

Roswil, Inc., d/b/a Ramey Super Markets and Congress of Independent Unions and Retail Store Employees Union Local 322 of Southwest Missouri, AFL-CIO, Party to the Contract

Congress of Independent Unions and Retail Store Employees Union Local 322 of Southwest Missouri, AFL-CIO

Retail Store Employees Union Local 322 of Southwest Missouri, AFL-CIO and Congress of Independent Unions

Retail Store Employees Local 322 and Retail Clerks International Association and Roswil, Inc., d/b/a Ramey Super Markets. Cases 17-CA-6773, 17-CB-1512, 17-CB-1514, 17-CB-1546, and 17-CB-1583

September 29, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On January 28, 1977, Administrative Law Judge Marion C. Ladwig issued the attached Decision in this proceeding. Thereafter, General Counsel, the Employer, and Retail Store Employees Union Local 322 filed exceptions and supporting briefs. Retail Store Employees Union Local 322 filed a brief in opposition to the Employer's 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 authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The facts in this case, though complicated, may be set out as follows: The Employer operates a chain of grocery stores in southwest Missouri. Six of these stores are in Springfield, Missouri, one is in nearby Republic, and a number are in surrounding counties. Retail Store Employees Union Local 322 (hereafter the Local) represents the grocery employees in the Springfield stores and in a number of stores in the surrounding counties. The Congress of Independent Unions (hereafter CIU) also represents grocery employees in some of the stores in the surrounding counties.

As in more fully set forth in the Administrative Law Judge's Decision, there has been a considerable degree of friction between the Employer and the Lo-

cal in recent years, with much resulting litigation. The principal issue in the present case involves a dispute between the Employer and the Local over representation of employees at the Employer's Republic store.

The Company acquired the Republic store in July 1973. At that time the Company and the Local had a collective-bargaining agreement covering present and future company stores within a 40-mile radius of Springfield. The Company and the Local also had a separate agreement covering company stores within a 20-mile radius of Aurora, Cassville, and Seymour, Missouri. Republic, through some apparent oversight, fell within the geographical jurisdiction of both agreements, and a dispute arose over placement of the Republic store. The Company argued that the Republic store belonged under the Aurora-Cassville-Seymour agreement. The Local argued that the Republic store should be placed under the Springfield agreement. The matter was submitted to an arbitrator, who rejected both contentions and directed bargaining over an agreement for the Republic store.

Meanwhile, the 12 employees at the Republic store signed a petition in January 1974, stating that they wanted to be included under the Springfield agreement. On May 27 or 28, 1974, following the arbitration award, a majority of the Republic employees voted to go on strike to put the Republic store under the Springfield agreement. After the strike, which began June 6, the parties executed a June 15 memorandum of agreement providing that the Republic employees would be governed by the Springfield agreement with several specified changes, including a separate termination date, August 1, 1975. (The Springfield agreement expired June 1, 1975). Since the execution of the memorandum agreement, the Local has taken the position that the Republic and Springfield employees are in the same bargaining unit. The Company has taken the position that separate bargaining units for Springfield and Republic employees were contemplated. (The Company's position was vindicated by the Board in *Retail Clerks International Association, and Retail Store Employees Local 322 (Roswil, Inc., d/b/a Ramey Supermarkets)*,¹ a case pending disposition at the time the events described herein occurred.)

In any event, the June 15 memorandum of agreement did not bring complete harmony to the parties' relationship. On at least two occasions in 1974, the Company sent letters to its employees criticizing the Local and, in one of these letters, expressed a preference for the CIU and encouraged the employees "to call in another union or vote out your present union when your contract expires."

¹ 226 NLRB 80 (1976).

On May 19, 1975, the CIU filed an election petition for a unit of Republic store employees. That petition was dismissed because of the pending unfair labor practice charges in the above-mentioned case. The Company appealed the dismissal of this petition on CIU's behalf. At approximately the same time, the Company and the Local began conducting negotiations for a new contract to succeed the Springfield agreement.² On June 6, 1975, shortly after the Springfield agreement expired, the Local began to strike the Springfield stores.

At the end of July 1975,³ 10 Republic employees signed a petition requesting the Company to recognize the CIU as their bargaining representative.⁴ On August 1, the Company-Local memorandum agreement covering the Republic store expired. On August 5, the CIU submitted the Republic employees' petition to the Company's president and demanded recognition as the Republic employees' bargaining representative. That same afternoon the Company and the CIU negotiated the terms of an agreement. The next day the employees voted their acceptance, and the parties signed a 3-year contract on August 18 and 20.

The Local, however, continued to claim representation of the Republic employees as part of the Springfield bargaining unit and on August 12 began picketing the Republic store. On September 25, the Local and the Company signed a new Springfield agreement which specifically covered the Republic employees. The parties also executed a strike settlement agreement in which they agreed to withdraw or seek dismissal of all pending litigation between them.

The Administrative Law Judge, on the basis of the above, found that by signing a contract with the Local covering the Republic employees after the Company had itself taken the position that the Local was no longer majority representative, the Company violated Section 8(a)(2) and (1) of the Act. The Administrative Law Judge also found that, by executing this contract and attempting to enforce its union-security provisions, the Local violated Section 8(b)(1)(A) of the Act. He found no violations with respect to the Company's extending recognition to the CIU on August 5 and in the CIU's accepting such recognition. We agree with the Administrative Law Judge's finding that the Company's recognition and the Local's acceptance of that recognition violated Section 8(a)(2) and (1) and Section 8(b)(1)(A) of the Act, respectively, but we find additional violations of those

sections by the Company's recognition of the CIU and that Union's acceptance of recognition.

Thus, here, the Local at all times had a good claim of majority representation based on the presumption of continuing majority status. The CIU, to be sure, clearly undercut to some extent the substantiality of the claim by securing cards from all the employees in the unit. Its position was in turn somewhat diminished by the Company's prior urging that unit employees abandon the Local and support the CIU. Consequently, the situation was patently an ambiguous one concerning the majority status of either Union. Nevertheless, as indicated, the Company rejected the Local's status as an incumbent and recognized the CIU and then, without the occurrence of any relevant intervening event, recognized the Local again. Such conduct by the Company seems to have been based solely on what it considered to be in its own best self-interest at the particular time and not upon any belief, much less one supported by substantial evidence, that one Union or the other represented a majority of the employees in the unit. And, indeed, in the existing fluid situation, there was no consequential evidence that either Union did in fact represent a majority at the times relevant. Therefore, we find that the Respondent Company's recognition of the CIU on August 5 and of the Local on September 25 violated Section 8(a)(2) and (1) of the Act. Furthermore, both Unions were well aware of the conflicting claims being made and the uncertainty surrounding their majority status but nevertheless accepted unquestioned recognition as the unit employees' bargaining representative. Consequently, we find that in these circumstances both the CIU's and the Local's acceptance of recognition on, respectively, August 5 and September 25 violated Section 8(b)(1)(A) of the Act.⁵

THE REMEDY

Having found that Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(2), 8(a)(1), and 8(b)(1)(A) of the Act, we shall order Respondents to cease and desist therefrom and to take appropriate affirmative action. Respondents

² During these negotiations, the Company's Washington counsel admitted to the Local's representative that the Company was responsible for bringing in the CIU.

