Co., Manufacturers Electric Company, Maintenance Engineers Company, Franklin Electric Company, Ben Agree Co., Fisher and Wright Plumbing Company, John Miller Electric Company, and Newkirk Electric Company, or any other employer other than Dobson Heavy Haul, Inc., to engage in a strike or refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce, or restrain the aforesaid employers or persons other than Dobson Heavy Haul, Inc., where an object in either case is to force or require Cunningham-Limp Co., to cease doing business with Dobson Heavy Haul, Inc.

MILLWRIGHTS LOCAL UNION NO. 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL–CIO,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

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

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 226–3244.

Young & Stout, Inc. *and* Amalgamated Meat Cutters and Butcher Workmen of North America, Food Store Employees Union, Local 347, AFL–CIO. *Case 6–CA–3436. December 16, 1966*

DECISION AND ORDER

On August 10, 1966, Trial Examiner George Christensen 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 alleged in the complaint, and recommended that such allegations be dismissed. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a brief in support thereof.

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.[1]

[The Board adopted the Trial Examiner's Recommended Order, with the following modification:

[Add the following paragraph immediately after the fifth indented paragraph of the Appendix.

> [WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Amalgamated Meat Cutters and Butcher Workmen of North America, Food Store Employees Union, Local 347, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.]

[1] As the record does not clearly show with what regularity or frequency either Burton or Walker worked as a part-time cutter, we do not pass on the Trial Examiner's conclusion that the "sporadic" nature of their employment disqualifies them from inclusion in the unit. In addition, we shall modify the Appendix to the Recommended Order to include a paragraph relating to the broad cease and desist order recommended by the Trial Examiner but inadvertently omitted from the Appendix.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

On September 22, 1965,[1] Food Store Employees Union Local 347, an affiliate of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO (hereafter called the Union), filed a charge with the National Labor Relations Board (hereafter called the Board) alleging that Young and Stout, Inc. (hereafter called the Respondent or the Company) violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (hereafter called the Act). On December 3, the Union filed an amended charge, alleging a discriminatory discharge in violation of Section 8(a)(3) of the Act. On December 8, the Regional Director for Region 6 issued and served upon the Company a formal complaint [2] based upon the charges. On December 16, the Company filed its answer denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was conducted on April 22, 1966, at Clarksburg, West Virginia, before Trial Examiner George Christensen. All parties were represented at and participated in the hearing, and were afforded full opportunity to

[1] All dates refer to 1965 unless otherwise noted.

[2] Without objection, General Counsel's motion to strike paragraph 6(b) of the complaint was granted during the course of the hearing.

adduce evidence, to examine and cross-examine witnesses, to present oral argument, and to submit briefs. The General Counsel and the Respondent have filed briefs.

Based upon my review of the entire record, observation of the witnesses, and perusal of the briefs, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent is a West Virginia corporation with its plant and office located in Clarksburg, West Virginia. It employs a small work force in its nonretail business of processing, selling, and distributing meat products. During the 12-month period preceding the filing of the charge, Respondent received at its plant, directly from points outside West Virginia, goods valued in excess of $50,000. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union admits to membership employees of the Respondent for the purpose of representing such employees in collective bargaining with their employer. The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background and issues*

The Company operates a small meatpacking plant employing approximately 13 employees. In July, and for several years previous, the Company employed Frank Burton as a meatcutter on a part-time basis. Burton, for the preceding 10 years, had worked full time for Swift Co. as a meatcutter. He has been a member of the Union (which has represented the Swift employees for many years) since 1956.

About March, Burton began promoting the idea of union representation among the Company's employees. At an April meeting of the Union, he spoke to the Union's business representative, Jack Brooks, about securing such representation. Brooks told him to get a group together and arrange a meeting. Burton arranged a meeting for July 29 (after a previous postponement) and five of the Company's employees (plus Burton) signed union authorization cards at the meeting. Two more employees were visited after the meeting and also signed cards. Burton solicited and secured the signature of an eighth employee at the company parking lot the following day.

