

Adelson, Inc., d/b/a Food Fair Stores, Inc. and Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 31-CA-336

March 13, 1967

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On October 19, 1966, Trial Examiner Thomas A. Ricci issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief.

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

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 the case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Adelson, Inc., d/b/a Food Fair Stores, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹ We do not adopt the Trial Examiner's finding that the discharge of the three drivers was not subject to the grievance procedure. However, we find no merit in Respondent's exception that the circumstances herein are appropriate for the exercise of the Board's discretion in deferring to arbitration *Smuth v Evening News Association*, 371 U.S. 195, 197; *Westinghouse Electric Corporation*, 162 NLRB 768; *Flasco Manufacturing Co.*, 162 NLRB 611, *Cloverleaf Division of Adams Dairy, Co.*, 147 NLRB 1410, 1415-16

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Trial Examiner: A hearing was held in the above-entitled proceeding before me in Las Vegas,

Nevada, on September 7, 1966, on complaint of the General Counsel against Adelson, Inc., d/b/a Food Fair Stores, Inc., herein called the Respondent or the Company. The issue litigated is whether the Respondent has violated Section 8(a)(5) of the Act. Briefs were filed by the General Counsel and by the Respondent.¹

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Adelson, Inc., is a wholly owned subsidiary of Food Fair Stores, Inc., a corporation which operates retail supermarkets in California and Nevada. This case is concerned solely with seven supermarkets operated in the Las Vegas area in the name of Adelson, Inc., where during the past year the Respondent sold and distributed products of a gross value in excess of \$500,000. During the same period the Respondent received goods at these Las Vegas stores valued in excess of \$50,000, all transported to the State of Nevada in interstate commerce directly from States other than the State of Nevada. I find that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The Issue in Brief

For the six stores it operates in Las Vegas and the seventh in nearby Henderson, the Respondent purchases dry groceries from Certified Grocers, among other suppliers. The merchandise comes from Certified's warehouses in Los Angeles, California, about 300 miles distant. For some time the Company has used its own drivers to truck this merchandise from Los Angeles to Las Vegas and its environs. On March 2, 1966, it finalized an arrangement with Certified to have truckdrivers employed by Certified, instead of the Respondent's own employees, make these deliveries, and, in direct consequence, it discharged three of its employees. The Respondent did this without notice to the Union, which was the exclusive bargaining agent of the employees so adversely affected. Because such unilateral action, in the face of its statutory duty to bargain with Local 631—the representative of all truckdrivers under existing contract—deprived the Union of any opportunity to bargain with the Company on the subject, and because it resulted in so substantial a loss of employment, the complaint alleges that the Respondent thereby refused to bargain in violation of Section 8(a)(5) of the Act.

The answer denies all of the essential allegations of the complaint. Affirmatively it sets out a number of affirmative defenses, chief among them the assertion that the Union ought to have arbitrated the dispute under the

¹ An unopposed motion by the General Counsel to correct transcript is hereby granted.

terms of the existing collective-bargaining agreement, and that therefore the Board should decline to hear and decide the case.

The Facts

The facts are clear, there is no meaningful conflict in testimony, and the record as a whole proves a *prima facie* case in support of the complaint.

On March 2, 1966, immediately preceding the events in question, there were five long-haul and three short-haul truckdrivers in the Respondent's employ, all on the payroll of Adelson, Inc. These were Elmer Conn, Orville Green, Richard Giannoni, Walter Harris, Roscoe Risley, Jack Shaffer, Joseph Burleson, and Gilbert Dees. The Union's dues payment records show that at that time seven of these—i.e., all but Dees—were regular paid-up members of the Union. There was also then in effect a contract between the Respondent and Local 631 covering the foregoing employees. The agreement consisted of two documents, one dated April 1, 1962, and signed by Market Town, a predecessor in ownership over the stores before the Respondent, and an amendment supplement dated April 19, 1965, signed by the Respondent under the name Food Fair Markets. The 1962 document describes the bargaining unit as "all drivers of trucks loading, unloading, storing and warehousing." The substantive terms of the agreement, as well as of the 1965 supplement, concern themselves solely with the work and wage rate of drivers of trucks. There is no indication in either document, or in the record otherwise, that any employee in any other category is covered by the total contract. The supplement agreement provides that the contract shall remain in effect until April 1, 1968.

I find that all long-haul and short-haul drivers employed by the Respondent in the Las Vegas area, excluding all supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the statute, and that at all times material herein the Union has been and is the exclusive bargaining representative of all employees in that bargaining unit within the meaning of Section 9 of the statute.

Sometime in February 1966 the Respondent approached Certified Grocers with the proposal that drivers of the latter company haul dry groceries purchased by the Company to the Las Vegas area instead of those employed by Food Fair. On March 2, agreement was reached to start doing so on March 7.