³ All dates hereinafter are in 1975 unless otherwise indicated.

⁴ Seven of the 10 had withdrawn from formal membership with the Local since the end of May 1974 and had continued as financial core members since that time.

⁵ We thus adopt the Administrative Law Judge's finding that the Local, by executing the September 25 contract and seeking to enforce its union-security provision, violated Sec. 8(b)(1)(A). However, the record does not clearly show whether or to what extent the CIU attempted to enforce the August 18 contract's union-security clause. In the absence of evidence establishing that the CIU sought enforcement of such provisions, we will not find that the CIU violated Sec. 8(b)(2) as alleged. See *United Brotherhood of Carpenters & Joiners of America, Local Union No. 515 (G. E. Johnson Construction Co., Inc.)*, 188 NLRB 832 (1971).

It is also not clear to what extent the Company has been enforcing either contract's dues-checkoff provisions. Accordingly, we shall provide in the Order that all moneys collected and retained under these union-security provisions shall be refunded to the Republic employees.

will be directed to cease and desist from maintaining and enforcing the collective-bargaining agreements covering the Republic store employees until such time as the representation question has been decided through a Board-conducted election. Respondent Local will be directed to cease and desist from attempting to enforce the union-security provisions of its contract. Respondents will be directed to refund to the employees any moneys collected or retained pursuant to either contract's union-security provision.

CONCLUSIONS OF LAW

1. Roswil, Inc., d/b/a Ramey Super Markets is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Congress of Independent Unions, Retail Store Employees Union Local 322 of Southwest Missouri, AFL-CIO, and Retail Clerks International Association are labor organizations within the meaning of Section 2(5) of the Act.

3. By executing on August 18, 1975, and thereafter maintaining and enforcing a collective-bargaining agreement with the CIU which recognized the CIU as the exclusive bargaining representative of its Republic store employees at a time when a real question concerning representation existed as to the collective-bargaining representative of the Republic employees, the Company violated Section 8(a)(2) and (1) of the Act.

4. By executing on or about September 25, 1975, and thereafter maintaining and enforcing a collective-bargaining agreement with the Local which recognized the Local as the exclusive bargaining representative of its Republic store employees at a time when a real question concerning representation existed as to the collective-bargaining representative of the Republic employees, the Company violated Section 8(a)(2) and (1) of the Act.

5. By accepting recognition as the exclusive bargaining representative of the Company's Republic employees and by executing and thereafter maintaining a collective-bargaining agreement covering them at a time when a real question concerning representation existed, the CIU violated Section 8(b)(1)(A) of the Act.

6. By accepting recognition as the exclusive bargaining representative of the Company's Republic employees and by thereafter maintaining a collective-bargaining agreement at a time when a real question concerning representation existed, and by attempting on November 26 and December 4 to enforce the agreement's union-security provisions, the Local violated Section 8(b)(1)(A) of the Act.

7. The foregoing unfair labor practices are unfair

labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. The Local and the International did not violate Section 8(b)(3) of the Act by refusing to bargain in good faith with the Company between September 22 and 25.

9. By its strike settlement agreement executed on or about September 25, the Company obligated itself not to refile any unfair labor practice charges which the parties agreed (as part of the settlement) to withdraw. The Company was bound by this agreement and thereby was precluded from refiling, in Case 17-CB-1583, litigation previously withdrawn.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Roswil, Inc., d/b/a Ramey Super Markets, Springfield and Republic, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing or contracting with Respondent CIU or Respondent Local as the exclusive bargaining representative of its Republic store employees unless or until said labor organizations, or either of them, have been duly certified pursuant to a Board-conducted election.

(b) Giving effect to, maintaining, or in any way enforcing the collective-bargaining agreements executed with the CIU on August 18, 1975, or the Local on September 25, 1975, covering the Republic store employees, unless and until said organizations, or either of them, have been duly certified pursuant to a Board-conducted election.

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

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

(a) Withdraw and withhold all recognition from Respondent CIU and Respondent Local as the representatives of its Republic store employees unless and until said labor organizations, or either of them, have been duly certified pursuant to a Board-conducted election.

(b) Jointly and severally with Respondent CIU and Respondent Local, reimburse all present and former Republic store employees for all moneys collected pursuant to the union-security provisions of the Company's August 18 and September 25, 1975, contracts with the CIU and the Local.

(c) Post at its store in Republic, Missouri, copies of

the attached notice marked "Appendix A."⁶ Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent Company's authorized representative, shall be posted by Respondent Company 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 Company to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in paragraph 2(c), above, as soon as forwarded by the Regional Director, copies of the Respondent Local's attached notice marked "Appendix B" and Respondent CIU's attached notice marked "Appendix C."

(e) Sign and return by mail to the Regional Director, immediately upon receipt from him, copies of the attached notice marked "Appendix A" for posting by Respondent CIU and Respondent Local.

(f) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent Company has taken to comply herewith.

B. Respondent Retail Store Employees Union Local 322 of Southwest Missouri, AFL-CIO, Springfield, Missouri, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Accepting recognition as the exclusive bargaining representative of Respondent Company's Republic employees unless and until certified pursuant to a Board-conducted election.

(b) Giving effect to or maintaining its contract of September 25, 1975, with Respondent Company covering the Republic employees unless and until it is certified pursuant to a Board-conducted election.

(c) Attempting to enforce the union-security provisions of its contract of September 25, 1975, with Respondent Company unless and until it is certified pursuant to a Board-conducted election.

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

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

(a) Jointly and severally with the Respondent Company, reimburse all present and former Republic

store employees for all moneys collected pursuant to the union-security provisions of the September 25, 1975, contract between the Company and the Local.

(b) Post in Respondent Local's business office copies of the attached notice marked "Appendix B."⁷ Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent Local's authorized representative, shall be posted by Respondent Local immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local to insure that said notices are not altered, defaced, or covered by any other material.

(c) Post at the same places and under the same conditions as set forth in paragraph 2(b), above, as soon as forwarded by the Regional Director, copies of the Respondent Company's notice marked "Appendix A."