On August 2, Brooks telephoned the Company's vice president and general manager, Gabe M. Ferraro,[3] and requested union recognition and bargaining, at the same time offering to prove the Union's majority by a card check. Ferraro denied the request, stating the Company was too small to have a union. The Union followed up Brooks' telephone request with two letters, both dated August 2, one stating the composition of the unit sought by the Union and the other repeating the requests for union recognition and bargaining and renewing the offer to prove the Union's majority in the unit by a card check.

The complaint charges that on or about August 5, Company President Abner C. Stout[4] interrogated several employees concerning their union affiliation and desires.

The complaint further charges that at an August 6 meeting at the plant, Ferraro threatened loss of employee benefits if the employees supported the Union and promised benefits if the employees ceased their union support. It is also charged that in September, Ferraro again threatened loss of employee benefits if the employees supported the Union.

It is charged in addition that at the August 6 meeting, Stout and Ferraro encouraged the employees to abandon the Union and negotiate directly with the Company concerning their wages, hours, and other working conditions.

Frank Burton has not been employed by the Company in his part-time work capacity since July 24. From September until a few months before the hearing,

[3] Respondent in its answer admitted that Ferraro was its agent at all times material to this proceeding.

[4] Respondent in its answer admitted that Stout was its agent at all times material to this proceeding.

the Company employed Jim (Red) Walker in a part-time capacity to perform the same work Burton had performed for several years prior to July 24. It is charged that the Company has ceased to employ Burton because of his activities on behalf of the Union.

On August 6, the Company replied to the Union's August 2 letters by reiterating its August 2 refusal to recognize and bargain with the Union and its rejection of the Union's offer to prove its majority, unless and until the Union was certified as the collective-bargaining agent of its employees by the Board. The Company to date continues to refuse the requested recognition, bargaining, and offer of proof. The General Counsel charges that the Company did not have a good-faith doubt of the Union's majority but merely sought time to undermine the Union when it refused the requests and offer and therefore has refused to bargain in violation of Section 8(a)(5) of the Act.

The Company denies the commission of the acts charged as unfair labor practices and that it has violated any provisions of the Act.

The issues therefore are whether:

(1) The Company on or about August 5, by its Agent Stout, illegally interrogated its employees concerning their union affiliation, membership, or activities;

(2) The Company on August 6, by its Agent Ferraro, promised benefits to its employees to encourage their abandonment of the Union;

(3) The Company on August 6 and in September, by its Agent Ferraro, threatened loss of benefits to its employees to discourage their support of the Union;

(4) The Company on August 6, by its Agents Ferraro and Stout, sought to persuade its employees to bargain directly with the Company concerning their wages, hours, and conditions of employment rather than and instead of through the Union;

(5) The Company terminated the employment of Frank Burton on July 24 and failed or refused subsequently to employ him because of his union activities and to discourage other employees from similar activity;

(6) The Company acted in good faith in refusing to recognize and bargain with the Union in its August 2 request and subsequently; and

(7) If it is found that the Company committed any one or more of the above, whether the commission of such act violated Section 8(a) of the Act.

B. *The 8(a)(1) charges*

1. Employee interrogation

Respondent employee Harold S. Lowther testified that on or about August 5, Company President Stout asked him at the plant if he had signed a union authorization card and subsequently at his home asked him who brought the card to him for his signature and who was with the person who brought the card. Lowther testified that he told Stout he had signed a card, that Mr. Wilkes (Brooks?) had given him the card, and that Frank Burton was with Mr. Wilkes (Brooks?).

Respondent employee Charles R. Williams testified that sometime during the month of August (he could not specify the exact date), Stout asked him if he had "signed for the union" and that he replied he had.

Stout testified that "I did ask a few of them if they had signed cards. Some of them told me yes and some of them told me no."

I find that Stout interrogated employees of the Company in the unit sought by the Union concerning their union affiliation, desires, and activities on or about August 5.

