ply, marking room, millinery workroom, corset alteration, receiving, shipping and delivery, and returned goods departments but excluding all selling employees, office clerical employees, employees represented by other labor organizations, guards, managerial employees, confidential employees and all supervisors, as defined in the Act.

SAKS AND COMPANY,
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, 881 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 828–7597.

Justesen's Food Stores, Inc., Justesen's Rosedale, Inc., and R. J. Agerton[1] ***and*** **Butchers Union Local 193, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO.** *Case 31–CA–74 (formerly 21–CA–6662). August 26, 1966*

DECISION AND ORDER

On March 28, 1966, Trial Examiner Samuel M. Singer issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He further found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Charging Party and the General Counsel filed exceptions to the Trial Examiner's Decision, and briefs in support of said exceptions, and the Respondents filed cross-exceptions and exceptions to said 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, Jenkins, and Zagoria].

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 entire record in this case, including the Trial Examiner's Decision, the exceptions, cross-exceptions, and briefs, and hereby adopts the Trial Exam-

[1] As explained in the remedy section of the Trial Examiner's Decision, his Order, which we adopt, is directed only against the two corporate Respondents.

iner's findings, conclusions, and recommendations, except to the extent modified herein.[2]

[The Board adopted the Trial Examiner's Recommended Order [3] and dismissed those portions of the complaint as to which no violations have been found.]

[2] In agreeing with the Trial Examiner's dismissal of that part of the 8(a)(5) allegation which concerns unilateral installation by the Respondents of a wrapping machine and resultant layoff of two employees in the Bakersfield unit, we do so because the Union, Party to the Contract and Charging Party here, failed to protest. Although advised of Respondents' unilateral action in December 1964, immediately after the layoffs of Couch and Manuel, the Union's sole protest came in June 1965 when it filed a first amended charge alleging that its bargaining contract with the Respondents required negotiations when "new" methods were introduced. At no time while attempting to bargain for a new contract—including a meeting with the Respondents in January 1965—did the Union raise this issue or in any way request the Respondents to bargain about it. At the hearing it alluded to the problem during a record discussion of the contract, but now, in its exceptions and brief, the Union has not urged that the Respondents' unilateral action exceeded the authority conferred by the new methods clause of the contract then in effect. In the circumstances we cannot find that the Respondents failed to bargain in good faith with respect to the installation of automatic machinery in the meat department and the layoff of employees See *Motoresearch Company,* 138 NLRB 1490, 1493.

In agreeing with the Trial Examiner that the January 1965 solicitations to employees Buckley and Brecht to withdraw from the Union constituted 8(a)(1) interference, restraint, and coercion; we note the timing of these conversations shortly after the unit had been cut from four to two by the economic layoffs of Couch and Manuel, as well as the fact that the suggestions were made, respectively, by managerial personnel who had hired the employee solicited.

[3] The address for Region 31, appearing at the bottom of the notice attached to the Trial Examiner's Decision, is amended to read: 215 West Seventh Street, Los Angeles, California 90014, Telephone 688–5850.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case was heard before Trial Examiner Samuel M. Singer at Bakersfield, California, on November 2, 1965, pursuant to charges and amended charges filed on various dates between April 27 and August 25, 1965, and a complaint issued August 31, 1965. The complaint alleged that Respondents violated Section 8(a)(1), (3), and (5) of the Act. Respondents have denied the commission of the alleged violations. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. All filed briefs.

Upon the entire record in the case,[1] the briefs, and my observation of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENTS

Justesen's Food Stores, Inc. (herein called Justesen's), is a corporation engaged in the retail sale of groceries, produce, and meats at its store located at 2800 River Boulevard, Bakersfield, California (herein called the River store). During the calendar year 1964, Justesen's had a gross volume of business in excess of $50,000. During the same period, it had an indirect inflow, in interstate commerce, of goods in excess of $50,000 from outside the State.