(d) Sign and return by mail to the Regional Director, immediately upon receipt from him, copies of the attached notice marked "Appendix B" for posting by Respondent Company.

(e) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent Local has taken to comply herewith.

C. Respondent Congress of Independent Unions, Alton, Illinois, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Accepting recognition as the exclusive bargaining representative of Respondent Company's Republic employees unless and until it is certified pursuant to a Board-conducted election.

(b) Giving effect to or maintaining its contract of August 18, 1975, with the Company covering the Republic employees unless and until it is certified pursuant to a Board-conducted election.

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

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

(a) Jointly and severally with the Respondent Company, reimburse all present and former Republic store employees for all moneys collected pursuant to the union-security provisions of the August 18, 1975, contract between the Company and the CIU.

(b) Post in Respondent CIU's business office cop-

⁶ In the event that 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."

⁷ See fn. 6, *supra*.

ies of the attached notice marked "Appendix C."⁸ Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent CIU's authorized representative, shall be posted by Respondent CIU immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent CIU to insure that said notices are not altered, defaced, or covered by any other material.

(c) Post at the same places and under the same conditions as set forth in paragraph 2(b), above, as soon as forwarded by the Regional Director, copies of the Respondent Company's notice marked "Appendix A."

(d) Sign and return by mail to the Regional Director, immediately upon receipt from him, copies of the attached notice marked "Appendix C" for posting by Respondent Company.

(e) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent CIU has taken to comply herewith.

IT IS FURTHER ORDERED that the complaints be dismissed insofar as they allege violations of the Act not specifically found.

⁸ See fn. 6, *supra*.

APPENDIX A

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

WE WILL NOT recognize or contract with the CIU or Local 322 as the exclusive bargaining representative of our Republic store employees unless or until said labor organizations have been duly certified pursuant to a Board-conducted election.

WE WILL NOT give effect to, maintain, or in any way enforce the collective-bargaining agreements executed with the CIU on August 18, 1975, and with the Local on September 25, 1975, covering our Republic store employees unless and until said labor organizations have been duly certified pursuant to a Board-conducted election.

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

WE WILL jointly and severally with the CIU and Local 322 reimburse all present and former Republic store employees for all dues collected under the union-security provisions of our August 18, 1975, and September 25, 1975, contracts with the CIU and the Local.

WE WILL withdraw and withhold all recognition from the CIU and Local 322 as the representatives of our Republic store employees unless and until said labor organizations have been duly certified pursuant to a Board-conducted election.

ROSWIL, INC., D/B/A RAMEY SUPER MARKETS

APPENDIX B

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

WE WILL NOT accept recognition as the exclusive bargaining representative of Ramey Super Markets' Republic store employees unless or until we are certified pursuant to a Board-conducted election.

WE WILL NOT give effect to or maintain our September 25, 1975, contract with Ramey Super Markets covering the Republic store employees unless and until we are certified pursuant to a Board-conducted election.

WE WILL NOT attempt to enforce the union-security provisions of our September 25, 1975, contract with Ramey Super Markets unless and until we are certified pursuant to a Board-conducted election.

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

WE WILL jointly and severally with Ramey Super Markets reimburse all present and former Republic store employees for all dues collected under the union-security provisions of our September 25, 1975, contract with Ramey Super Markets.

RETAIL STORE EMPLOYEES UNION LOCAL
322 OF SOUTHWEST MISSOURI, AFL-CIO

APPENDIX C

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

WE WILL NOT accept recognition as the exclusive bargaining representative of the Ramey Super Markets' Republic store employees unless and until we are certified pursuant to a Board-conducted election.

WE WILL NOT give effect to or maintain our August 18, 1975, contract with Ramey Super Markets covering the Republic store employees unless and until we are certified pursuant to a Board-conducted election.

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

WE WILL jointly and severally with Ramey Super Markets reimburse all present and former Republic store employees for all dues collected under the union-security provisions of our August 18, 1975, contract with Ramey Super Markets.

CONGRESS OF INDEPENDENT UNIONS

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge: These consolidated cases were tried at Springfield, Missouri, on June 21-25, 1976. The CIU filed the charge against the Company in Case 17-CA-6773 on October 1, 1975,¹ and the charges against Local 322 in Case 17-CB-1514 on September 8 and in Case 17-CB-1546 on December 3 (amended January 12, 1976); the complaints issued on March 31, 1976. The Local filed the charge against the CIU in Case 17-CB-1512 on September 5 (amended March 5, 1976), and the complaint issued on March 31, 1976. The Company filed the charge against the Local and International in Case 17-CB-1583 on March 22, 1976 (amended on May 21, 1976), and the complaint issued on May 21, 1976.

During the 1975 strike conducted by Local 322 in Springfield and nearby Republic, Missouri, the Company signed a collective-bargaining agreement covering the Republic store employees with CIU, a favored independent union. Thereafter, the Company and Local settled the 16-week strike and agreed to resolve all their disputes. They executed a new Springfield area agreement, which included the same Republic employees. They also signed a strike settlement agreement in which they agreed to seek the dis-

¹ All dates are in 1975 unless otherwise stated.

missal of all litigation (as they promptly proceeded to do) and further agreed not to "file any future unfair labor practice charges" or other claims related to any presettlement matter. Nearly 6 months later—after closing down all six of the Local-represented Springfield stores and while continuing to sign contracts with the CIU—the Company reneged on its promise and filed the charge herein against the Local and International in Case 17-CB-1583, alleging presettlement unfair labor practices and contending that it "should be allowed to reinstate" the dropped litigation.

The primary issues are (a) whether the CIU and/or the Local violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act by executing the agreements covering the Republic employees without an election; (b) whether the Company violated Section 8(a)(1), (2), and (3) by executing and enforcing the agreement with the Local; and (c) whether the Company, after receiving the benefits of the strike settlement agreement, is precluded from dishonoring that part of the agreement in which it promised not to refile any presettlement charges.

Upon the entire record,² including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel, Company, Local, International, and CIU, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Roswil, Inc., d/b/a Ramey Super Markets, is a Missouri corporation which operates retail grocery stores in Missouri, where it annually purchases goods valued in excess of \$50,000 directly from outside the State and sells goods valued in excess of \$500,000. The parties admit, and I find, that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 322, the International, and CIU are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Surrounding Circumstances*

1. Friction between the Company and the Local

The Company has a chain of grocery stores in southwest Missouri. The evidence (including the transcript and exhibits in an earlier case, Case 17-CB-1336) indicates that the Company operated six (formerly seven) stores in Springfield, one store in nearby Republic, and stores in surrounding counties, including individual stores in Aurora, Carthage, Cassville, Granby, Houston, Lebanon, Monett, Neosho, Nixa, Ozark, Rolla, Seymour, and West Plains.

