

Allied Food Distributors, Inc. and/or Fabro, Incorporated and/or International Meat Processors, Inc. and General Teamsters Local Union No. 528 and International Union of District 50, United Mine Workers of America, Party to the Contract. Case 10-CA-7027

February 14, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

Upon a charge filed by General Teamsters Local Union No. 528, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint, dated August 3, 1967,¹ against Allied Food Distributors, Inc., and/or Fabro, Incorporated and/or International Meat Processors, Inc., herein jointly called Respondent, alleging that the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(2) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served upon the Respondent.

With respect to the unfair labor practices, the complaint alleges, in substance, that on or about April 17 Respondent recognized and executed a collective-bargaining agreement with District 50 while a question concerning representation was pending² with respect to employees in the unit covered by said agreement, and has since maintained and enforced said collective-bargaining agreement. On August 7, the Respondent filed its answer, admitting in part, and denying in part, the allegations of the complaint, and requesting that the complaint be dismissed.

On August 28, the General Counsel filed with the Board a Motion for Summary Judgment, submitting, in effect, that the issues raised by the Respondent's answer have previously been litigated in the representation proceeding³ and that there are no issues of fact or law requiring a hearing in the instant case and requesting, in view of the admission contained in the Respondent's answer, that the Board issue an order that cause be shown why a Decision and Order should not be issued finding the violations as alleged in the complaint, and that such

Decision and Order be duly issued thereafter. On August 29, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause. On September 6, the Respondent filed a Motion to Dismiss Complaint and Response to Motion for Summary Judgment, requesting that the motion be denied and that either the complaint be dismissed or the matter be renoticed for hearing.

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.

RULING ON THE MOTION FOR SUMMARY JUDGMENT

In its Response to Motion for Summary Judgment, the Respondent admits that on April 17 it executed a collective-bargaining agreement with District 50, but contends, *inter alia*, that said agreement was executed within the last 60 days of an existing contract covering the same bargaining unit, at a time when no question of representation was pending with respect to any employees in the unit covered by said agreement. By raising this argument, the Respondent is raising no issue requiring a hearing, for the factual matters underlying its position were fully considered in the representation proceeding.⁴ In that proceeding, the Regional Director determined that this renewal contract could not act as a bar because it was signed at a time when a question concerning representation existed. Both the Respondent and District 50 filed Requests for Review of said Decision and Direction of Election with the Board, and such requests were denied.

In its Response to Motion for Summary Judgment, the Respondent also contends that it executed the contract with District 50 in reliance on a ruling of the Regional Director in a previous representation proceeding.⁵ This argument was found to be lacking in merit by the Regional Director in the representation proceeding also.⁶

Here, the Respondent did not offer to adduce at a hearing any newly discovered or previously unavailable evidence; nor does it contest any essential facts involved herein. Inasmuch as the Respondent has thus fully litigated all material issues in the representation case, we find that there are no matters outstanding which require further hearing in this unfair labor practice proceeding.⁷

asserts generally that the "unfair-labor-practice" questions differ from those decided in the representation proceeding and should be developed at a hearing. We can perceive no relevant issue that has not already been specifically determined by the representation proceeding other than the possible defense that, because the Teamsters petition, as amended, did not specify the canning employees as a potentially appropriate unit, the Respondent had no notice that a question concerning representation existed as to this unit. The record, however, clearly discloses that the facts relating to the canning employees were so fully investigated at the representation proceeding that the Respondent must be considered to be foreclosed from contending that it had inadequate notice that these employees might later be deemed a separate appropriate unit.

¹ Unless otherwise noted, all dates are in 1967

² *Allied Food Distributors, Inc.*, Case 10-RC-7025.

³ *Ibid.*

⁴ *Ibid.*

⁵ Dismissal of petition in Case 10-RC-7003

⁶ Denial of Motion for Reconsideration in Case 10-RC-7025.

⁷ *N.L.R.B. v. Air Control Products of St Petersburg, Inc.*, 335 F.2d 245, 249 (C.A. 5) Cf. *Pittsburg Plate Glass Company v. N.L.R.B.*, 313 U.S. 146, *The Sheffield Corporation*, 163 NLRB 180, Section 102.67(f) of the National Labor Relations Board Rules and Regulations, Series 8, as amended

In its response to the Motion for Summary Judgment, the Respondent

Thus, all material issues having been either decided by the Board or admitted in the answer to the complaint, there are no matters requiring a hearing before a Trial Examiner. Accordingly, the General Counsel's Motion for Summary Judgment is granted. On the basis of the record before it, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Allied Food Distributors, Inc., is a Delaware corporation with its principal office and place of business located in Atlanta, Georgia, where it is engaged in the nonretail sale and distribution of food products.