At the hearing the parties stipulated that from on or about April 1 to August 31, 1964, Justesen's and Agerton (the individual respondent) operated as a partnership the meat department in a store located at 10595 Rosedale Highway, Bakersfield, California (herein called the Rosedale store). The parties also stipulated that at all times

[1] As corrected by my order dated March 14, 1966.

material, until at least around August 31, 1964, Justesen's and Agerton were a single employer engaged in commerce within the meaning of the Act. It was further stipulated that from September 1, 1964, until February 1, 1965, Justesen's owned and operated the River and Rosedale stores as a single employer within the meaning of the Act.

Justesen's Rosedale, Inc. (herein called Rosedale), incorporated on February 10, 1965, has operated the Rosedale store since approximately that date. Anton J. (Bud) Justesen, William S. Glick, Wanda Justesen (Anton's wife) are president, vice president, and secretary, respectively, of Justesen's Rosedale, Inc., and Justesen's Food Stores, Inc. I find that at all times material the two corporations have been a single employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Butchers Union Local 193, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO (the Union), is a labor organization within the meaning of the Act.[2]

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

The issues in this case are:

1. Whether, by unilaterally installing automatic machinery in one of their stores and consequently laying off two emloyees, Respondents violated Section 8(a)(5) and (3) of the Act.
2. Whether Respondents also violated Section 8(a)(5) by refusing to meet and negotiate with the Union after expiration of their existing collective agreement.
3. Whether Respondents violated Section 8(a)(1) by soliciting employees to withdraw from the Union.

B. *Background; contractual relations between Respondents and the Union*[3]

When Justesen's acquired the River store in 1959, the meat deartment employees were already represented by the Union. On September 17, 1960, Justesen's and the Union signed a new collective agreement covering those employees. The agreement, effective (retroactively) from January 16, 1960, to January 15, 1965, provided that the Union was to represent all meat department employees "performing work under the jurisdiction of Local 193" in all existing or future meat markets of the employer.

During the period of the contract, Justesen's acquired a retail grocery and meat store in Lamont, California. After selling that store, it opened the Rosedale store on April 3, 1963. The parties applied the collective agreement to both stores. Thus, until expiration of the contract on January 15, 1965, employees at Rosedale (as well as Justesen's River store) were paid according to the contract; grievances were processed thereunder; and contributions to the pension and benefit fund were made as required by the contract.

The Rosedale meat department, originally operated by Justesen's, was operated jointly by Justesen's and Nathan Magnesi as partners from October 1, 1963, to March 28, 1964; Justesen's contributed the capital and handled the administrative work, while Magnesi contributed his services. From April 1 to August 31, 1964, the meat department was operated by a partnership, consisting of Justesen's and R. J. Agerton. On dissolution of that partnership, Justesen's again operated the department exclusively; however, Agerton remained as meat manager until he left around January 27, 1965. After incorporation of Justesen's Rosedale, Inc. (on February 10, 1965), that corporation operated the Rosedale meat department.

During the period here involved, the meat department force at Rosedale consisted of R J. Agerton and Terry Buckley. The meat department employees at the River

[2] In its answer and at the hearing, Respondents contended that they had "no information or belief" as to the status of the Union as a labor organization The very fact that Justesen's and the Union had negotiated, and for almost 5 years (including the period here material) operated under, a collective agreement governing the wages and working conditions of Respondents' employees (members of the Union) establishes the Union's status as a labor organization within the meaning of Section 2(5) of the Act

[3] Unless otherwise indicated, findings in this and in succeeding sections are based on substantially uncontradicted testimony or documentary evidence

store were Mattie Couch, Evelyn Manuel, and Edward Brecht; Vice President Glick managed the River department. All, including Glick and Agerton, were union members.

