

Albertsons, Inc and United Food and Commercial Workers, Retail Clerks Union Local No 1105 and United Food and Commercial Workers Union, Local No 44 Cases 19-CA-15543 and 19-CA-15612

22 October 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS**

Upon charges filed on 24 March 1983 by United Food and Commercial Workers Retail Clerks Union Local No 1105 and 15 April 1983 by United Food and Commercial Workers Union Local No 44, the General Counsel of the National Labor Relations Board issued a complaint on 3 May 1983 and a consolidated complaint on 17 May 1983 against Albertsons, Inc (the Respondent) alleging that it has violated Section 8(a)(1) of the Act by promulgating, maintaining, and enforcing a rule concerning union buttons

On 3 October 1983 all parties filed a stipulation of facts and a motion to transfer the proceeding to the Board for decision without a hearing before an administrative law judge or issuance of a judge's decision On 28 March 1984 the Board approved the stipulation and granted the motion The Respondent, Local 1105, and the General Counsel filed briefs

The National Labor Relations Board has delegated its authority in this proceeding to a three member panel

On the entire record in this case and after consideration of the parties' briefs, the Board makes the following findings

I JURISDICTION

The Respondent is a Delaware corporation with offices and places of business in Seattle Washington where it is engaged in selling groceries During the past 12 months a representative period the Respondent had gross sales of goods and services valued in excess of \$500,000 During the same period it purchased and had delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside the State or from suppliers within the State that had obtained the goods and materials directly from sources outside the State We find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 1105 and Local 44 are labor organizations within the meaning of Section 2(5) of the Act

II UNFAIR LABOR PRACTICES

A Issue

The issue presented is whether the Respondent violated Section 8(a)(1) of the Act by promulgating, maintaining, and enforcing a rule that prohibits employees from wearing buttons provided by any union

B Facts

The Respondent operates several¹ retail food stores in the area of Seattle, Washington It provides female employees with blue slacks and smock and male employees with a large blue fabric apron embossed with the letter "A" to be worn over slacks shirt and tie Produce section employees wear a green plastic apron

Local 1105 and Local 44 represent employees at the stores involved in this proceeding¹ Pursuant to applicable collective bargaining agreements, employees who work less than a 4 hour shift are entitled to a 10 minute break per shift, and employees who work more than a 4 hour shift are entitled to a 15 minute break with a 1 hour lunchbreak per shift At all its stores the Respondent provides separate employee lunchrooms located away from general merchandise and selling areas

About mid February 1983 employees at the various stores began wearing Equity in 83 buttons during worktime on their clothing in a manner visible to the public The buttons were metal, about 1 inch in diameter and one fourth inch thick, with a dark blue background and white lettering which read "UFCW Equity in 83, No Take Aways"

Concurrently with the wearing of the Equity in 83' buttons Local 1105 distributed two separate handbills to customers outside the King and Snohomish County stores The leaflets were printed with a copy of the Equity in 83' button in the background They thanked customers for support mentioned the profit status of the retail food industry and stated that the Union was seeking an equitable agreement and fighting Concession (take aways) Bargaining

In mid March 1983 the Respondent published a rule to all directors and employees at the stores involved either by posting it adjacent to employee lunchrooms and/or timeclocks or by orally relating it to employees The rule read

¹ Local 1105 is the representative of all employees at the Respondent's stores in King and Snohomish Counties Washington Local 44 is the representative of all grocery clerks and meatcutters at the Bellingham Washington store and all meatcutters at the Bothell Edmonds Everett Lynwood Mountlake Terrace and Port Angeles Washington stores The units exclude office clericals guards and supervisors as defined in the Act

None of our employees are allowed to wear buttons provided by any union. In particular, the button that says

Equity in 83 No take aways USCW [sic] 1105

The Respondent has maintained the rule in effect and has directed employees to remove prohibited buttons from their clothing

Earlier, during October and November 1980 employees at the King and Snohomish County stores had worn "recycling" buttons on worktime with the Respondent's acquiescence. The buttons, which Local 1105 had distributed, were about 2 1/4 inches in diameter and bore orange, brown and white lettering which stated, "Keep on Recycling Vote No #61". The message related to a controversial "bottle bill" issue that the voters of Washington later rejected. Also, historically employees had worn "union" buttons in a manner visible to the public in the workplace during worktime. The buttons varied in size from three fourths of an inch to 1 1/2 inches in diameter, had different color combinations and bore the name of a labor organization or the word "steward". After the Respondent published its button rule, employees were not allowed to wear the union buttons.

In June through August 1983, following the posting of the button rule in March 1983 the Respondent provided two buttons to employees to wear publicly during worktime in the workplace. One, about 3 inches in diameter, bore the legend

Funk & Wagnalls New Encyclopedia only 9¢ [cents] Vol 1 in red letters on a white background. The second, about 2 1/2 inches in diameter bore the legend "LUCKY STRIKES AGAIN" in black letters on a red and gold background.

C Contentions of the Parties

In support of the complaint the General Counsel contends that the Respondent's button rule contravenes Section 8(a)(1) because the Respondent has not established any special circumstances that warrant limiting the employees' right to display union emblems and because the Respondent acted disparately in prohibiting employees from wearing union buttons while permitting them to wear political or commercial buttons. Local 1105 argues, in addition that the Respondent designed the button rule to discourage the Union's collective bargaining stance.

The Respondent takes the position that the rule is privileged. It points out that a significant element of its customer appeal program is the neat, uniform appearance of selling employees, and that it has a longstanding policy that only company approved

emblems may be worn at work. The Respondent also emphasizes that at times it has permitted employees to wear buttons which further company interests such as the "recycling button" and buttons promoting the sale of certain products, but it considers the "Equity in 83" button to be a nontraditional union button that violates the apparel policy and amounts to unprotected economic warfare" against the Company on the selling floor.

D Discussion

Under the protection of Section 7 of the Act, employees may wear union buttons or other emblems at work to demonstrate union adherence.² This employee right is balanced against an employer's right to operate its business and an employer may restrict the wearing of union emblems for considerations such as production, discipline, or customer relations. In this case, we conclude that the Respondent's restriction of buttons is unlawfully broad because it applies to nonselling as well as selling areas of the stores and applies to employee breaktime as well as time when employees are working. Accordingly we find that the rule constitutes an unreasonable impediment to employee union activity and a violation of Section 8(a)(1).

CONCLUSION OF LAW

By promulgating, maintaining, and enforcing an overly broad rule that prohibits employees from wearing buttons provided by any union the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

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

ORDER

The National Labor Relations Board orders that the Respondent, Albertsons, Inc., Seattle, Washington its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Promulgating, maintaining, and enforcing an overly broad rule that prohibits employees from wearing buttons provided by any union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex

² See *Republic Aviation Corp v NLRB* 324 U.S. 793 (1945)

ercise of the rights guaranteed them by Section 7 of the Act

2 Take the following affirmative action necessary to effectuate the policies of the Act

(a) Post at its facilities in King and Snohomish Counties, Washington, and Bellingham, Bothell Edmonds Everett, Lynwood, Mountlake Terrace, and Port Angeles, Washington copies of the attached notice marked Appendix "3 Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material

³ If this Order is enforced by a Judgment of a United States Court of Appeals the words in the notice reading Posted by Order of the National Labor Relations Board shall read Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice

WE WILL NOT promulgate maintain, or enforce an overly broad rule that prohibits you from wearing buttons provided by any union

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act

ALBERTSONS, INC