The Local has represented the grocery employees (not separate meat department employees) in the Springfield stores and a number of other stores. The Meat Cutters represent both grocery and meat department employees in the Nixa store. The Company signed its first contract with the

² The Company's unopposed motion to correct the transcript, dated September 22, 1976, is granted and received in evidence as Company Exh. 14.

CIU in 1974 at Lebanon and since then has signed CIU contracts at Houston, Seymour, and White Plains, as well as Republic.

In recent years, there has been considerable friction between the Company and the Local, and much resulting litigation. This conflict has primarily involved Richard Taylor (president of Ramey Super Markets) and Donald Jones (the Company's Springfield attorney) on one side, and Jack Gray (president of the Local) on the other. On April 17, 1974, the Company sent its employees a letter, over President Taylor's signature, referring to "friction between Rameys and this union for quite some time" and stating: "This problem was going on when I took over management of Rameys [in 1970], and it seems to have increased as time goes on. . . . We are constantly being threatened with grievances, lawsuits, and harassment, and it appears that the union would much rather have hatred between company and employees than the good friendly working relationship that both you and your company needs to prosper."

Later in 1974, the Company mentioned the CIU (with its address), as a favored alternative to the Retail Clerks. In its long October 24 letter over President Taylor's signature, the Company severely criticized the Retail Clerks and its officers and stated:

The employees in Lebanon have apparently found out that the Retail Clerks Local 322 is more interested in harming Ramey Super Markets and driving our customers over to some of our competitors than they are in honestly and fairly representing our employees. Thus, they have apparently requested the *Congress of Independent Unions, 303 Ridge Street, Alton, Illinois*, to represent them. That union has filed an election petition with the NLRB.

* * * * *

[Y]ou *have a right* to do what our Lebanon employees have done, and to *call in another union* or to vote out your present union when your contract expires. [Emphasis supplied.]

Other company letters and memoranda, criticizing the Local and President Gray, are in evidence. (The CIU won the election at Lebanon. Thereafter, one of the Republic store employees was invited to attend the Company-CIU negotiations there.)

In 1975, after the Regional Director dismissed CIU's May 19 petition for an election at the Republic store, it was the Company (not CIU) which filed the appeal to the Board.

Toward the end of May, before the long strike began on June 6, the Company's Washington counsel admitted both to a representative of the International and to Local President Gray that the Company was responsible for bringing in the CIU. Joel Meizel, president of the parent company, Roswil, Inc., retained Robert Rolnick and another Washington attorney in the hopes of avoiding a strike. Attorney Rolnick, in an effort to carry out President Meizel's stated desire to let the Local "go back to representing the people and let the Ramey Company go back to selling groceries," told International Representative Michael Christy in a

meeting in Washington on May 30 that he realized a lot of bad things had gone on and that they wanted to undo all the animosity and get a contract negotiated. Later in the meeting, he told Christy not to get concerned about the CIU, admitting, "We brought them in and we can take them out." Later, meeting directly with Local President Gray, Rolnick told him "we want to clean up everything" (to settle all pending litigation) and get everything back on an even keel in those stores. Rolnick stated that Meizel would like to expand there, and "We can control Mr. Taylor. . . . I will come in on a once-a-month basis" and "settle grievance," etc. When the CIU was mentioned, Rolnick stated, "Let's not kid one another. *We brought the CIU in, we can get rid of the CIU.*" (Emphasis supplied.) Rolnick also mentioned the difference in his "attitude toward labor relations" from that of Jones, the Company's Springfield attorney.

I note that Rolnick did not testify, and that this credited testimony by Christy and Gray is undisputed, except for the rebuttal testimony of Company President Taylor, who was not in the Washington meetings. Claiming that it was reported to him that the Retail Clerks demanded that the Company "get rid of the Congress of Independent Unions," Taylor testified he had the original notes of the May 30 meeting in his file at the office and that those notes were consistent with what had been reported to him. In its brief, the International sharply challenges Taylor's credibility, pointing out that the Company made no effort to produce the notes and accusing Taylor of fabricating the story. In his brief, the General Counsel states that he does not rely upon Taylor's testimony about the Washington meetings, stating:

As an *officer of the court*, counsel for the General Counsel states that the testimony of Richard Taylor concerning specific discussions, acts and conduct occurring at the Washington, D.C. meetings, and his knowledge thereof, are *contrary to the information* provided by Mr. Taylor to counsel for General Counsel during his pretrial preparation of this witness and therefore *I do not in any manner rely on such testimony* to support General Counsel's allegations of violation of the Act. [Emphasis supplied.]

(The Company's brief does not mention any error in Taylor's testimony.) I also note that Taylor's prior testimony in the earlier case, Case 17-CB-1336, was credited on the crucial issue of whether the Republic employees constituted a separate bargaining unit.

The negotiations resumed in Springfield after the Washington meetings. No settlement was reached, despite the agreement reached between the Local and the Company's major competitors. In July, during the strike, Local President Gray met in negotiations with Company Attorney Rolnick in St. Louis. Before the meeting concluded, Rolnick telephoned Roswil President Meizel and "ran over what we thought would be a fair way to settle everything." Rolnick then promised to discuss the matter further over the weekend with Meizel in Washington. On Monday, Rolnick telephoned Gray and said they were not in a position to accept the offer because "Mr. Taylor had convinced Mr. Meizel if he stayed with it a while longer that the business would start to come back and they thought they might be

able to weather the strike." Later, in Springfield, Rolnick told Gray "he was not having any success in working with" Company Attorney Jones and President Taylor, and talked about seeking out a different local counsel. (Jones continued to represent the Company.)

2. Dispute over Republic employees

On July 30, 1973, when the Company purchased the store in Republic, 8 miles from Springfield, the Company and Local had a Springfield agreement covering present and future stores within a 40-mile radius. They also had a separate agreement containing lower wages for Aurora (30 miles from Springfield) and Cassville (over 50 miles away) and still lower wages for the store in Seymour (27 miles away). The Local's typist had made copying mistakes in the Aurora-Cassville-Seymour agreement (erroneously typing certain claims, dates, and places from the Local's agreement with another grocery chain, Milgram's). As typed, the Aurora agreement covered present and future stores with a 20-mile radius "of Aurora, Cassville, and Seymour" (without stating which set of wages—the Aurora-Cassville rates or the lower Seymour rates—would be applicable to other stores). As the two agreements were written, both applied to the Republic store. (Aurora is 18 miles from Republic. Unlike Aurora, Republic is in the same county as the other cities.)