C. *The automation of meat wrapping operations and layoff of two employees*

In June or July 1964, Justesen's decided to purchase an automatic meat wrapping machine for its River store. Due to delays in delivery, the Corley-Miller machine it bought was not installed, however, until December 12, 1964 [4] At the end of that day, Company Vice President Glick called in the two River store meatwrappers, Manuel and Couch, and told them that because of the Company's "going automation" he would have to let them go Glick explained that the Company lost close to $5,000 the previous year and that, like other companies, it had to "modernize" and save labor costs "or get out." Because the two girls had worked for the Company for over 5 years, Glick gave them a week's extra pay plus vacation pay. Neither had been previously advised that she "would possibly be replaced by this machine," although both had heard "rumors" about "bringing in a meat wrapping machine." Nor had the Union been notified in advance of Justesen's decision to automate any part of the meat operation or to lay off any employee. Glick's wife, Edith (not a member of the Union), who had worked as a meatwrapper 1 or 2 days a week before the installation of the machine, thereafter worked 3 or 4 days a week to help the retained employee (Brecht) operate it.[5]

Article 3(e) of the collective agreement, governing the parties' rights respecting machine installation, provides:

> It is further agreed that should the employer adopt any new methods of operations not presently in the industry, including any centralized system or method of cutting, preparing, fabricating, or wrapping that would result in a substantial change in the content of any job presently covered by this Agreement or that would displace emloyees presently covered by this Agreement, the Union shall be informed of such new methods and the matter of job classifications, wages, and/or the disposition of displaced employees shall become a matter for negotiations for at least sixty (60) days prior to the installation of such new methods or displacement. At expiration of such sixty (60) day period, nothing herein shall prohibit or in any way impede the employer from installing or effectuating any such new methods, systems or equipment and the procedures set forth below shall apply.

Article 3(f) provides that if agreement is not reached in the 60-day negotiation period, "there shall be" no strike or lockout, "but the matter may be referred to arbitration by either party"; and that the findings of the neutral arbitrator selected "shall be binding upon both parties." Article 8 prescribes the "grievance and arbitration procedure" for resolving "any controversies involving the interpretation of any provisions" of the collective agreement. Article 10 of the agreement, the "management prerogative" clause, provides:

> The management of the business of the Company and the direction of its working force, the type, and variety of products to be handled, the work scheduled and methods and means of handling or processing, are prerogatives of Management, subject to and where not in conflict with this Agreement.

The record shows, and I find, that Corley-Miller wrapping machines have been used in the Bakersfield-Los Angeles (California) area since at least June 1957,[6] the first such machine having been shipped to Bakersfield itself in February 1961.[7] Although there have been technical improvements in the machine since 1957, it has remained basically the same "one man operation" device since its inception.

Couch and Manuel reported their layoffs or discharges to Hodson, the Union's representative, on Monday, December 14, 1964. Hodson instructed them to obtain

[4] Unless otherwise indicated, all dates hereafter refer to July 1964–April 1965.

[5] Whenever he was free, Brecht also helped Glick cut meat

[6] Four such machines were installed in Los Angeles and nearby areas in 1957, three in 1958, and one in 1959 The record does not disclose how many similar machines (e g , "Super Wrapper" models), manufactured by companies other than Corley-Miller, had been installed (or already were in use) in that area

[7] Two Corley-Miller machines were shipped to Bakersfield facilities in 1961 and 1962, none in 1963, and six (including Justesen's) in 1964

in writing from the Company the reason for their discharge. The employees did so and turned over to Hodson the Company's written statements explaining that although the employees' work had been "completely satisfactory" they had to be terminated "because of automation." Hodson at no time thereafter discussed the discharges with the Company, although, as hereafter related, he communicated with the Company on several occasions (and once met with it) regarding contract renewal negotiations. Nor did he or the employees file any grievances on the discharges.