Respondent employee Joseph Cicero testified that he sometimes answers the telephone at the plant; that on August 2 he received Brooks' call to Ferraro and called Ferraro to the phone; that on completion of the call Ferraro turned to him and said "What is this going on about a union?", to which he replied, "What do you mean?"; that Ferrara then asked "Did you sign?", that he answered "Yes, sir."; that Ferraro asked, "How many more?", and that he replied "All of us, as far as I know, sir."

Cicero and Lowther testified that at an August 6 meeting at the plant called by Ferraro, Ferraro sought and received further corroboration from the employees present that they had authorized the Union to represent them.

Respondent employee Kenneth Wagner testified that during the course of the August 6 meeting referred to above, Ferraro asked him if he thought the rest of the employees would bargain directly with the Company and abandon the Union,

to which he replied that he did not know, but that he would go along with the majority.

Ferraro neither affirmed nor denied Cicero's testimony with regard to the August 2 conversation following completion of his telephone conversation with Brooks, and Wagner's testimony regarding the August 6 conversation just set forth. With regard to the testimony of Cicero and Lowther regarding his remarks at the August 6 meeting, Ferraro stated that "I asked them (the employees) if they had signed letters of intent and they nodded their heads. This was a shock to me. I never thought they would get to the point where they would want someone else to bargain for them. I thought we were close enough and if there was any bargaining to be done they should come right to us." Stout testified that at the August 6 meeting, "we asked them if the majority of them there wanted a union."

The testimony of Cicero and Lowther on other matters was corroborated fully, both by company and union witnesses. Ferraro himself corroborated Cicero and Lowther as to the remarks attributed to him at the August 6 meeting. Wagner appeared a forthright, truthful witness and was not challenged on cross-examination.

I find that on August 2 and 6, Ferarro interrogated employees of the Company in the unit sought by the Union concerning their union affiliation, membership, and desires.[5]

2. Promises of benefit and threat of loss

Cicero testified that Ferraro directed him to attend a meeting of all the employees at the plant on the morning of August 6. He testified that most of the employees attended and were addressed by Ferraro and Stout. Cicero testified that in addition to his comments and inquiries concerning the union sentiments of the employees, Ferraro spoke of the poor financial situation of the Company, said it could not afford the Union, and then stated that if the Union were successful, the relation between the employees and the Company could not be the same as it had been in the past, particularly as to the treatment of the employees in regard to days off with pay and various other favors the Company had granted to employees. Lowther testified that he attended the same meeting. He corroborated Cicero's testimony that Ferraro said the Company could not afford a union. Lowther stated that Ferraro also referred to sick pay, and said if the Union came in, the employees would no longer receive pay while off sick, nor pay for days off. Wagner testified he also attended the August 6 meeting, after seeing a meeting notice posted over the timeclock. He corroborated the testimony of Cicero and Lowther with regard to the loss of pay for time off and sickness in the event the Union came in.

Wagner also testified about a conversation he had with Stout and Ferraro at a restaurant in September. He stated that in the course of that conversation, Ferraro stated that if the Union came in, the practice of permitting employees to take home meat scraps would have to stop. He also testified that after discussing the Swift union contract calling for a 36-hour week as against the Company's 48-hour week, Ferarro said, "if we had another contract like that we wouldn't make any money . . . if things would give way to the union they would have to stop."[6]

Employees Cicero, Lowther, Wagner, and Frank Muriale further testified that at the conclusion of his remarks concerning the Company's inability to afford a union and the loss of benefits which would ensue in the event that a union came in, Ferraro suggested the employees confer together to see what benefits they desired from the Company, after informing them the Company and the employees could work things out between them without the necessity of a union. Stout and Ferraro then left the room and the employees furnished their spokesman, Muriale, with demands for increased wage rates; reduction to a 5-day, Monday through Friday workweek; establishment of a standard starting time of 7 a.m.; overtime pay of 1½-time for all hours over 40 in the workweek; establishment of a regular

[5] The complaint does not charge any illegal employee interrogations by Ferraro, either on August 2 or 6; however, since the conversations occurred in the course of the other events charged and grew out of and are closely related thereto, no objection was raised to such testimony at the hearing, and they were fully litigated, findings are entered thereupon. *New England Web, Inc., National Webbing, Inc., et al.*, 135 NLRB 1019; *Thompson Manufacturing Company*, 132 NLRB 1464; *Rocky Mount Natural Gas Company, Inc.*, 140 NLRB 1191.