The Company contended that the 20-mile provision in the Aurora agreement should be applied as written, that the Aurora agreement superseded the earlier Springfield agreement, and that the Aurora-Cassville rates should be paid the Republic employees. The Local contended that the 20-mile radius language in the Aurora agreement was a typing error; that only the Aurora, Cassville, and Seymour stores were intended to be excluded from the Springfield agreement; that Republic is part of Metropolitan Springfield and the store is only 7 miles from downtown Springfield; and that the higher Springfield wage rates should be paid the Republic employees.

The dispute was submitted to arbitration. The arbitrator did not specifically rule on any question of bargaining unit or units. He found on April 1, 1974, that the copying "mistake that creates this controversy" (copying the 20-mile radius provision from the Milgram agreement) was not shown to be a "mutual" mistake, and that there had been no agreement on the Republic wages and classifications, which "are a proper subject for collective-bargaining," along with "any other issues in which the terms of the Springfield and Aurora contracts are not compatible."

Meanwhile, in January 1974, the 12 Republic employees had signed a petition (later submitted to the Company), stating that they "want to be included in the current contract covering other Ramey employees in Springfield, Missouri, and deserve the rate of pay as set forth in the Springfield contract." (Employees in the Company's store in Ozark, in another county, were included in the Springfield bargaining unit and were being paid the Springfield rates.) The Local now contends that at the time the Republic store employees indicated their desire to be represented by the Local they "became part of the Springfield unit and were properly accreted to the Springfield unit," citing *Houston*

Division of the Kroger Co., 219 NLRB 388 (1975), and *S. B. Rest of Framingham, Inc.*, 221 NLRB 506 (1975).

On May 27 or 28, 1974, following the arbitration award, the Republic employees voted seven to three (with two employees absent) to go on strike "to put the Republic store in the Springfield agreement" and on other issues. The strike began on June 6, 1974. On June 15, in a meeting with Ramey President Taylor and Vice President Joe Yates, Local President Gray proposed a written memorandum of agreement to settle the strike. The memorandum provided that "The *current collective bargaining agreement* for the employees of Rameys Super Markets in Springfield, Mo. will also apply to the Republic Mo. store," with several specified changes. (Emphasis supplied.) In the meeting, Taylor agreed to pay the Springfield wage rates at Republic but, as testified by Yates, "not all at one time." (New rates, to become effective in Springfield and Ozark on August 4, 1974, would not become effective at the Republic store until January 1, 1975.) Taylor insisted on a different expiration date. Gray asked why. Taylor explained, but did not disclose the Company's later contention that with a separate termination date, the memorandum of agreement covered a separate bargaining unit. (In the same meeting, after reaching the settlement of the Republic strike, the Company and Local agreed on new, lower wages for Aurora and Cassville and for Seymour, and also different expiration dates, using the same language as in the Republic memorandum of agreement.)

Since the June 15, 1974, meeting, Local President Gray has claimed that the Republic and Springfield employees are in the same bargaining unit, and Ramey President Taylor has claimed that the Republic employees constitute a separate bargaining unit.

The unit placement of the Republic employees was one of the issues in Case 17-CB-1336, which was tried on June 23-25 (during the 1975 strike). In that proceeding, Company President Taylor testified that the "intent" of the June 15, 1974, memorandum of agreement (which provided that the "current collective bargaining agreement . . . in Springfield . . . will also apply to the Republic . . . store"—with certain changes) was "that we would use the Springfield language, not the Springfield agreement" and "that there would be separate contracts drew [sic] up, but we would use *some of the Springfield language* in drawing up the body of the contract." (Emphasis supplied.) Vice President Yates did not corroborate this testimony. Local President Gray, in turn, testified that the agreement was to place Republic and the other three stores under the Springfield agreement, with modifications, and that he told the Company "we are not going to get into more separate contracts with you, we will just attach letters to the Springfield agreement. We are not going to have another arbitration like we had on Republic."

The 1975 strike was settled before Case 17-CB-1336 was decided, as discussed below.

B. Legality of CIU's and Local's Republic Agreements

1. Alleged violations

The 1975 strike began at the Springfield and Ozark stores on June 6. On August 12, following the August 1 termina-

tion of the June 15, 1974, memorandum of agreement, the Union began picketing at the Republic store.

None of the Republic employees joined in the strike. All 10 of them had signed a petition (on July 28-31), requesting the Company to recognize the CIU. (Seven of the 10 employees had withdrawn from formal membership in the Local on May 30, 1974, about 2 days after the seven-to-three strike vote, and had been financial core members of the Local since then. The International had set aside the Local's illegal fines against them for crossing the 1974 picket line after resigning from membership, as found in Case 17 CB-1336.)

On the afternoon of August 5, the CIU submitted to Ramey President Taylor and Attorney Jones the Republic employees' CIU petition. In a short time that same afternoon, the Company and CIU negotiated the terms of an agreement, which the Republic employees voted to accept the next day. After making minor changes, the CIU signed the 3-year agreement on August 18 and the Company on August 20, covering the Republic employees as a separate unit.

The Local, continuing to claim that the Republic employees were part of the Springfield-Ozark bargaining unit, negotiated a strike settlement agreement with the Company on September 25 and signed a new Springfield agreement, specifically covering the same Republic employees.

The General Counsel alleges that "a real question concerning representation" existed and that, under the *Midwest Piping* doctrine, both the CIU and the Local agreements were illegally executed. *Midwest Piping and Supply Co.*, 63 NLRB 1060, 1070 (1945). The General Counsel contends that the remedy should include a Board-conducted election among the Republic store employees.

2. CIU's majority claim

Citing *Iowa Beef Packers, Inc., v. N.L.R.B.*, 331 F.2d 176 (C.A. 8, 1964), and the Company's strong opposition to the Retail Clerks, the General Counsel challenges the CIU's claim of majority status, despite the fact that all 10 of the Republic store employees signed the CIU petition.

In *Iowa Beef Packers*, which arose in the context of employer "antagonism" toward the petitioning AFL-CIO International union which had represented the predecessor's employees, the court held that the Board was warranted in concluding that the favored independent union did not clearly represent an uncoerced majority and that a real question of representation existed when the employer recognized the Independent. The Independent had obtained signatures of over 100 of the 160 employees at the reopened plant, but the employer had actively campaigned against the International, had warned that the plant would close down if the employees selected the International, had stated, "We are not going to have no union in this place . . . just a company union," and had engaged in other conduct violative of Section 8(a)(1). The court concluded: "In summary, the active opposition to International by Company—known to its employees—throughout the period when the rival unions were vying for employees' support, was an important factor and certainly one for the Board to consider." The court enforced the Board's order finding a violation of Section 8(a)(2).