The same day, March 2, Morris Glass, Food Fair personnel director stationed in Los Angeles, telephoned Joe Folsom, the Company's district manager in Las Vegas, informed him that, as of the 7th, Certified would start doing the hauling, and instructed him to serve notice on drivers Burleson and Shaffer that they were discharged as of Saturday, March 5.²

At 10 a.m., the same day, Benny Bautista, business agent of Local 631, who had heard a rumor from Burleson, called Glass to tell him about it. When Glass answered he knew nothing, Bautista suggested "that we sit down and negotiate it and discuss it before any changes were made for the well-being of our people." Glass restated his ignorance of the matter. By afternoon Bautista had learned of the projected discharges—Burleson and

Shaffer had heard of it from certain Los Angeles drivers at Certified—and again called Glass and asked him to come to Las Vegas. Glass said "the machinery was in action, and he couldn't hold off Certified," and that in any event he could not meet Bautista before March 15.

The foregoing is Bautista's testimony of his conversations with Glass that day, which I fully credit. As Glass recalled, he had only one talk with the business agent, and his testimony is as follows:

The Witness: Mr. Bautista called me approximately 10:00 o'clock that morning, and said to me, "I understand that you fellows—I hear that you fellows are going to start hauling by Certified."

And I said, "that is correct, Benny."

And he said, "Why didn't you let me know?"

And I said, "We didn't know about it until this morning ourselves as to when we were going to start."

* * * * *

Mr. Bautista said, "We ought to talk about this," or words to that effect.

And I said, "Any time, Benny."

He said, "How about coming down here on the 8th?"

I said, "I have a prior commitment on the 8th. I couldn't get away."

He said, "How about the 15th?"

I said I had some commitments for that date, too, but I will see.

Glass also admitted having told Bautista that day "the machinery is in motion . . . Certified is geared to start operations on Monday, and I cannot stop it." He further admitted Bautista asked him to defer action for a week so they could discuss the question, and that his answer was: "I can't delay it now."

The next time Glass spoke to Bautista was on March 23 when he chanced to run into him in Las Vegas.

It is conceded the Union was given no advance notice of the contemplated change or discharges. Burleson, Shaffer, and Conn were dismissed by the end of the week. From March 7, 1966, to date the groceries purchased by Food Fair from Certified Grocers have been hauled by employees of Certified in that Company's vehicles.

Analysis, Defenses, and Conclusions

These facts, undisputed, picture a clear violation of Section 8(a)(5) of the Act under established Board law, and I so find.³ Despite its statutory obligation to bargain with the Union on all matters pertaining to terms and conditions of employment, the Company, without notice to the Local, eliminated a quantity of work normally performed by employees in the truckdriving unit by arranging to have it performed by the seller of its merchandise instead of by itself as purchaser using its own employees. Requested specifically to discuss the matter with a union representative, even before the change was implemented, it flatly refused to do so. As the Board has recently stated, because the Respondent "unilaterally transferred this work, constituting a change in, and caused significant detriment to employees in the driver . . . unit in terms of their wages, hours and other terms and conditions of employment . . . [it] violated Section 8(a)(5) and (1) of the Act."⁴

² These were long-haul drivers. It was also stipulated by the Respondent that at the same time Conn, a short-haul driver, was discharged in like manner and for the same reason.

³ *East Bay Union of Machinists, Local 1304, Steelworkers (Fibreboard Paper Products Corp.) v. N.L.R.B.*, 379 U.S. 203

⁴ *Cities Service Oil Company*, 158 NLRB 1204

When Bautista realized that Glass was going to discharge the men and not talk to him at all, he threatened to picket the store in retaliation. The next day he received a telegram from Robert Fox, president of Food Employers Council, centered in Los Angeles, apparently an employer organization of which the Respondent is a member. The telegram warned the Union that picketing in the circumstances would be unlawful and violative of the existing contract; it also "invoked the grievance and arbitration procedure of the collective-bargaining agreement."

In consequence of the telegram, the next day William Carter, secretary-treasurer of the Union, talked to Fox on the telephone. Fox said he knew little of the "problem," and repeated his urging that the Union do no picketing. The two argued a bit, Carter said the Company was in violation of the contract, and Fox that the contract authorized the Respondent to subcontract away unit work. They spoke of trying to settle the "problem," and Fox invited Carter to arbitrate the question. Nothing came of their talk. Between March and August, shortly before the hearing, they spoke on the telephone several times and once met in Las Vegas and once in Los Angeles. They spoke of possible settlement but there were no results. The charge in this proceeding had been filed on March 7 and the complaint issued on May 27.