[6] The complaint does not charge any illegal threat by Ferraro in September to cease company operations if the Union came in; nevertheless, on the grounds and based on the authorities set forth in footnote 5, *ibid.*, findings are entered thereupon.

one-half hour lunch period; etc. These demands were jotted down on a scrap of paper and presented to Stout by Muriale in Ferraro's presence. Stout consulted with his partner and company counsel and subsequently informed Muriale he had been advised not to grant any increased benefits in view of the union notice and requests or he might be in violation of law, and therefore, he could not act on the employee demands. None of the demands were placed in effect by the Company.

Ferraro confirmed that at the August 6 meeting, he spoke of the financial problems of the Company and said that the Company was too small to have a union. He also confirmed that he stated the Union was unnecessary since the Company and the employees could adjust their differences without it. He conceded he spoke of the Company's continuing to pay two employees who were off for several weeks due to accident and illness and that this benefit would be lost if there were a union. He neither admitted nor denied that he told Wagner in September that the practice of permitting the employees to take home meat scraps would be discontinued if the Union came in. He stated that he called the August 6 meeting of employees and posted the notice over the timeclock. He testified, however, that the employees suggested they would drop the Union if their demands were satisfied; not he. He denied that he stated to Wagner at the September meeting that the Company would have to stop operations if the Union came in.

I find that on August 6, Ferraro threatened the employees with loss of pay while off sick or on days off if the Union came in. I further find that in September, Ferraro threatened plant closure and loss of the privilege of taking home meat scraps if the Union came in.

I also find that on August 6, Ferraro promised that if the employees would abandon the Union, the Company would grant concessions to the employees, and that Stout subsequently reneged on this promise on advice of counsel.

3. Inducement to abandon Union

As earlier indicated, it is undisputed that Ferraro called the August 6 meeting, voiced the Company's opposition to dealing with the Union, and suggested that any company-employee differences could be worked out between the Company and the employees without the intercession of the Union.

Ferraro, however, insists that the proposal for employee abandonment of the Union with the understanding that the Company would bargain directly with the employees concerning the list of employee demands prepared and presented by Muriale came from the employees. Employees Cicero, Lowther, Wagner, and Muriale on the other hand, testified that it was Ferraro who suggested that the employees meet outside the presence of Stout and him, prepare a list of the concessions they desired as the price for their abandonment of the Union, and present same to the Company.

It is undisputed that Stout and Ferraro did withdraw from the meeting room (Ferraro in fact complained that he did not expect the meeting of the employees alone would last so long), that Muriale did present a list of employee proposals to Stout in Ferraro's presence, that Stout conferred with his partner and counsel concerning them, and that Stout then informed Muriale he had been advised he could not consider the proposals without violating the law and therefore would not do so.

Ferraro's testimony appears contradictory. First, he admits calling the meeting and advocating direct dealing between the Company and the employees to adjust any differences but then denies that he suggested the employees prepare a list and present it with the understanding this was their price for abandonment of the Union. While either corroborating the employees' testimony in all other respects or failing to deny it, in this one respect he takes issue with their testimony. It appears much more logical and reasonable to credit the employee version, which also conforms to a much greater degree with the admitted portion of Ferraro's statements. I therefore credit the employees and discredit Ferraro's version of this incident.

I find that on August 6, Ferraro sought to induce the employees to abandon the Union and bargain directly with the Company concerning their wages, hours, and other conditions of employment.

C. *The 8(a)(3) charge*

Frank Burton had been employed intermittently by the Company for several years prior to July 24 as a meatcutter, working mostly on Saturdays and Mon-

days, his days off from his regular job with Swift & Co., where he worked (days) Tuesday through Friday, plus Sunday morning. When Ferraro, who ran the plant on a day-to-day basis (Stout spent most of his time outside), felt the workload warranted it, he called Burton to work. On some occasions, when there was a conflict between Burton's work schedule at Swift and the hours Ferraro wanted him to work, Ferraro had to defer to Burton's schedule and either schedule him in for a different period or make other arrangements. During a period extending from July 24 to September 25, the Company did not require the services of any part-time help. It is undisputed that July, August, and the first part of September were slack periods for the Company.