Relying on *Iowa Beef Packers*, the General Counsel argues that "Ramey had long strongly opposed the Local's representation of its employees. This fact has been obviously well known to the Republic unit employees from *inter alia*, the multitudinous litigation against the Local." In its brief, the Local emphasizes "the Company's animosity towards Local 322 and the Company's promotion of the CIU." The Local contends that the Company's "hate" letters and memoranda (signed by Ramey President Taylor or by both Taylor and Attorney Jones) attacking the Local and President Gray were part of a campaign to alienate the Company's employees from the Local and Gray. The Local contends that the Company's campaign against it resulted in a series of four unfair labor practice charges in which the Regional Director found merit, issuing complaints against the Company before the 1975 strike: in Case 17 CA 6292 (the complaint alleging that in letters, including the above-mentioned October 24, 1974, pro-CIU letter, the Company "bypassed the Union, dealt directly with its employees, and solicited its employees" in the Republic store and elsewhere to abandon the Retail Clerks—as well as alleging unlawful interrogation, soliciting an employee to obtain antiunion applicants for employment, threatening to discharge and reprimanding employees, and interfering with the policing of union agreement by threatening a union steward); in Case 17-CA-6395 (threatening to discharge a union supporter); in Case 17 CA 6405 (telling employees that 90 percent of its employees who had filed grievances were no longer employed by the Company); and in Case 17-CA-6484 (refusing to furnish the Union with information). The Local argues that the memoranda, which Company Attorney Jones would read at the 1975 negotiating sessions and which the Company then distributed to the store employees, justified even more charges against the Company. Citing the "cavalier manner in which the Company promoted the CIU," the admission by the Company's Washington counsel that the Company brought in the CIU, and the Company's "bland dealings" with the CIU (reaching agreement with CIU in the August 5 "negotiations," which "lasted between one and two hours"), the Local argues that "not only did the Company bring in the CIU as part of its campaign against Local 322 but . . . the CIU is and has been a willing and cooperative pawn of the employer in its campaign against Local 322."

After considering these contentions, as well as the contentions by the Company and CIU that their execution of the Republic agreement was lawful, I find that the present case is distinguishable from the *Iowa Beef Packers* case. There is no allegation in this proceeding that the Company engaged in unlawful conduct which tainted the majority status which the CIU claimed after all 10 of the Republic employees signed the CIU petition in late July. Although it is clear from the evidence that the Company openly, and with the obvious knowledge of the Republic employees, favored the CIU and opposed the Local, the evidence does not establish that the Company had contributed unlawful support to the CIU. Neither does the evidence show that the Company gave active aid and assistance to the CIU in getting the petition signed or that it unlawfully coerced (through threats or promises) the signing of the petition. The Regional Director did issue the complaints in the four

cases cited by the Local (involving employees in the Company's Aurora, Cassville, Granby, Republic, Springfield, and West Plains stores). But on September 2 (during the 1975 strike), Administrative Law Judge Lowell Goerlich approved the unilateral settlement (by the Company with the Regional Director) of all four cases, and the settlement agreement contains a nonadmission clause.

I therefore reject the challenges to CIU's claim of majority status among the Republic store employees on August 5.

3. The local's claim of interest

It is clear that the Local makes no claim of interest in a separate bargaining unit of Republic store employees. Instead, the Local continues to claim that the Republic employees are a part of the overall unit consisting of employees in the Springfield, Ozark, and Republic stores—relying on the specific language in the June 15, 1974, memorandum agreement that the Springfield agreement “will also apply to the Republic” store.

Throughout the 1975 strike, that unit issue remained in litigation. However, on October 1, a few days after the September 25 strike settlement, Administrative Law Judge Sidney Barban ruled that the Republic employees were not part of the Springfield unit, but constituted a separate bargaining unit. Pursuant to their settlement agreement, neither the Company nor the Local filed exceptions to any of Judge Barban's findings. On September 22, 1976, the Board issued its Decision and Order, stating that “in the absence” of such exceptions, it “has decided to affirm in their entirety the rulings, findings, and conclusions” in Barban's Decision, 226 NLRB No. 20 (1976). I therefore agree with the Company and CIU that the Local's overall-unit contention “has been foreclosed . . . by the decision of Judge Barban” (now affirmed by the Board).

The General Counsel contends that the Local still has a “colorable” claim to recognition, because some of the Republic employees were apparently still formal members; “all of the unit employees apparently continued to pay dues to the Local” at least through July; and the Local was the lawful incumbent at least until July 31 and has a continuing interest in the unit. To the contrary, I find that in view of the Board's decision that the Republic employees are in a separate bargaining unit and the failure of the Local to claim any interest in them as a separate unit, I find that the Local does not now have even a colorable claim to recognition.

4. Concluding findings

In the recent case, the Board held that “an employer does not violate the Act by extending recognition to one of the competing unions where the rival union's representation claim is clearly unsupported or specious or otherwise not colorable.” *U and I, Inc.*, 227 NLRB 1 (1976).

I find that this well-established rule is applicable here. In August, when the Company and CIU signed the agreement covering the employees in the Republic store unit which the Board later found to be appropriate as a separate bargaining unit, the CIU validly claimed the support of 100 percent of the employees, and the Local made no claim to them in

a separate unit. I therefore find that the execution of the CIU agreement was lawful, that the subsequent inclusion of these Republic employees in the coverage of the Springfield agreement was unlawful, and that there is no necessity for an election in the Republic unit (as proposed by the General Counsel).

Accordingly, in Case 17-CB-1512, I shall dismiss the complaint which alleges that the CIU violated the Act by accepting recognition and by executing and enforcing the agreement covering the Republic employees.

Concerning the September 25 inclusion of the Republic employees in the coverage of the Springfield agreement, I find, as alleged in Case 17-CA-6773, that the Company coerced its employees and contributed unlawful support to the Local by executing the agreement insofar as it applied to the Republic employees, thereby violating Section 8(a)(1) and (2) of the Act. However, in view of the Company's refusal to enforce the union-security clause as to the Republic employees, I shall dismiss the allegation that it discriminated against them in violation of Section 8(a)(3) of the Act. Also, in Cases 17-CB-1514 and 17-CB-1546, I find that the Local restrained and coerced the Republic employees by executing the September 25 Springfield agreement insofar as it covered them and by attempting on November 26 and December 4 to enforce the union-security provisions in the agreement as to them, thereby violating Section 8(b)(1)(A) of the Act. (The complaints did not allege violation of Section 8(b)(2) by attempting to enforce the union-security clause.)