D. *The contract renewal negotiations*

In accordance with article 31 of the collective agreement, Union Representative Hodson wrote Justesen's on November 6, 1964, requesting a meeting to negotiate modifications and changes in that agreement. On November 12, Company Vice President Glick answered that the Company elected to terminate the agreement and was giving notice to that effect pursuant to article 31. On January 11, the parties met at Freddie's Top of the Hill restaurant to discuss a new contract. Hodson and another business agent represented the Union; Respondents were represented by Glick, Anton Justesen, and Archie Taylor.[8] The parties discussed the Union's proposed contract terms and agreed to meet again after the Company "examined the proposals." Respondents' representatives undertook to notify Hodson of the next meeting date a week later.[9]

Shortly thereafter, Agerton, manager of the Rosedale meat deartment, told Rosedale employee Buckley that Glick wanted both of them to write letters telling the Union that they "did not want them to represent us anymore." (As previously noted, Agerton and Glick belonged to the Union, even though they were managerial officials.) However, Buckley refused to resign. Around the same time, Glick discussed with Brecht, his nephew, the fact that he (Brecht) was the only union employee left at the River store (after the layoff of Couch and Manuel). Later, on January 15, the Union received a letter from Brecht stating his "wish" to withdraw from the Union as of that date. (January 15, 1965 was the expiration date of the collective agreement.) Glick also resigned from the Union at that time.[10]

On January 28, 1965, Hodson wrote to Justesen's requesting a meeting in early February to continue negotiations. The letter was returned "unclaimed." On February 11, Hodson again wrote the Company, suggesting a meeting in the first week of March. Hodson reminded the Company that at their last (January 11) meeting "you stated that you would notify me one day during the following week as to the time for our next meeting so that we could continue our negotiations."

There is a sharp dispute as to whether the Company thereafter arranged for a meeting with the Union. Glick testified that after receiving the Union's February 11 letter—he could not recall the date—he instructed his secretary to call Hodson to tell him to meet him at Freddie's Top of the Hill restaurant (where they met on January 11). He further testified that he waited for him at the bar but Hodson failed to appear. Glick admitted, however, that he never checked why Hodson failed to show up, and acknowledged that he made no further attempts to contact the Union. Nor did Respondents produce (or explain their failure to produce) Glick's secretary to corroborate Glick. Instead, Respondents called as their witness "an acquaintance" of Glick (Pocius), who testified that he met Glick at that restaurant one evening at the end of February or early March; that he saw Glick imbibe "a couple of highballs";

[8] Taylor, like Glick and Justesen, was an official of the two companies involved in this proceeding

[9] Glick could not recall whether the Company or the Union was to take the initiative in arranging the next meeting. I credit Hodson's more definitive recollection

[10] On the basis of the foregoing and the entire record, I infer that Glick sought to induce Brecht's as well as Buckley's withdrawal from the Union, succeeding as to the former but failing as to the latter. My finding respecting the inducement of Buckley is based on that employee's credited testimony, in part corroborated by Agerton The latter testified that Glick also asked him to write to the Union "telling them that I personally didn't want to be represented by Local 193 any longer"; Agerton was "not sure" if Glick asked him to induce Buckley's withdrawal also Glick admitted personally talking to his nephew Brecht about the impending expiration of the contract, but he was evasive as to whether he asked him to withdraw When asked if he did not tell his nephew that "he might think over the fact that he was the only Union member" at the store, he stated that he could not recall the words used. When pressed further he admitted that he "could have said" something similar.

and that he heard him mention that "he was waiting for someone from a labor union." Hodson denied receiving any communication from the Company, directly or indirectly, at any time after January 11, 1965. He specifically denied receiving any message about a meeting allegedly arranged by Glick through Glick's secretary. Called as a corroborating witness, the Union's office girl (Martin) testified that she could not recall any telephone call from Glick's secretary arranging any meeting between Hodson and Glick.

I do not credit Glick's testimony concerning the arrangements he allegedly made to meet with Hodson after receiving the Union's February 11 letter. I have already commented adversely upon Glick's testimony on another material point (*supra,* footnote 10). His testimony and that of his supposed corroborating witness on the matter in issue is vague and evasive. Furthermore, if, as Glick testified, the purpose of the meeting was to discuss contract negotiations, it is strange that he went to it without the Company's other officers (Anton Justesen and Taylor) who attended the January 11 meeting. Moreover, if he was seriously desirous of negotiating, why did he not attempt to contact the Union to inquire into Hodson's reasons for not having been present? Finally, Glick's testimony, even if credited, suggests that he only summoned Hodson to meet him, without checking on Hodson's ability to make the appointment on the short notice given him.