On March 9, after the men had been discharged, Fox sent an assistant, Mel Dauber, to talk to Carter. Dauber said he wanted to discuss the problem; at first Carter refused to recognize his authority, but then did talk. The discussion centered primarily about the possibility of arbitration, and Carter suggested five or six names, apparently none acceptable to the Company's agent. Fox also suggested some names, all rejected by the Union, which insisted that if there was to be arbitration the central figure would have to be a Nevada man. This was the inconclusive state of affairs at the time of the hearing.

In its answer the Respondent sets out a number of defenses, and I find each of them without merit in the light of the entire record.

The Respondent asserts that it did bargain with the Union as the statute demands. This is a reference to the attempt made to settle the "problem" with Secretary-Treasurer Carter. The Respondent misconceives the statutory duty to bargain with the exclusive majority representative. The duty arises *before* unilateral action by the employer; the vice in the Respondent's conduct lay in the refusal of Glass, its personnel director, to discuss the change made at the special request of Bautista before it was made. Indeed, all talk between Carter and Fox, or his representative, after the *fait accompli*, was but an attempt to avoid the consequence of the charge which had already been filed. Carter did suggest at one point that the *status quo* be first restored, but Fox would have none of that. At no time during these conversations *after the fact* did Fox permit any discussion of whether or not the Company *should* make the change, or whether some other method for achieving its economic purposes might be found. And whatever conversations may have taken place in January 1965, when the possibility of this change was first considered, but before the contract extension amendment of April 1965, cannot fill the void of the failure and refusal to bargain in 1966.⁵

There is no factual support for the assertion in the answer that the change of delivery method in this instance was permitted by "past practice." The contract is silent on the subcontracting and there is no evidence of previous experience.

There is an arbitration provision in the existing contract, but it is expressly limited to "grievances arising out of the interpretation of this Agreement, including layoffs and rehires . . ." There was nothing in the arbitrary elimination of a substantial portion of the unit work in this instance, or in the consequent discharge of the three employees, that could fairly be said to involve any "interpretation" of the existing contract. The "problem," therefore, was not one embraced within the scope of the contractual grievance and arbitration provision. In any event, even assuming the Union, or the employees themselves, could have resorted to arbitration, but chose instead to resort to the Board to redress the unfair labor practices committed, the fact cannot serve as a defense to the Respondent now.⁶

The last defense rests upon an assertion that bargaining would have been "futile" in any event. Here the implied assertion is that Local 631 or its agents were not truly concerned with whether or not the Company gave them advance notice of the change, or whether the Company was willing to bargain about it before deciding the matter. All that the Union wanted and still desires today, according to the Company, is to retain exclusive jurisdiction over all trucking in Clark County, where the city of Las Vegas is located. The theory of defense here is that because bargaining in this situation would be futile—the Union not really caring to discuss the projected change—there was no point in consulting them in advance and therefore the complaint must be dismissed.

But this is precisely the point of the rule of law which makes bargaining mandatory before substantial unilateral changes of this kind are made. "Experience has shown, . . . that candid discussion of mutual problems by labor and management frequently results in their resolution with attendant benefit to both sides. Business operations may profitably continue and the jobs may be preserved. Such prior discussion with a duly designated bargaining representative is all that the Act contemplates. But it commands no less."⁷

Upon the basis of the foregoing considerations, and the record as a whole, I find that by unilaterally altering the method of deliveries by arranging to have Certified Grocers deliver dry groceries from Los Angeles to Las Vegas in place of its own employees, and by discharging three of its own drivers, without advance notice to the Union, the Respondent has violated Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

⁵ Cf. *Hartman Luggage Company*, 145 NLRB 1572, 1578.

⁶ *Aerodex, Inc.*, 149 NLRB 192, *Cloverleaf Division of Adams Dairy Co., etc.*, 147 NLRB 1410

⁷ *Town & Country Mfg. Co., Inc., etc.*, 136 NLRB 1022, enfd 316 F 2d 846 (C. A. 5)

V. THE REMEDY

Effective redress of statutory wrongs means the remedy must be tailored to fit the case. Here the Respondent must be ordered to cease and desist from unilaterally reducing the amount of work available for its employees without bargaining with the Charging Union about its decision to do so, and hereafter it must bargain with the Union in advance of such changes in methods of operations. Three employees having been discharged in direct consequence of the unilateral action, the Company must also be ordered to cancel its March arrangement for trucking merchandise from Certified Grocers and resume its past practice of having its own drivers perform the work. The Respondent operates very extensively as a multistate, retail food-marketing business. There is no reason to believe, therefore, that reinstatement of three drivers, and perhaps even resumed use of a truck or two, at least until such time as it shall have fulfilled its statutory duty to bargain, will be an undue burden. Each of the three drivers must be reinstated to his former position and made whole for any loss of earnings he may have suffered as a result of the employer's bypassing of their bargaining agent and unilaterally eliminating work previously performed by them, in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716. No less than restoration of the *status quo* will serve if bargaining, as dictated by the Act, is to be other than an exercise in futility.