C. Presettlement Issues

1. Renewed allegations

On September 22 (shortly before the end of the 1975 strike), a complaint was issued in a prior case, Case 17-CB-1472, alleging that the Local and International refused to bargain in good faith by conditioning accord with the Company upon the inclusion of Republic employees in the Springfield unit and upon withdrawal of litigation.

The strike was settled on September 25. As part of the strike settlement agreement, the Company agreed with the Local and International to withdraw and seek to dismiss, *with prejudice*, all pending litigation, including NLRB charges and complaints, grievances, civil and criminal claims, and unemployment claims or appeals. They also agreed “that they will not file any future unfair labor practice charges, civil claims, or criminal claims based on . . . any . . . matter related to the instant labor dispute which occurred prior to the date of this Strike Settlement Agreement.” (Emphasis supplied.) Thus the Company agreed to, and did, request the withdrawal of the charge and dismissal of the complaint in 17-CB-1472 and promised not to refile any such charge. The request was granted on October 3.

Until March 22, 1976, the Company, as well as the Local and International, abided by the strike settlement agreement. They succeeded in having withdrawn or dismissed all pending litigation, involving *both* the strike and other disputes (with the exception of Case 17-CB-1336, in which the judge's Decision issued on October 1). Much of this litigation was against the Company. The Local withdrew the

charge in Case 17-CA-6648, in which the Regional Director had found merit in the Section 8(a)(1) and (3) allegations that the Company closed its Neosho store "in order to discourage activities in behalf of" the Local. The Local withdrew the charge in Case 17-CA-6718, in which the Local had alleged that the Company violated Section 8(a)(5) by seeking to negotiate directly with its employees when it presented to them (on June 6, at the beginning of the strike) "a contract bearing the signature of the Company president and stating it was the Company's offer" and further violated Section 8(a)(1) by harassing, intimidating, and threatening pickets. The Local made a request (which was granted) that "the Company not be required to post or mail the notices" (to the employees in its Aurora, Cassville, Granby, Republic, Springfield, and West Plains stores) as provided in the September 2 unilateral settlement of Cases 17-CA-6292, 17-CA-6395, 17-CA-6405, and 17-CA-6484 (the Company promising in the notice not to attempt to bypass the Local and bargain directly with employees, not to refuse to furnish necessary information for bargaining, not to solicit employees to abandon the Local, not to interrogate employees about their union support, not to solicit employees to seek out antiunion applicants, not to hire applicants based on their union opposition in order to undermine unionization, not to threaten employees with discharge for filing grievances or engaging in protected concerted activities, not to threaten or harass the union steward to interfere with enforcement or policing of an agreement, and not to discriminate against employees because of union membership or support). Through its attorney, the Local effected a settlement of the \$110,000 State court damage suit by Derius Mammen (a former business agent of the Local) against the Company for the alleged 1973 assault and beating by a company supervisor. The Local and International succeeded in having a \$125,000 State court malicious-prosecution damage suit by International Representative Billy Jack Wingo dismissed against the Company and President Taylor. The Local succeeded in having a total of 36 former strikers withdraw their appeals to the State employment office for denied unemployment claims. The Local also withdrew a total of five arbitration cases which had been pending before three different arbitrators.

On March 22, 1976 (3 days less than 6 months later), after the Company had benefited from the Retail Clerks' compliance with their promises in the September 25 strike settlement agreement, the Company reneged on what it had promised. Despite the unequivocal agreement not to file any NLRB charge based on any such presettlement matter, the Company (through Attorney Jones) filed a new charge in Case 17-CB-1583, alleging that on and prior to September 25, the Local and International had unlawfully refused to bargain in good faith and engaged in other unlawful activity (including strike misconduct). In this original charge, the Company also alleged that "it should be allowed to reinstate" the charge and complaint in Case 17-CB-1472 and all other litigation which it has dropped (against the Retail Clerks and their officers). However, in its amended charge—on which the complaint was issued—the Company omitted the reference to reinstating dropped litigation.

In the 17-CB-1583 complaint, the Regional Director alleged that beginning September 22 (6 months before the original charge), the Local and International insisted upon the expansion of the Springfield unit to include the Republic employees, and upon the withdrawal of all litigation, as a condition precedent to reaching an agreement (a paraphrase of similar allegations in Case 17-CB-1472). At the trial, the General Counsel agreed that the "remedy" was for the Administrative Law Judge but stated the position: "General Counsel is not trying to set aside the settlement agreement or the collective bargaining agreement between Ramey and the Clerks as it relates to anything other than the Republic store." After the General Counsel repeated this position, Company Attorney Jones asserted: "I cannot accept that. That's the most ridiculous thing I ever heard of"—apparently still seeking (despite the rewording of the amended charge) to set aside the Company's promise in the strike settlement agreement not to refile any of the presettlement charges or claims against the Retail Clerks. After I observed that the "General Counsel and not the charging party has control of what he wants to allege to be illegal in the complaint" and that "all of the respondents . . . are entitled to know what they are being charged with," the General Counsel reiterated his position that "the entire settlement is not being attacked but only the settlement insofar as it refers to the Republic store." In his brief, the General Counsel takes the position that "at no time has the Region revoked its approval" of the post-settlement withdrawal of various charges, including the charge in Case 17-CB-1472, "and does not now seek to do so."

Thus, the General Counsel takes the position that the approval of the withdrawal of the charge in Case 17-CB-1472 still stands and that he does not seek to set aside the strike settlement agreement (except as it applies to the Republic store). Yet the General Counsel has issued the complaint in Case 17-CB-1583 (restating the withdrawn 17-CB-1472 allegations), pursuant to a charge filed by the Company in direct violation of its promise in the strike settlement agreement not to refile any such presettlement charge.

In its answer the Local asserted that the complaint should not be pursued because the Company engaged in "trickery, deceitful and fraudulent actions" by waiting until "virtually the last day of the six month statutory limitation period" to file the renewed charge. In their briefs both the Local and the International point out the long delay in filing the charge and accuse the Company of a "lack of good faith." In this regard, I note that the Company did abide by the strike settlement agreement in apparent good faith until virtually all of the litigation was withdrawn or dismissed. However, in February 1976, several months later, the Company closed down all six of the Springfield stores, leaving only the one Ozark store in operation under the September 25 collective-bargaining agreement. The Company is continuing to sign agreements with the CIU (signing a CIU agreement at the Seymour store a short time before the trial in June 1976). I infer that it was after the Company began closing down the large number of Local-represented stores that it decided it would be to its advantage to dishonor its commitment not to refile any presettlement charges and

claims and to seek to reinstate litigation against the Retail Clerks.

