to violate the sections of the Act in suit did in fact exist."³

In my Intermediate Report I found, on the basis of Breihof's undisputed testimony and certain written admissions against interest, as follows, in part.

(1) Breihof first came to Muncie in July, to oversee the preparations for opening a new store in that city. He transferred Lester LaVictor from the Fort Wayne, Indiana, store to be resident manager at Muncie.

(2) About August 1, Breihof met with Max Ungar, a representative of the Respondent Central States. Ungar requested and Breihof granted permission to have three women organizers, who were also experienced "discount girls," put on the Muncie payroll and do "quiet, efficient" organizing.

Neither LaVictor nor Ungar was called to testify at the original hearing.

Based upon the credible testimony of LaVictor at the reopened hearing, which is consistent with the undisputed testimony of Breihof at the original hearing, I now find:

(1) As the store manager at Muncie he was, at times material, required to follow the instructions of Breihof, his superior.

(2) Just before the Muncie store opened for business LaVictor was instructed by Breihof to "hire three specific people," whom he identified as Howard, Ice, and Denham. (These are the same three individuals found previously by me to have been hired pursuant to the "arrangement" between Ungar and Breihof.)

(3) Although Breihof did not tell LaVictor why these three were to be hired, the store manager "assumed," according to his testimony, that they were union organizers, and as instructed he hired them.

(4) Neither before nor after this single occasion did LaVictor receive from Breihof instructions to employ specific individuals.

As a witness at the reopened hearing Ungar, called by General Counsel, admitted: (1) that he was in Muncie for a "day or two" in the latter part of July or the first of August 1961, and (2) that he "discussed" organization of the store with Howard, Ice, and Denham. He denied, however, that he met Breihof in Muncie and that he discussed with him the hiring of Howard, Ice, and Denham.

Conclusions of Fact

I cannot and do not believe Ungar's denial that he discussed with Breihof the hiring of the three organizers. The perfunctory delivery of his denial was far from persuasive. Relevant circumstances, including the fact that he was not called by the Respondent Unions at the original hearing to dispute any detail of Breihof's testimony which plainly had placed him in the role of an alleged coconspirator, militate against crediting his belated denial. Other testimony of Ungar adds support to the conclusion that the "arrangement" between himself and Breihof was precisely as Breihof described it at the original hearing—to the effect that the three above-named girls would be hired. Ungar said that he instructed another individual, one Pat Crist, to help organize the Muncie store employees, and to apply there for a job, but that upon applying she was not hired.

In short, I conclude that the credible testimony of LaVictor further supports the finding in the original Intermediate Report to the effect that an "arrangement" existed between Breihof and Ungar to hire the three named organizers for the purpose of organizing the Muncie store. And under the circumstances noted in the Intermediate Report, including the fact that a similar privilege was denied the Charging Union, it is concluded that the "purpose" of the "arrangement" was unlawful. Finally, to use the terms of the court remand, I conclude that a conspiracy to violate the sections of the Act in suit did in fact exist.

³ Quoted language is, as previously noted, from the court's remand. In its Order the Board directed me to take evidence "consistent with the court's decision." It is considered that by its direction the Board in this case relieves me of the duty I was specifically reminded of in *The Prudential Insurance Company of America (Insurance Agents' International Union, AFL-CIO)*, 119 NLRB 768: to follow its precedents until the Board itself or the Supreme Court overrules them. For the Board, in its decision, stated "We do not agree" with the Trial Examiner's findings that Breihof and Ungar did agree to put three women organizers on the Muncie store payroll to organize the employees in the Amalgamated—although in a footnote it added, "we deem it unnecessary to decide whether in fact Breihof and Ungar entered into an agreement."

Upon the foregoing findings and conclusions of fact, and pursuant to the Board's remand order, I make the following:

CONCLUSIONS OF LAW

Since the foregoing findings and conclusions of fact further support the conclusions of law already reached by me, they are reaffirmed and are hereby incorporated by reference.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, I reaffirm my original recommendations and hereby order them incorporated by reference in full, including the text of the notices to be posted appearing as appendixes thereto, and excepting only the following paragraph, which is to be substituted for the final paragraph in the Intermediate Report.

"Notify the Regional Director for Region 25, in writing, within 20 days from the date of the service of this Trial Examiner's Supplemental Decision, what steps have been taken to comply herewith."

Shapiro Packing Company, Inc. and Meat Cutters, Packing House and Allied Food Workers, District Union 433. *Case No. 10-CA-5915. November 15, 1965*

DECISION AND ORDER

On July 9, 1965, Trial Examiner Louis Libbin issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in his attached Decision. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent and the Charging Party filed exceptions to the Trial Examiner's Decision and Respondent filed a supporting brief.¹

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 [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 and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

¹ Respondent's motion to dismiss the Charging Party's exceptions, taken to the recommended dismissal of the 3(a)(5) allegation, is hereby denied.

² In concluding that the Union did not represent a majority of the employees at the time it requested recognition, the Trial Examiner ruled that the union authorization card of employee Lonnie Buzzle was not valid for purposes of determining the Union's majority status because Buzzle testified that he had signed his card on the basis of a statement by the union solicitor that a majority of or practically everybody had signed such a card, a statement which was incorrect. As we do not regard Buzzle's card to be determinative of majority status, we find it unnecessary to decide whether the exclusion was proper.