On April 2, Hodson wrote his final letter to Justesen's. After adverting to his previous letter of January 28 (which the Company "refused to accept") and to his letter of February 11 (which it ignored), Hodson requested an early meeting to resume negotiations. The Company did not reply.

E. *Conclusions*

1. The appropriate unit and the Union's majority status

At the hearing the parties stipulated that until February 1, 1965, the appropriate bargaining unit consisted of the meat department employees employed at both the River and the Rosedale stores; that until the December 12, 1964, layoff, three River store employees (Brecht, Couch, and Manuel) and one Rosedale store employee (Buckley) were in the two-store unit; and that the question whether the two laid-off employees remained in the unit after that date turned on whether the layoff was discriminatory. In their brief, Respondents now assert "doubt" as to whether the appropriate unit is a one-store or two-store unit.

As already found, the meat departments of both stores have had common owners and officers, and the employee wages and working conditions in both have been fixed by the identical collective agreement. The record also establishes that the two stores advertise jointly, display "Justesen's" signs, carry products with the exclusive "Big J" trade name, and are only a 22-minute automobile drive (15 miles) away from each other.

Although, as previously noted, the Rosedale store has been owned by a corporation (Justesen's Rosedale) since February 10, the officers of that corporation are the same as those of the River store corporation (Justesen's Food Stores). There is no substantial, credible evidence demonstrating any operational and policy changes since then to warrant separating the two-store unit into two single one-store units. To the contrary, there is credible evidence indicating that the manager at Rosedale now, as before, is responsible to Glick, an officer of both corporations.[11] I cannot agree with Respondent's suggestion that "a reorganization of the Company into two separate corporations," without more, justifies a "reorganization" of the appropriate unit. See *Meijer Supermarkets, Inc.,* 142 NLRB 513. Cf. *N.L.R.B.* v. *Frisch's Big Boy Ill-Mar, Inc.,* 356 F.2d 895 (C.A. 7).

I conclude that at all times material herein (before and after February 1) all meat department employees employed by Respondents at the River store and the Rosedale store (excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act) have constituted a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

[11] Thus, Rosedale store employee Buckley's credited testimony indicates that in March or April 1965, the Rosedale store manager considered it necessary to obtain Glick's prior approval before increasing the number of days Buckley was to work in that store.

I also conclude that the Union at all times material herein was the exclusive representative of all employees in the above-described unit.[12]

2. The unilateral installation of automatic machinery and resulting layoff of two employees

The legal principles here applicable are clear. The duty of an employer to bargain with the statutory representative of his employees includes the duty to bargain about automation of operations, affecting jobs and working conditions of employees in the bargaining unit. *Carl Rochet, etc. d/b/a Renton News Record,* 136 NLRB 1294; *Weston and Brooker Company,* 154 NLRB 747. See also *Fibreboard Paper Product Corporation,* 138 NLRB 550, affd. *sub nom. East Bay Union of Machinists, Local 1304,* 379 U.S. 203. It is equally clear, however, that the bargaining representative may surrender or waive its right to be consulted and to bargain about such mandatory subjects of bargaining See *Druwhit Metal Products Company,* 153 NLRB 346; *General Motors Corporation,* 149 NLRB 396, 399–400; *LeRoy Machine Co., Inc.,* 147 NLRB 1431, 1432; *International Shoe Company,* 151 NLRB 693. The waiver must, of course, be clear; it will not lightly be inferred. *Puerto Rico Telephone Company,* 149 NLRB 950, 963.