In late August or early September, Ferraro received a telephone call from the brother of a former employee, Jim (Red) Walker, Walker's brother informed Ferraro that his brother Red had been "boiled out" at the Western State Hospital (Red had been terminated by the Company the previous December because of absenteeism due to overindulgence in alcohol), that Red was the sole support of his family, that he needed work badly, and requested that Ferraro employ him.

Stout and Ferraro testified that since Walker was a faster worker than Burton, was available for work at any time (since he did not have any other job) and because they were sympathetic to his needs, they decided to employ Walker on a part-time intermittent basis to perform the same work they had formerly called upon Burton to perform, and did employ Walker intermittently between September 25 and February 1966. Walker was not employed during March or between April 1–22, 1966 (the date of the hearing), inasmuch as the workload did not warrant calling him in.

The Company never subsequent to July 24 notified Burton he would no longer be called, nor did Burton after that date inquire as to when or whether his services would be required.

Stout and Ferraro testified they were aware throughout Burton's employment that he was an employee of Swift and Co., that the Swift employees were unionized, and that Burton was a member of the Union representing the Swift employees. They denied any knowledge, however, of Burton's activities in the organization of the Company's employees by the Union.

Stout did not deny Lowther's statement that on or about August 5 at Lowther's home he learned from Lowther that Burton accompanied Brooks at the time the latter solicited and secured Lowther's signature on a union authorization card.

I cannot find that but for the foregoing union activity, Burton would have been called to work instead of Walker between September 1965–February 1966, or subsequently.

D. *The 8(a)(5) charge*

1. The employee authorizations

On July 29, Burton and six of the Company's employees met with the Union's business representative, Jack Brooks. Brooks answered questions regarding the Union and told the employees that if a majority of them signed cards authorizing the Union to act as their representative, the Union would ask the Company to recognize and bargain with the Union concerning their wages, hours, and working conditions without an election.

Brooks then passed out cards. The cards read:

APPLICATION
FOOD STORE EMPLOYEES UNION
LOCAL NO. 347

P.O. Box 2751 Charleston, W. Va.

The undersigned hereby authorizes this Union to represent his or her interest in collective bargaining concerning wages, hours and working conditions.

Employer's Name	Employee's Signature
Employer's Address	Employee's Street Address
	City & State
	Date

Employees Paul E. Ball, Clair D. Holbert, Frank Muriale, Antonio Tricase, and Kenneth Wagner filled in all the blanks on the form, including their signature, and returned the cards to Brooks. Frank Burton also filled in and signed a card.

Upon conclusion of the meeting, Brooks, Burton, Wagner, and Holbert drove to a fruit stand operated by Joseph Cicero and his cousin. Brooks told Cicero what had transpired at the meeting, explained the Union to Cicero, handed him a card and asked him to read and sign it. Cicero read the card, signed it, filled in all the blanks except the ones for the employer's name and address, and returned the card to Brooks. Cicero testified that he intended the card to authorize the Union to represent his interests in collective bargaining with the Company, and that he told Ferraro on August 2 he had signed a card for the Union so authorizing. Brooks testified that he referred specifically to the Company in seeking authorization from Cicero to act on his behalf, and repeated his statement that if a majority of the employees signed, the Union would seek recognition and bargaining from the Company without an election.

Following the interview with Cicero, the same four men drove to the home of Steve Lowther, and Brooks in essence repeated the conversation he had conducted with Cicero. Lowther then also signed a card, filled in all the blanks but the name and address of the employer, and returned the card to Brooks.

Lowther testified that he did not fill in the employer's name and address because he did not know he was supposed to. Lowther further testified he had only one employer, the Company. Brooks testified his conversation with Lowther related solely to the Company. Lowther also testified that on August 6 he advised Stout that he had signed a card for the Union. Stout confirmed this.

