

rather than to employees represented by Local 472, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO.

LOCAL 300, UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPEFITTING
INDUSTRY OF THE UNITED STATES AND CANADA,
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.

Employees may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. Market 4-3088, if they have any questions concerning this notice or compliance with its provisions.

Wenatchee Thrifty Drugs, Inc. and Retail Store Employees Local 631, Retail Clerks International Association, AFL-CIO. *Cases Nos. 19-CA-2687 and 19-CA-2812. November 15, 1965*

SUPPLEMENTAL DECISION AND ORDER ¹

On July 27, 1965, Trial Examiner Martin S. Bennett issued his Supplemental Decision in the above-entitled proceedings, 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 the attached Trial Examiner's Supplemental Decision. The Trial Examiner further recommended that certain allegations of the complaint be dismissed. Thereafter the Respondent filed limited exceptions to the Supplemental Decision and a supporting brief. The General Counsel and the Charging Party likewise filed limited exceptions with supporting briefs. An answering brief was thereafter filed by the Respondent.

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].

¹ See *Wenatchee Thrifty Drugs, Inc.*, 151 NLRB 752, wherein the Board overruled the Trial Examiner's recommended dismissal of the complaint for alleged lack of Board jurisdiction and remanded the case to the Trial Examiner for a decision on the merits.

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 Supplemental Decision and the entire record in this case,² including the exceptions and briefs, and hereby adopts the findings, conclusions,³ 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 the Respondent, Wenatchee Thrifty Drugs, Inc., Wenatchee, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

IT IS FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations not found herein.

² The record herein includes pleadings, the transcript of testimony, and the exhibits considered in connection with *Wenatchee Thrifty Drugs, Inc.*, *supra*. The name of the employee to whom the Trial Examiner refers as "Hoggatt" is spelled "Hoggart" in the transcript.

³ No exceptions were filed by the General Counsel or the Charging Party with respect to the Trial Examiner's failure to find that Respondent's interrogation of its employees was violative of Section 8(a)(1) of the Act. Nor were exceptions taken by the Respondent to the Trial Examiner's finding that Respondent had violated Section 8(a)(5) of the Act.

Regarding the cases of Waite and Hoggart alleged to have been unlawfully discharged, it is noted that when Respondent laid off these same employees in 1963, because of a business slowdown and prior to the advent of the Union, it also employed part-time student help.

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

This matter was heard before Trial Examiner Martin S. Bennett at Wenatchee, Washington, on September 10, 1963, and April 23, 1964. Various procedural steps are described in *Wenatchee Thrifty Drugs, Inc.*, 151 NLRB 752, reversing a dismissal by the Trial Examiner on jurisdictional grounds and remanding for a supplemental decision on the merits. The complaints¹ allege that Respondent, Wenatchee Thrifty Drugs, Inc., has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), (4), and (5) of the Act. A brief has been submitted by Respondent.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

The operations of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act. *Wenatchee Thrifty Drugs, Inc.*, 151 NLRB 752.

II. THE LABOR ORGANIZATION INVOLVED

Retail Store Employees Local 631, Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

¹ The initial complaint is dated August 23, 1963, and is based upon charges filed by Retail Store Employees Local 631, Retail Clerks International Association, AFL-CIO, herein called the Union, on August 1 and 8, 1963. The later complaint issued March 24, 1964, and is based upon charges filed January 17, February 10, and March 9, 1964.

A. Introduction; the issues

Respondent operates a large drugstore in Wenatchee, Washington, and, at the time material herein, employed 2 pharmacists, 10 to 12 lunch counter employees, 1 office worker, and 7 clerical or sales personnel. The latter perform various shelf stocking, sales, and cashier functions and the Union commenced organizational activity in this previously unorganized group in July 1963.

The complaint alleges that Respondent: (1) On and after July 24, 1963, refused to bargain with the Union as the representative of the sales personnel; (2) engaged in unlawful interrogation and uttered threats to employees in July and August 1963; (3) discriminated against Ollie Waite by reducing her hours of work after August 1, 1963, because of her union activities; and (4) discharged Ollie Waite and Lena Hoggatt on January 5, 1964, because of their union activities and because they had appeared at a Board hearing for the purpose of testifying.

B. Refusal to bargain, interference, restraint, and coercion

1. Sequence of events

On July 24, 1963, Paul Rickman, executive officer of the Union, wrote to Store Manager Gail Hayes, undisputedly a supervisor, as follows. ²

This letter is to advise you that as of this date a majority of your employees who are in the jurisdiction of our Union, have joined this organization and accordingly have petitioned us to represent them for the purpose of collective bargaining and associated problems.