Although Justesen's installation of the wrapping machine was a proper subject for bargaining, the record establishes, and I find, that for the duration of the governing collective agreement the Union effectively bargained away its right to require Respondents to negotiate regarding that matter, vesting in management the right to determine that question. Article 3, section (*e*) of the collective agreement provides that when the employer "adopt[s] any new methods of operations not presently in the industry, including any centralized system or method of . . . wrapping . . . the Union shall be informed of such new methods," whereupon the employer's action shall "become a matter for negotiations." It is not disputed that if the Corley-Miller wrapping machine, installed by the Company in December 1964, did not involve "new methods of operations," that is, if it was used "in the industry" at the time of execution of the collective agreement (September 17, 1960), the Company's unilateral action was protected by the collective agreement. In my view, the record amply supports Respondents' contention that the machine was in use at that time, and, indeed, as far back as 1957. The fact that technical improvements have since been made in the machine did not alter its basic character as an automatic wrapping operation, designed to displace employees. And although the machine was not shipped into Bakersfield itself (the location of Justesen's River store) until February 1961, several months after the signing of the contract, it was in use in nearby areas in California (including Los Angeles, 113 miles away),[13] certainly within the meaning of the broad term "in the industry" as used in the contract.

The Union's failure to object to Respondents' unilateral action lends weight to this conclusion. Although apprised of the Company's reason for terminating the two employees ("because of automation") within 2 days of its action, the Union lodged no protest. It did not invoke the contractual grievance-arbitration machinery to challenge the Company's conduct as it had the right to do. Nor did the Union raise the issue in its contract-renewal negotiation meeting with Respondents on January 11, 1965. It did not even cite the Company's unilateral action as the basis for its Section 8(a)(5) refusal to bargain charges filed against Respondents on April 27, 1965. (The Union's detailed charges pertained only to company delays and refusals in setting dates for resumption of negotiations on the new contract.) It was not until it filed its amended charges on June 7, 1965, that the Union raised the issue of validity of Respondents' unilateral action. The Union's conduct suggests that its present reading and interpretation of the collective agreement to bar

[12] It is undisputed that the Union represented all of Respondents' employees until January 15, 1965 With the layoff of employees Couch and Manuel on December 12, only two (Brecht at the River store and Buckley at the Rosedale store) remained in the unit. Although Brecht withdrew from the Union on January 15, his withdrawal (as hereafter found) was coercively induced by Respondents. Accordingly, Respondents cannot rely on the Union's loss of majority on January 15 as justification for their refusal to bargain. *Franks Bros. Company* v *N L R B* , 321 U S 702

[13] Rand McNally & Co , Standard Highway Mileage Guide

the Company's unilateral installation of the Corley-Miller wrapping machine was an afterthought.

I conclude that Justesen's decision to install and its subsequent installation of the Corley-Miller wrapping machine, without prior notification to and bargaining with the Union, was not violative of Section 8(a)(5) of the Act.[14]

Since, as the record shows, the December 14 layoff of the two meatwrappers, Couch and Manuel, is attributable to the installation of the Corley-Miller meatwrapping machine, I further find that their layoffs were not discriminatorily motivated, in violation of Section 8(a)(3) of the Act. *Ador Corporation*, 150 NLRB 1658 Although, as hereafter found, Respondents seized upon their nondiscriminatory decision to automate (resulting in a significant reduction in the size of the unit) as an opportunity to oust the Union altogether, I cannot find, as General Counsel would have me, that that illegal action also supplies the antiunion motivation for the unilateral conduct It is to be noted that Justesen's decision to install the machine was made in June or July 1965, almost 6 months before its implementation and the employees' termination. There is no evidence whatever of the existence at that time of any union animus on the part of Respondents [15] Insofar as it appears, relations between the parties under their 5-year contract were amicable and harmonious. Nor is there any claim that the laid-off employees were discriminatorily selected or in a manner contrary to the contract. Accordingly, I conclude that the layoff or discharge of Couch and Manuel on December 12, 1965, was not violative of Section 8(a)(3) of the Act.