On July 30, Burton accosted employee Charles E. Williams at the company parking lot and solicited his signature to a card, informing Williams that the card would authorize the Union to bargain on his behalf with the Company. Williams testified that he signed the card and filled in all the blanks other than the employer's name and address with that understanding and intention, and that he subsequently advised Stout that he had done so.

The Company objects to the admissibility of all the cards in question on the ground the authorizations do not sufficiently identify the Union as the organization authorized to represent the employees. The Company also argues that the cards of Cicero, Lowther, and Williams are insufficient as authorizations because they do not list the Company's name and address.

I find that neither of these objections has merit. Neither the employees who executed the cards, nor the Company were in any doubt as to the identity of the Union which sought and secured the cards and sought recognition and bargaining with the Company on behalf of the employees who executed them. Cicero, Lowther, and Williams clearly understood they were authorizing the Union to act on their behalf in seeking recognition from and bargaining with the Company, and no other employer. Not only did the Union and the three employees in question so understand when the cards were executed, the three employees subsequently informed the Company they had executed the cards with that intention. It should be further noted that the Union twice offered to produce the cards for examination by the Company and check against its records, but the Company rejected the offers and raised no questions concerning the validity or sufficiency of the authorizations until proffer of the cards in evidence.

I therefore find that company employees Ball, Cicero, Holbert, Lowther, Muriale, Tricase, Wagner, and Williams authorized the Union to act as their representative in collective bargaining with the Company concerning their wages, hours, and working conditions on July 29 and 30, and that Frank Burton similarly authorized the Union on July 29.

2. The Union's requests

Based on the foregoing authorizations on August 2, the Union sent two letters to the Company. One letter requested that the Company recognize and bargain with the Union concerning the wages, hours, and working conditions of certain of the Company's employees and offered to submit the cards executed by the employees as proof of the Union's authorization to act on their behalf.

The second letter specified the unit which the Union sought to represent as follows:

> We would include all production and maintenance employees, truck drivers, and those employees employed in the slaughter house.
> We would exclude supervisory employees, office and clerical employees, salesmen, guards, professional employees, as defined in the National Labor Act as amended.

3. The appropriateness of the unit and the Union's majority status

The complaint alleges that a unit of:

> All production and maintenance employees at Respondent's Clarksburg, West Virginia facilities, including truckdrivers and slaughterhouse employees, but excluding office clerical employees; salesmen, and guards, professional employees and supervisors as defined in the Act

constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At the outset of the hearing, all parties stipulated to the correctness of the described unit for the purpose set forth.

The parties further stipulated that the following named employees [7] constitute all production and maintenance employees, including truckdrivers and slaughterhouse employees of the Respondent since July 29:

Paul Edward Ball	Herbert Paul McVicker, Jr.	Antonio Tricase
Joseph Cicero	Frank Muriale	Kenneth Wagner
Clair D. Holbert		Charles R. Williams
Harold S. Lowther		Elbert A. Woofter

Based upon the foregoing stipulations and the findings set forth in II, C, 4, above, I find that the unit just described is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and that since July 29, the Union has been and is the duly designated exclusive representative of a majority of the Company's employees in such unit for the purpose of bargaining collectively with the Company concerning the rates of pay, wages, hours, and other terms and conditions of employment of the employees within the unit.

4. The Company's refusal to bargain

Immediately after receipt of the Union's first request for recognition and bargaining by telephone on August 2, Ferraro interrogated employee Cicero, who had taken the call and transferred it to him, both regarding Cicero's union desires and activities and those of the other employees. Cicero told him he had authorized the Union to represent him and so had all the other employees. On August 4, the Company received the Union's formal requests for recognition and bargaining and offer to prove majority status. Between August 2 and 6, Stout interrogated a number of employees as Ferraro had on August 2, and received similar responses. At the outset of the August 6 meeting called by Ferraro with the employees, Ferraro informed the employees present he understood they had signed cards for the Union and then, after making several threats of loss of benefits if the Union came in, solicited the employees to prepare and present a list of the demands the employees would require to be satisfied by the Company as their price for abandonment of the Union. In September, Ferraro made further threats of a similar nature.