We are writing you, first of all, to give notice that we do represent the majority of these employees (and herewith submit proof of our representation); secondly, that we wish to advise you of the restraints established by the Federal Government, which make it illegal for an employer or his agent to willfully coerce, discriminate, or in any way discourage membership in, activity for, or securing membership in the designated Union. Since we have dealt successfully with many employers throughout this Central Washington District without the necessity of Labor-Management problems, we have found that we can avoid embarrassment of all parties concerned by advising the employer of these legal restrictions, in order that he does not inadvertently violate the law and create a problem when there is no necessity for such a problem to develop. [Emphasis supplied.]

We would appreciate it if you would advise us as to whether or not you have authority, to represent the Company for purposes of collective bargaining and the establishment of Union policies; or in event that you do not have such authority, that you would advise us of the person or persons who do take care of this particular phase of your retail operations.

We do not intend in any way to cause you embarrassment or disrupt any segment of the harmony that you would ordinarily enjoy in your store except to the extent that we are forced to take legal and economic action in event that you elect to disregard our notification or rights to represent the employees.

Please advise at your earliest opportunity.

The General Counsel has introduced into evidence authorization cards signed by five of the seven sales employees between July 18 and 24, 1963. These are Joanne Field, Lena Hoggatt, Lila Whittaker, Evelyn Gilbert, and Ollie Waite.³

This letter of July 24 was not answered. Certain conduct by Manager Hayes after receipt of the letter appear below. On July 30, Rickman again wrote to Hayes as follows:

To my surprise, and after our advising you of the regulations governing coercion, intimidation, and other acts by management to discourage Union membership, we have been advised that you not only captively called in the employees known to be Union members and interrogated them, but further actively and personally advised them that they could have gotten Union conditions had they first come to you. This, among the other reports we have heard is disheartening for it leaves us the impression that you are choosing a route of dissension, unfair labor charges, and internal strife because of your misconduct and handling of our good faith submission to verify our majority representation.

² Hayes' name also appears as Hays.

³ Hoggatt also appears in the transcript as Hoggart. Whittaker's first name appears in the transcript as Laverne. It would seem that the "proof of representation" reference in the July 24 letter was to the enclosure of photostatic copies of these five cards.

We are forthwith taking action to secure affidavits in order to verify the reports that we have received; and if we find that these reports are accurate as reported, we shall undoubtedly find it necessary to file Federal charges against you and your firm and then proceed as we would in any case where an employer shows bad faith actively.

This is of no satisfaction to me to find this type of action necessary *after we attempted to peacefully prove our majorities, and peacefully enter into negotiations and peacefully conclude the negotiations* by your recognizing the rights of your employees. [Emphasis supplied.]

This letter of July 30 was followed by another on July 31 which stated as follows:

We now understand that you are planning to take a vacation as of the first of August; however, you have still not availed us of the information requested in our letter of July 24, 1963.

We know that you have been carrying on a regular campaign to discourage your employees and our members from their Union membership, and now feel that you may possibly take your vacation to *avoid your responsibilities to the recognition demands made by this Union*

We want to meet with you or your legal Labor Relations Representative to get answers to our previous letters, and further, to commence bargaining; unless you intend to refuse to bargain along with your other violations of the law. [Emphasis supplied.]

Please advise.

There is no evidence that Respondent even replied to any of these communications and I find that it did not.

Joanne Field uncontrovertedly testified that about 1 week after she signed her card, Manager Hayes summoned her to his office and displayed photostatic copies of the signed cards; these, I find, were furnished to Hayes by the Union and received by him together with the July 24 letter. Hayes stated that ". . . we would all be sorry that we joined the Union, that they didn't follow through on their promises. . . ."

About 1 week later, Hayes again spoke with Field and told her that if the Union entered the store "he would have to cut back his help" because he could not afford the wages the Union "would require." He stated that Ollie Waite, Lena Hoggatt, and Field, the latter because of her pregnancy, would be laid off. Field had previously been told by Hayes that she could continue working as long as she was able to handle her job. She worked until November 1963, the seventh month of her pregnancy; thus, she was approximately in the fourth month of her pregnancy at the time of this conversation.

Lena Hoggatt uncontrovertedly testified that Hayes summoned her to his office on July 26. He had a letter in his hand and announced that, according to the letter, Hoggatt had joined the Union on July 24, this manifestly was a reference to the photostat of her card which showed a July 24 signature. He asked her "what about the Union" and when she had joined. She replied that she had joined "The night of the meeting." Hayes expressed disappointment over the secrecy of the matter and asked how much it had cost to join; Hoggatt replied that the sum was \$1.50. Hayes then stated that her initiation would ultimately cost her \$55 and ended the interview. Shortly thereafter, Hayes showed Hoggatt a union card, stating that he had once belonged to a union, that no one would tell him how to run his business, and that he would run it as he saw fit.