3. The refusal to meet and negotiate a new labor agreement; solicitation of employees to withdraw from the Union

As found, on January 11 the parties met to negotiate a new contract to replace the current one expiring on January 15. Respondents agreed to study the Union's proposals and to contact the Union the following week in order to set the next meeting date. Hearing nothing further, the Union wrote Respondents on January 28 to request a bargaining conference, but its letter was returned "unclaimed." The Union again communicated with Respondents on February 11. Respondents ignored the letter. On April 2, the Union again attempted to arrange a bargaining conference, but Respondents again ignored the Union. Thereafter (on April 27) the Union filed its charges alleging that Respondents had violated the Act by refusing to meet and negotiate.

Respondents' conduct hardly squares with the statutory command of Section 8(d) of the Act to "meet at reasonable times and confer in good faith." See *Little Rock Downtowner, Inc.*, 145 NLRB 1286, 1304–06, enfd. 341 F.2d 1020 (C.A. 8). Respondents apparently saw in the reduction of the size of the bargaining unit (from 4 to 2 employees) as a result of their economic decision to automate, an opportunity to oust the Union altogether. To this end, they sought to destroy the Union's majority by soliciting the remaining two employees (Brecht and Buckley) to withdraw from the Union.[16] To this end also, they procrastinated and obstructed the scheduling of bargaining sessions.[17]

Respondents' contention in their brief that the Union no longer represents a majority of their employees in an appropriate unit is without merit, since, as found, it was Respondents' unfair labor practices (inducing employees to with-

[14] In view of the foregoing conclusion, it is unnecessary to pass upon Respondents' additional contentions (1) that the "management prerogative clause" of the collective agreement also authorized its unilateral installation; (2) that, in any event, the question whether it could properly take such action concerns a contract interpretation to be resolved through the contractual grievance-arbitration procedure and not by the Board; and (3) that if the Union had the right to bargain regarding the installation of the machine, it waived such right by acquiescing in the Company's action and failing to request bargaining thereon.

[15] I do not regard Vice President Glick's action in increasing the part-time work of his wife after the layoffs (from 1 or 2 days to 3 or 4 days a week) as evidencing discriminatory motivation; and General Counsel apparently makes no such claim

[16] Respondents also sought to induce the resignation of Agerton, who (as a managerial employee) was not part of the unit

[17] According to the uncontroverted credited testimony of employee Manuel, Company Vice President Glick told the two laid-off employees in the discharge interview that he "was not going to sign the contract" with the Union until a neighboring market (Young's) signed it This remark also reflected on Respondents' good-faith intentions in embarking on the negotiations.

draw from the Union) that caused the Union's majority loss. Their further contention that they are "not certain what the proper bargaining unit should be" (i e., whether it be a "multi- or single-store unit") is of no avail, even if the contention implies that they entertained a good-faith doubt concerning the appropriateness of the unit.[18] In any event, Respondents at no time gave the Union either ground (alleged union majority loss or unit inappropriateness) as their reason for refusing to meet with the Union. Their contentions are afterthoughts. See *N.L.R.B.* v. *Biles-Coleman Lumber Co.*, 98 F.2d 16, 22 (C A. 9); *N.L R.B.* v. *Sunshine Mining Co.*, 110 F.2d 780, 789 (C.A. 9).

I further find that Respondents' solicitation of employees to withdraw from the Union constituted interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act. See *Newberry Mills, Inc*, 141 NLRB 1167, 1170, 1177; *N.L.R.B.* v. *Louisville Container Corporation*, 209 F.2d 654, 655 (C.A. 6).

Conclusions of Law

1. Respondents constitute a single employer engaged in commerce within the meaning of the Act.
2. Butchers Union Local 193, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, is a labor organization within the meaning of the Act.
3. All meat department employees employed by Respondents at their River and Rosedale stores (excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act) constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4 At all times here material, the Union has been the exclusive representative of all employees in the above appropriate unit, for purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5 By failing and refusing to meet and bargain with the Union after January 11, 1965, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
6. By the conduct above described and by soliciting employees to withdraw from the Union, Respondents have interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.
7. Respondents did not violate Section 8(a)(5) of the Act by unilaterally installing an automatic meatwrapping machine.
8. Respondents did not violate Section 8(a)(3) of the Act by laying off or discharging employees Couch and Manuel.
9. The unfair labor practices described in paragraphs 5 and 6, above, are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondents have engaged in unfair labor practices violative of Section 8(a)(1) and (5) of the Act, I will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since I have found that Respondents unlawfully refused to meet and bargain with the Union, the Recommended Order will require them, upon request, to bargain collectively with the Union and, if an understanding is reached, embody such understanding in a signed agreement.