Company conduct such as this not only destroys the Company's professed good-faith doubt of the Union's majority status in an appropriate unit of the Company's employees at and subsequent to the Union's August 2 request for recognition and bargaining, it indicates bad faith to gain time to undermine the Union's majority status. (*Joy Silk Mills* v. *N.L.R.B.*, 185 F.2d 732 (C.A.D.C.), cert. denied 341 U.S. 914.)

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[7] No stipulation was reached concerning Frank Burton. The General Counsel sought his inclusion; the Company, his exclusion. Inasmuch as I shall recommend dismissal of the charge that the Company illegally terminated Burton on July 24 and failed to recall him since, he shall be excluded from the unit. In any event, it is my finding that since both Burton and Jim (Red) Walker, who has worked in the same capacity as Burton between September 1965 and February 1966 as an intermittently employed part-time meatcutter, they should be excluded because of the sporadic nature of their employment.

I therefore find that the Company did not possess a good-faith doubt that the Union represented a majority of the Company's employees in an appropriate unit on August 2 and subsequently and further find that on August 2 and at all times subsequent, the Company nevertheless has refused to recognize and bargain with the Union as the duly designated exclusive bargaining representative of its employees in an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act.

E. *Ultimate findings*

Based upon the foregoing, I find and conclude that the Company interfered with, restrained, and coerced its employees in the exercise of their self-organization right, in violation of Section 8(a)(1) of the Act:

a. On August 2, by its Vice President and General Manager Gabe Ferraro's interrogation at the plant of company employee Joseph Cicero concerning his and other employees' union affiliations, desires, and activities;

b. On August 5 and other unspecified dates in August, by its President Abner C. Stout's interrogation both at and outside the plant of company employees Lowther, Williams, and others (by Stout's own admission) concerning their union affiliations, desires, and activities;

c. On August 6, by its Vice President and General Manager Gabe Ferraro's (1) interrogation at the plant of the employees present at a meeting called by Ferraro concerning their union affiliations, desires, and activities;

(2) threats to the employees present at the meeting of loss of days off with pay, and pay for time off while sick or injured if the Union came in;

d. In September, by its Vice President and General Manager Gabe Ferraro's threat at a restaurant in Clarksburg to employee Kenneth Wagner of employee loss of the benefit of taking home meat scraps if the Union came in;

e. In September, by its Vice President and General Manager Gabe Ferraro's threat at a restaurant in Clarksburg that the Company would have to stop operations if the Union came in;

f. On August 6, by its Vice President and General Manager Gabe Ferraro's promise at the plant to the employees present at a meeting called by Ferraro that certain of their demands for increased benefits would or might be met if they abandoned their support of the Union and negotiated instead directly with the Company.[8]

Based on the earlier finding that since July 29 the Union has represented a majority of the Company's employees in an appropriate unit and that the August 2 and subsequent company refusal to recognize and bargain with the Union concerning the wages, hours, and working conditions of the employees in the unit was not based on a good-faith doubt of the Union's majority therein but rather to gain time to undermine the Union's majority status. I find and conclude that since August 2 the Company has refused to bargain collectively with the representative of a majority of its employees in an appropriate unit in violation of Section 8(a)(5) and (1) of the Act.

Inasmuch as I cannot find that but for Frank Burton's union activities known to the Company, Burton would have been called in to perform work assigned intermittently on a part-time basis to Jim (Red) Walker between September 1965 and February 1966, I find and conclude that the Company has not violated Section 8(a)(3) and (1) of the Act by failing to call Frank Burton in to perform such work since July 24, 1965.

CONCLUSIONS OF LAW

1. All production and maintenance employees of Respondent at its Clarksburg, West Virginia, facilities, including truckdrivers and slaughterhouse employees, but excluding office clerical employees, salesmen, guards, professional employees, 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.