A threat is attributed by Hoggatt to one Paul Rath. While Rath receives a monthly salary substantially in excess of the wages earned by others in the unit, there is no evidence to support a finding that he is a supervisor within the meaning of the Act. Accordingly, no adverse findings are predicated upon the statements attributed to Rath.

Lila Whittaker uncontrovertedly testified that on or about July 26, Hayes asked what Whittaker expected to gain from the Union. Whittaker replied, "Job security" and spoke up in favor of unionized establishments. Hayes responded, "I don't want to have anyone here telling me how to run my business."

2. Appropriate unit and majority representation therein

The complaint alleges that all regular full-time and regular part-time employees of Respondent's Wenatchee store, excluding lunch counter employees, office clericals, pharmacists, professional employees, supervisors, guards, and the store manager, constitute a unit appropriate for the purposes of collective bargaining. The appropriate-

ness of this unit is not challenged in any specific respect and I find that it is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

There were seven clerical employees in said unit as of July 26, 1963, the approximate date of receipt of the Union's first letter of July 24. According to Hayes, these were the above-mentioned Gilbert, Hoggatt, Waite, Field, and Whittaker, plus Violet Nyce and Paul Rath; Rath, I find, is properly includable in the unit. The cards of the first five were duly identified either by the signers or by Executive Officer Rickman of the Union and, in any event, were received in evidence without objection. I find that there is no serious challenge to the authenticity of the signatures. Indeed, Hayes promptly spoke with some of the signers who authenticated their signatures and proceeded to voice their support of the Union.

I find, therefore, that the cards are reliable evidence of the wishes of the respective signers and that they constitute trustworthy evidence that five of the seven in the unit had duly designated the Union as their bargaining representative. I further find that on and after July 24, 1963, the Union has been and now is the representative of the employees in said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. Conclusions as to the refusal to bargain

A consideration of the three union communications to Respondent on July 24, 30, and 31 readily discloses that in one form or another they constituted demands for recognition and the commencement of bargaining. Thus, the July 24 letter announced that the Union represented a majority of the employees and five cards, proof of such representation, were submitted therewith. The July 30 letter, while expressing dismay over the questioning of employees, referred to the Union's "good faith submission" of its "majority representation." If further referred to the Union's desire to "peacefully prove our majorities" and its wish to "conclude the negotiations by your recognizing the rights of your employees." Again, on July 31, the Union expressly asked to "meet with you" and "commence bargaining."

These communications all went unanswered although Manager Hayes immediately took steps to ascertain the authenticity of the signatures as well as to express his opposition to unionization. I find that by this course of conduct, Respondent, without any doubt of the union majority, ignored and evaded its obligations under the Act to recognize the majority representative of its employees. I further find that, on and after July 26, 1963, the approximate date of its receipt of the Union's initial demand for recognition, Respondent has refused to bargain with the Union and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and, derivatively, Section 8(a)(1) of the Act.

4. Conclusions as to interference, restraint, and coercion

The statements attributed to Hayes, with one exception, constitute expressions of opinion and are devoid of threats or promises of benefit. Hence, no adverse findings of unfair labor practices are directly predicated thereon. The one exception is the uncontroverted statement attributed to Hayes by Joanne Field that if the Union came into the store, three persons including herself would be terminated.⁴

While this is an isolated incident, it appears to be Board policy that a threat of this nature, as contrasted with an isolated act of interrogation, warrants a Board order. I find, therefore, that in this one respect Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

C. Alleged discrimination

The General Counsel alleges that on and after August 1, 1963, and because of her union activities, Respondent provided Ollie Waite with less employment than she normally would have received. Waite testified that she normally worked 4 or 5 days a week on a 7-hour basis, this totalling 28 or 35 hours a week. The thrust of this particular allegation appears to be that Waite was scheduled to be off approximately the last 3 days in July and that Hayes then proceeded to give her 3 additional days off; this, according to Waite, an employee since February 1961, had not happened previously. It did not happen again prior to her layoff in January 1964.

⁴I construe the statement to Field to mean that her anticipated departure because of pregnancy would be accelerated.

Hayes uncontrovertedly testified that employee Hoggatt had requested this change in schedule, that he did this to accommodate Hoggatt, and that he assumed Waite did not quarrel with the decision. Hoggatt was not questioned concerning the matter. At best, this amounts to giving several days of work to one known union member rather than to another known union member. I detect no substantial evidence to support this contention of the General Counsel.