The parties stipulated at the close of the hearing that since R. J. Agerton, the individual Respondent, was not an owner of the meat department at either the River or the Rosedale stores at the time of commission of the unfair labor practices, the order to be issued herein, if any, be directed only against the two corporate Respondents. The order recommended herein will give effect to that stipulation.

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

[18] A good-faith doubt as to unit appropriateness does not justify an employer's refusal to recognize a union, if the unit is in fact appropriate. *Primrose Super Market of Salem, Inc*, 353 F 2d 675 (C.A 1); *Florence Printing Co.* v *N L R B.*, 333 F 2d 289, 291 (C A. 4); *Oklahoma Sheraton Corporation*, 156 NLRB 681, footnote 1

Relations Act, as amended, it is recommended that Justesen's Food Stores, Inc., and Justesen's Rosedale, Inc., their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Butchers Union Local 193, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, as the exclusive collective-bargaining representative of Respondents' meat department employees at their River store and Rosedale store, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

(b) Encouraging or soliciting employees to withdraw their union membership or affiliation from the above-named Union or any other union of their choice.

(c) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of rights guaranteed by Section 7 of the Act.

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

(a) Upon request, bargain collectively with the above-named Union, as the exclusive representative of all the employees in the appropriate unit set forth above, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody the same in a signed agreement.

(b) Post at their stores, 2800 River Boulevard and 10595 Rosedale Highway, Bakersfield, California, copies of the attached notice marked "Appendix." [19] Copies of said notice, to be furnished by the Regional Director for Region 31, after being duly signed by an authorized representative of Respondents, shall be posted immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days from the date of receipt of this Decision, what steps Respondents have taken to comply therewith.[20]

IT IS FURTHER RECOMMENDED that the complaint be dismissed in all other respects.

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[19] 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 is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

[20] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondents have 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 collectively with Butchers Union Local 193, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, as the exclusive representative of all our meat department employees at the River store and at the Rosedale store, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT encourage or solicit our employees to withdraw their union membership from the above-named Union or any other union of their choice.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed by the National Labor Relations Act.

JUSTESEN'S FOOD STORES, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

JUSTESEN'S ROSEDALE, 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, 17th Floor, U.S. Post Office and Court House, 312 North Spring Street, Los Angeles, California 90012, Telephone 688-5850.

Poray, Inc. *and* Metal Processors' Union Local No. 16, AFL-CIO.

Case 13-CA-6775. August 26, 1966

DECISION AND ORDER

On April 19, 1966, Trial Examiner Owsley Vose 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 the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that such allegations of the complaint be dismissed. Thereafter, the Charging Party filed exceptions to the Decision and a supporting brief. The Respondent filed cross-exceptions, and an answering brief and brief in support of cross-exceptions.

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 Zagoria].

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 briefs, and the entire record in this case, and hereby adopts the findings,[1] conclusions, and recommendations of the Trial Examiner.

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

[The Board dismissed the complaint insofar as it alleges violations of Section 8(a)(5) of the Act.]

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[1] *Frito-Lay, Inc.*, 151 NLRB 28 In view of our holding herein that the Respondent had reasonable grounds for believing that the Union had lost its majority status, we find it unnecessary to pass on the Trial Examiner's additional finding that the Union was responsible for discontinuation of negotiations, and that the General Counsel failed to prove that the incumbent Union represented an uncoerced majority because the new checkoff authorizations were obtained by the Union through false representations