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

CONCLUSIONS OF LAW

1. Adelson, Inc., d/b/a Food Fair Stores, Inc., is an employer within the meaning of Section 2(2) of the Act.
2. Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. By unilaterally altering its method of transporting purchased groceries from Los Angeles to Las Vegas without first bargaining with the Union as the exclusive representative of the employees in the appropriate bargaining unit, the Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Adelson, Inc., d/b/a Food Fair Stores, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Refusing to bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all employees in the appropriate bargaining unit in its Las Vegas, Nevada, stores, and from unilaterally changing their wages, hours,

and other terms and conditions of employment without prior consultation with the above-named Union, or any other union which they may select as their exclusive bargaining representative.

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

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

(a) Reinstatement its prior method of transporting dry groceries purchased from Certified Grocers in Los Angeles to its Las Vegas stores by use of its own employees; offer Elmer Conn, Jack Shaffer, and Joseph Burleson immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed; and make whole all three of those employees for any loss of pay they may have suffered by reason of their discharge on March 5, 1966, in the manner set out under "The Remedy" section of this Decision.

(b) Upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the appropriate bargaining unit in respect to rates of pay, wages, hours of employment, or other terms or conditions of employment, and embody any understanding reached in a signed agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in determining the amount of backpay due and rights of reinstatement under the terms of this Recommended Order.

(d) Post at its stores in Las Vegas and Henderson, Nevada, copies of the attached notice marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for Region 31, after being duly signed by the Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 31, in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply herewith.⁹

⁸ 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."

⁹ 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

Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all our employees in the appropriate bargaining unit at our Las Vegas and Henderson, Nevada, stores, or unilaterally change the wages, hours, rates of pay, or other terms or conditions of employment of such employees without prior consultation with the above-named Union, or any other union which they may select as their bargaining representative. The bargaining unit is:

All long-haul and short-haul drivers employed by us in the Las Vegas area, excluding all supervisors as defined in the Act.

WE WILL reestablish our prior system of transporting dry groceries purchased in Los Angeles from Certified Grocers to our stores in the Las Vegas area by use of our own employees; we will offer immediate and full reinstatement to Elmer Conn, Jack Shaffer, and Joseph Burleson to their former or substantially equivalent position; we will make each of these drivers whole for any loss of pay they may have suffered as the result of their discharge on March 5, 1966, in the manner described in the Trial Examiner's Decision.

WE WILL bargain, upon request, with Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of our employees in the appropriate bargaining unit with respect to wages, hours, and other terms and conditions of employment.

All our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named Union or any other labor organization.

ADELSON, INC., D/B/A FOOD
FAIR STORES, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

Note: We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

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, 10th Floor, Bartlett Building 215 West Seventh Street, Los Angeles, California 90012, Telephone 688-5850.

Normandy Square Food Basket, Inc. and Retail Clerks and Mangers Union Local 1357, affiliated with Retail Clerks International Association, AFL-CIO. Case 4-CA-3988

March 14, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

On November 17, 1966, Trial Examiner Arthur M. Goldberg issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief. The General Counsel filed a brief in general support of the Trial Examiner's Decision, but also filed cross-exceptions to portions of the Decision and a supporting brief in which the Charging Party joined. The Respondent also filed an answering brief to the General Counsel's 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.

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 the case, and hereby adopts the findings,¹ conclusions,² and recommendations of the Trial Examiner.

¹ Chairman McCulloch does not find it necessary to decide whether the lessor and lessees herein are joint employers. He would assert jurisdiction on the theory expressed in *Trade Winds Motor Hotel & Restaurant*, 140 NLRB 567. Here, as in *Trade Winds*, the enterprises, although separately owned and operated, are held out to the public as a single, integrated enterprise, occupy a common situs, serve essentially the same class of customers, and supplement each other. Due to the great amount of business done by the Mart, the impact exerted upon commerce by a labor dispute at one of the lessees in the Mart would be much greater than that exerted upon commerce by a labor dispute at a separately located retail business *Grand Central Liquors*, 155 NLRB 295, 298.

² The General Counsel excepted to the Trial Examiner's failure to find that Al Lipkin was an agent of the Respondent. Inasmuch as the record shows that at the time of the formation of Respondent Corporation Al Lipkin was designated as its president, and as Lipkin's own testimony at the Pennsylvania Labor Relations Board hearing on March 28, 1966, disclosed that he still occupies that position, we find that at all material times Al Lipkin was an agent of the Respondent, and that the unfair labor practices committed by him are attributable to the Respondent.

We also hereby correct the Trial Examiner's inadvertent failure to grant the "Joint Motion To Amend Stipulation Of The Parties Known As General Counsel's Exhibit No. 4"