The complaints further allege that Respondent discharged Waite and Hoggatt on January 5, 1964, because of their union activities and because they were subpoenaed to appear at a Board hearing. As for union activities, the record discloses that they signed union cards in July 1963, and that Respondent was advised thereof. The prior Board hearing was held on September 10, 1963, and both Waite and Hoggatt, and for that matter also Whittaker, were subpoenaed to attend and did attend.⁵

It is undisputed that Waite and Hoggatt were laid off on January 5, 1964, after the Christmas rush season; that business was slow, consistent with the season; and that these two employees had been laid off together in similar fashion in 1963 prior to the advent of the Union upon the scene. Indeed, Hoggatt's 1963 layoff lasted until June. There is also evidence that in 1964 Respondent was operating with one less pharmacist than in 1963.

The record discloses that the ages of these two employees were respectively in the mid-50's and 62 years and that, because of Respondent's expanded sales area, younger employees were deemed more efficient to handle sales duties in the two-floor store. The matter is not free from doubt because Respondent did hire a new employee, Joy Gundmunson, on December 20. On the other hand, this employee was a high school student who worked only one 7-hour day a week. In addition, another employee, Kathy Jones, a college student, started work on January 7 on the basis of a 20-hour week.

The record does not disclose what took place after April 23, 1964, the date of the second hearing in this matter. And, as noted, Hoggatt's 1963 layoff lasted until June. If speculation and some residual doubt were to prevail, a finding might be made for the General Counsel. But my considered appraisal of the record impels the conclusion that a preponderance of the evidence is contrary to the position of the General Counsel. Accordingly, I shall recommend that these allegations of the complaint be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

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

I shall further recommend that Respondent, upon request, be ordered to bargain with the Union as the representative of its employees in the unit heretofore described concerning rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

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

CONCLUSIONS OF LAW

1. Wenatchee Thrifty Drugs, Inc., is an employer within the meaning of Section 2(2) of the Act.
2. Retail Store Employees Local 631, Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All regular full-time and regular part-time workers at Respondent's Wenatchee, Washington, store, excluding lunch counter employees, office clericals, pharmacists,

⁵ No testimony was taken on this occasion. The sole issue considered was the General Counsel's motion for judgment on the pleadings which was granted by me and subsequently reversed by the Board. Respondent presumably was then aware of their presence at the hearing room although the record shows only that Respondent now admits that they were present

professional employees, supervisors, the store manager, and guards constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act

4. Retail Store Employees Local 631, Retail Clerks International Association, AFL-CIO, has been since July 24, 1963, and now is, the exclusive representative of the employees in the above-described appropriate unit within the meaning of Section 9(a) of the Act.

5. By failing and refusing on and after July 26, 1963, to bargain in good faith with the Union as the representative of the employees in the above-described appropriate unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (5) of the Act.

6. By threatening employees with economic reprisals if the Union were selected to represent them, Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

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

8. Respondent has not otherwise engaged in unfair labor practices.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Respondent, Wenatchee Thrifty Drugs, Inc., Wenatchee, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain with Retail Store Employees Local 631, Retail Clerks International Association, AFL-CIO, as the exclusive representative of its employees in the appropriate unit described above.

(b) Threatening employees with economic reprisals if they select a union, or in any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or 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.

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

(a) Upon request, bargain collectively with the above-named labor organization as the exclusive representative of the employees in the above-described appropriate unit with respect to rates of pay, wages, hours of work, or other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its store at Wenatchee, Washington, copies of the attached notice marked "Appendix."⁶ Copies of said notice, to be furnished by the Regional Director for Region 19, shall, after being duly signed by Respondent, be posted by it immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of receipt of this Decision, what steps it has taken to comply herewith.⁷

⁶ In the event that 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. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

⁷ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps 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, upon request, bargain with Retail Store Employees Local 631, Retail Clerks International Association, AFL-CIO, as the exclusive representative of our employees in the unit described below, with respect to rates of pay, wages, hours of work, or other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The unit is:

All regular full-time and regular part-time employees at our Wenatchee, Washington, store, excluding lunch counter employees, office clericals, pharmacists, professional employees, supervisors, the store manager, and and guards.

WE WILL NOT threaten our employees with economic reprisals if they select a union, or in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or 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 National Labor Relations Act.

WENATCHEE THRIFTY DRUGS, 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, 327 Logan Building, 500 Union Street, Seattle, Washington, Telephone No. 682-4553.

International Union of Operating Engineers, Local No. 98, AFL-CIO (Consolidated Gas and Service Co.) and Albert A. Bavosi.
Case No. 1-CB-924. November 15, 1965

DECISION AND ORDER

On August 26, 1965, Trial Examiner Horace A. Ruckel issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel 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 [Members Fanning, Brown, and Jenkins].