Before ruling on the propriety of this reinstatement of the presettlement litigation, I consider the allegations in Case 17-CB-1583 on the merits.

2. The strike settlement issues

On September 22 (the first day of the alleged unlawful insistence upon the inclusion of the Republic store employees in the Springfield unit and the dropping of all litigation), the Company's last offer was contained in President Taylor's September 17 letter to Union President Gray. In that proposal the Company offered to sign an agreement covering the Springfield and Ozark stores and containing the same wages and benefits provided in the Local's agreement with the Company's competitors, *except* for certain work restrictions on store managers, "so long as it is understood we have no obligation for any matter or occurrence arising before or retroactive to the date the new agreement is signed."

The Company's September 17 letter made it clear that the Company was agreeable to withdrawing all litigation. The letter stated:

As we have told you earlier, the pending litigation is an entirely separate matter. However, *we have also told you that we are willing, as a separate matter, to have our attorneys drop all pending litigation* against your organization and members of your organizations, and their agents, former agents, members, and other related organizations drop all pending claims against our company. This would have to include you dropping further efforts to fine our employees at Republic and we will not drop N.L.R.B. charges or litigation until after signing of the collective bargaining agreement. [Emphasis supplied.]

Thus, during the September 23-25 settlement negotiations (the only negotiations included in the period covered by the 17-CB-1583 complaint), the Company, Local, and International were in agreement insofar as withdrawing all pending litigation (despite Company President Taylor's testimony to the contrary).

On the other hand, the Company on September 22-25 was continuing to oppose the Union's claim that the Republic store employees should be included in the coverage of the Springfield agreement. In its September 17 letter, the Company specifically excluded the Republic store from the coverage of the proposed agreement. However, there were other issues separating the parties. The Union still wanted parity with the Company's competitors, and the Company was insisting on relaxation of the work restrictions applicable to store managers in the Local's agreement with the competitors. (Although Company President Taylor stated in the September 17 letter that Union President Gray had "agreed to the attached tentative agreement concerning work restrictions on our store managers," this was disputed by Gray, and Company Vice President Yates testified that "[a]s best as I can recall," this was a company proposal and the Local "rejected" it. The so-called tentative agreement was not the same as the provisions finally agreed to on September 25.) There were also issues involving the terms

of a strike settlement agreement, including provisions for the strikers' return to work. Company Attorney Jones wanted assurance on the settlement of the \$110,000 Mammen damage suit against the Company, even though the Local pointed out that this was a private lawsuit not involving the Local. (The Local promised to do what it could, and its attorney did later succeed in getting the matter settled.)

As previously indicated, the question of the unit placement of the Republic store employees was still in litigation during the negotiation of the strike settlement agreement and the new Springfield collective-bargaining agreement. It was not until October 1 that Judge Barban handed down his Decision in Case 17-CB-1336, ruling that the Republic employees constituted a separate bargaining unit.

3. Concluding findings

Concerning the allegation in Case 17-CB-1583 that between September 22 and 25 the Local and International refused to bargain in good faith by insisting upon the Company's withdrawing all litigation as a condition precedent to reaching an agreement, the documentary evidence is clear that the Company, Local, and International were then in agreement on this issue, a permissible subject of bargaining. I therefore find on the merits that during this period of time, from September 22 through 25, the Local and International did not refuse to bargain in good faith on this issue.

Moreover, I find under the circumstances of this case that there is a fundamental reason for rejecting, on an alternative basis, the allegation that the Local and International unlawfully insisted on dropping all litigation and for declining to rule on whether they unlawfully insisted on including the Republic employees in the Springfield unit when there were unresolved mandatory issues on the bargaining table.

As found above, the Company, Local, and International not only agreed in their September 25 strike settlement agreement to withdraw or seek to dismiss, with prejudice, all pending litigation, but they also promised not to refile any such charge or claim. Both of these allegations, of unlawful insistence upon dropping all litigation and including Republic in the unit, were contained in a pending NLRB complaint, which was dismissed pursuant to the strike settlement agreement. The Company did not seek to set aside the settlement agreement when Judge Barban's Decision issued on October 1 in Case 17-CB-1336 (finding a separate unit of Republic employees). Instead, the Company accepted the benefits of the settlement agreement, including the return of the striking employees and the dismissal of all litigation against itself. Then months later, after receiving these benefits, the Company decided to renege on its promise in the settlement agreement not to file such a presettlement charge and refiled the charge, alleging that it was forced to sign the settlement agreement.

Without deciding whether the Company, at the time, could have properly sought to set aside the settlement agreement, I find that the Company, after receiving and retaining all the benefits under the settlement agreement, is precluded from refiled the dismissed litigation in violation of its own commitments in the agreement. Whether this be considered a waiver or estoppel under contract law, I find that to permit the reinstatement of the litigation, under the

circumstances of this case, would tend to have an unstabilizing effect on industrial peace and the amicable settlement of disputes.

Accordingly, I shall dismiss the complaint in Case 17 CB 1583 in its entirety.

CONCLUSIONS OF LAW

1. By including the Republic store employees in the coverage of the 1975-77 Springfield collective-bargaining agreement executed on September 25, and by attempting on November 26 and December 4 to enforce the union-security provisions in the agreement as to them, the Local in Cases 17-CB-1514 and 17-CB-1546 restrained and coerced the Republic store employees, engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

2. By including the Republic employees in the Springfield agreement, the Company in Case 17 CA 6773 violated Section 8(a)(1) and (2) of the Act.

3. The CIU in Case 17 CB-1512 did not violate the Act by accepting recognition and by executing and enforcing the 1975-78 collective-bargaining agreement covering the Republic employees.

4. The Company in Case 17 CB 1583 is precluded from

refiling the dismissed litigation in violation of its commitments in the September 25 strike settlement agreement.

REMEDY

Having found that the Respondent Company and Local have engaged in certain unfair labor practices, I find it necessary to order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Based on the ruling in Case 17-CB-1336 that the Republic store employees are not part of the Springfield Ozark bargaining unit, I have found their inclusion in the coverage of the 1975-77 Springfield agreement to be unlawful. I therefore find it necessary to set aside the Springfield agreement insofar as it applies to the Republic employees.

I reject, as unwarranted, the extraordinary remedies sought by Respondent Company upon the contention that "unlawful conduct complained of" in Case 17-CB-1583 (failing to bargain in good faith from September 22 to 25, 1975) "has been persisted in by [the Local and International] over a period of time dating back to 1974." Even apart from the dismissal herein of the complaint, all the purported misconduct prior to September 22 is clearly outside the 6-month limitation period.

[Recommended Order omitted from publication.]