2. At all times since July 29, 1965, the Union has been the exclusive representative of all employees in the aforesaid unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

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[8] Respondent protested that it did not put any of the increases listed by the employees into effect, upon advice of counsel. The test, however, is not whether they were put into effect, but rather, "whether the employer engaged into conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *N.L.R.B.* v. *Illinois Tool Works*, 153 F.2d 811, 814 (C.A. 7).

3. By refusing to recognize and bargain with the Union as the exclusive representative of the employees in the aforesaid unit on and after August 2, 1965, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

4. By interrogating its employees concerning their union affiliations, desires, and activities, by threatening its employees with loss of benefits if they persisted in their support of the Union, by threatening that the Company would cease operations if the Union came in, and by promising economic concessions to its employees if they would agree to bargain directly with the Company and abandon their support of the Union, the Company has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

5. The Company has not violated Section 8(a)(3) of the Act by calling in Jim (Red) Walker on an intermittent, part-time basis between September 1965 and February 1966 to perform meatcutting work rather than Frank Burton.

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

REMEDY

Having found that the Company has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since I have found that Respondent unlawfully refused to recognize and bargain with the Union, I shall recommend that the Respondent be ordered, upon request, to bargain collectively with the Union and, if an understanding is reached, to embody such understanding in a signed agreement.

Because the Company, by its conduct, violated fundamental employee rights guaranteed by Section 7 of the Act and it appears from the nature and manner of the commission of those acts a disposition to commit other unfair labor practices, I shall recommend that the Company be ordered to cease and desist from the specific acts found to infringe upon those rights as well as generally to desist from in any other manner infringing thereupon.

Inasmuch as I have found that the Company has not violated Section 8(a)(3) of the Act as charged, I shall recommend that this charge be dismissed.

RECOMMENDED ORDER

Based upon the foregoing findings and conclusions, it is recommended that Young & Stout, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. Interrogating its employees concerning their union affiliations, desires, and activities;

b. Threatening its employees with loss of days off with pay, loss of pay while off sick or injured, and loss of the privilege of taking home meat scraps if the Union came in;

c. Threatening its employees with plant closure if the Union came in;

d. Promising economic concessions to its employees provided they abandon the Union and bargain instead directly with the Company;

e. Refusing upon request to bargain collectively with the Union as the exclusive representative of all employees in the following appropriate unit: All production and maintenance employees at Respondent's Clarksburg, West Virginia, facilities, including truckdrivers and slaughterhouse employees, excluding office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the Act;

f. In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

a. Upon request, bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, Food Store Employees Union, Local 347, AFL–CIO, as the exclusive representative of all of its employees in the bargain-

ing unit described herein, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody same in a signed agreement;

b. Post at its plant in Clarksburg, West Virginia, copies of the attached notice marked "Appendix."[9] Copies of said notice, furnished by the Regional Director for Region 6, shall be duly signed by an authorized representative of Respondent, shall be posted by the Company immediately upon receipt thereof, and shall be maintained by the Company 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 said Regional Director, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply herewith.[10]

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

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[9] 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 Decision and Recommended Order of a Trial Examiner." In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words used shall be "a Decree of the United States Court of Appeals Enforcing an Order."

[10] 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 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 Relation Act, as amended, we hereby notify our employees that:

WE WILL NOT interrogate our employees concerning their union membership, affiliation, desires, or activities;

WE WILL NOT threaten our employees with loss of pay for days off or while off due to sickness or injury if this plant is unionized;

WE WILL NOT threaten our employees that the plant will be closed if this plant is unionized;

WE WILL NOT promise our employees economic concessions if they will abandon their support of the Union and bargain directly with the Company instead;

WE WILL bargain, upon request, with Amalgamated Meat Cutters and Butcher Workmen of North America, Food Store Employees Union, Local 347, AFL–CIO, as the exclusive collective-bargaining representative of all our employees in the bargaining unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and embody any understanding reached in a signed agreement. The bargaining unit is:

All production and maintenance employees at our Clarksburg, West Virginia, plant, including truckdrivers and slaughterhouse employees, excluding office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the Act.

YOUNG & STOUT, 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, 1536 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 644–2977.