Fabro, Incorporated, is a Delaware corporation with its principal office and place of business located in Atlanta, Georgia, where it is engaged in the manufacture and sale of meat products.

International Meat Processors, Inc., is a Delaware corporation with its principal office and place of business located in Atlanta, Georgia, where it is engaged in the manufacture and sale of meat products. During the past calendar year, which period is representative of all times material herein:

(a) Allied Food Distributors, Inc., sold and shipped products valued in excess of \$50,000 directly to customers located outside the State of Georgia.

(b) Fabro, Incorporated, sold and shipped products valued in excess of \$50,000 to Allied Food Distributors, Inc.

(c) International Meat Processors, Inc., sold and shipped goods valued in excess of \$50,000 to Allied Food Distributors, Inc.

Allied Food Distributors, Inc., Fabro, Incorporated, and International Meat Processors, Inc., are, and have been at all times material herein, affiliated businesses with common ownership and management, common control of labor relations, integration of operations and interchange and interlocking supervision, and constitute a single business enterprise.

The Respondent admits, and we find, that it is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union of District 50, United Mine Workers of America, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

⁸ It appears from the record that it incorrectly named Allied as Employer instead of Fabro.

⁹ It was later established that the "O.C.O. department" is the same as,

General Teamsters Local Union No. 528, the Charging Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Employer's canmaking operations at its Atlanta, Georgia, plant, excluding office clerical employees, professional employees, guards, foremen, plant superintendent, and all other supervisors as defined in the Act.

A Chronology of Events

On January 13, 1964, District 50 of the United Mine Workers of America was certified by the Board as the exclusive bargaining agent in a plant-wide unit of Fabro, Incorporated, employees, excluding truckdrivers. Subsequently, on April 29, 1964, the parties entered into a collective-bargaining agreement covering the period from April 20, 1964, to April 19, 1967.

In 1965, both Allied Food Distributors, Inc., and International Meat Processors, Inc., were formed, the ownership of each being the same as that of Fabro. Allied performs the warehouse function previously performed by Fabro, and International processes meats. All these operations are performed at the same site.

In December 1966, Fabro began to manufacture cans for packaging its products. Although at least one employee was transferred, it appears that generally the employees were newly hired.

On February 24, 1967, General Teamsters Local Union No. 528 filed a petition naming Allied Food Distributors, Inc., as the Employer,⁸ but seeking an election in a unit composed of all employees of the Employer's plant in Atlanta, Georgia, including all employees of the O.C.O. department,⁹ dog food department, warehousemen, loaders, forklift operators, shipping and receiving clerks, with the usual exclusions. *Allied Food Distributors, Inc.*, Case 10-RC-7003. On March 6, the Regional Director administratively dismissed the petition on the ground that a collective-bargaining agreement then in effect between Fabro, Incorporated, and District 50 constituted a bar. There was no appeal from this dismissal. A week later, on March 13, the General Teamsters filed another petition, again naming Allied as the Employer,¹⁰ and requesting an election in a unit composed of all production and maintenance employees of the Employer's Food

the canmaking department.

¹⁰ It appears from the record that at this time Teamsters was interested in International Meat Processors even though it named Allied.

Processing plant. On March 27, notice of hearing issued and on April 3, a hearing was held. At the hearing, General Teamsters was allowed to amend its petition. It took three different positions as to unit: (a) all employees of all three companies at this location; or (b) all employees of Allied and International; and (c) any unit of employees that might be found appropriate. On April 17, after the hearing, but before a decision issued, the Respondent executed a new contract with District 50 covering the unit already previously certified in Case 10-RC-5739 but also including the employees of the canmaking department.

On June 16, 1967, the Acting Regional Director for Region 10 issued a Decision and Direction of Election in *Allied Food Distributors, Inc.*, Case 10-RC-7025, directing an election among the production and maintenance employees of the canmaking department. Both the Respondent and District 50 filed Requests for Review with the Board, and the Respondent also filed with the Regional Director a Motion for Reconsideration of the Acting Regional Director's Decision. The Requests for Review and the Motion were denied. On July 18, General Teamsters Local Union No. 528 filed the charge out of which the instant proceeding arose. The charge alleged that Respondent violated Section 8(a)(1) and (2) of the Act in having executed a contract with District 50 during the pendency of and prior to the settlement of an issue concerning representation.

By negotiating and executing a contract with District 50 during a time when a representation petition that raised a real question concerning representation was pending before the Board, the Respondent violated Section 8(a)(2) and (1) of the Act under the rule enunciated in the *Midwest Piping & Supply Co.* case.¹¹

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of the Respondent set forth in section III, above, occurring in connection with its operations as 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.

V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act, we shall order that it cease and desist from such practices and to take such affirmative action as will effectuate the policies of the Act.

Inasmuch as Respondent improperly resolved the question concerning the representation of its canmaking employees by according District 50 recognition as their collective-bargaining representative, we shall order that Respondent withdraw and withhold such recognition unless and until the said labor organization has demonstrated exclusive majority representative status pursuant to a Board-conducted election.

CONCLUSIONS OF LAW

1. Allied Food Distributors, Inc., Fabro, Incorporated, and International Meat Processors, Inc., are, and have been at all times material herein, affiliated businesses with common ownership and management, common control of labor relations, integration of operations, and interchange and interlocking supervision, and constitute a single business enterprise.

2. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. International Union of District 50, United Mine Workers of America, and General Teamsters Local Union No. 528 are labor organizations within the meaning of Section 2(5) of the Act.

4. All production and maintenance employees of the Respondent's canmaking operations at its Atlanta, Georgia, plant, excluding office clerical employees, professional employees, guards, foremen, plant superintendent, and all other supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

5. By granting unlawful assistance and support to District 50, United Mine Workers of America, Respondent has violated Section 8(a)(2) of the Act.

6. By frustrating the Section 7 rights of its employees to self-organization and collective bargaining, Respondent has violated Section 8 (a)(1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Allied Food Distributors, Inc., and/or Fabro, Incorporated, and/or International Meat Processors, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing or contracting with District 50, United Mine Workers of America, as the collective-bargaining representative of any of its canmaking employees at the Atlanta, Georgia, plant, for the purpose of dealing with the Respondent concerning

¹¹ 63 NLRB 1060; see also *Shea Chemical Corporation*, 121 NLRB 1027.

grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization has been duly certified by the National Labor Relations Board as the exclusive representative of such canmaking employees.

(b) Giving effect to its contract dated April 17, 1967, with District 50, United Mine Workers of America, but only with respect to its canmaking employees, or any extension, renewal, modification, or supplement thereof, or to any superseding contract, unless and until District 50, United Mine Workers of America, has been duly certified by the National Labor Relations Board as the exclusive representative of such canmaking employees; provided however, that nothing herein shall be construed as requiring it to withdraw, change, or abandon any of the terms and conditions of employment currently enjoyed by such canmaking employees.

(c) In any like or related manner interfering or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from District 50, United Mine Workers of America, as the collective-bargaining representative of its canmaking employees, unless and until said labor organization has been certified by the National Labor Relations Board as the exclusive representative of such employees.

(b) Post at its Atlanta, Georgia, plant, copies of the attached notice marked "Appendix."¹² Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

¹² In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL withdraw and withhold all recognition from District 50, United Mine Workers of America, as the collective-bargaining representative of any of our canmaking employees, and will not recognize said labor organization as such representative, unless and until said labor organization has been certified by the National Labor Relations Board as the exclusive representative of such canmaking employees.

WE WILL NOT give effect to our contract dated April 17, 1967, with District 50, United Mine Workers of America, but only with respect to our canmaking employees, or any extension, renewal, modification, or supplement thereof, or to any superseding contract, unless and until said labor organization has been certified as the majority representative of such canmaking employees by the National Labor Relations Board.

WE UNDERSTAND that nothing in the Board's Order requires to withdraw, change, or abandon any term or condition of employment currently enjoyed by our canmaking employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of any right guaranteed to them by Section 7 of the National Labor Relations Act.

ALLIED FOOD
DISTRIBUTORS, INC.,
AND/OR FABRO,
INCORPORATED, AND/OR
INTERNATIONAL MEAT
PROCESSORS, 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, 730 Peachtree Street, N.E., Room 701, Atlanta, Georgia 30308, Telephone 526-5760.