

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to bargain collectively through representatives of their own choosing, including job stewards, and to engage in any other lawful concerted or union activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any and all such activities.

ALABAMA ROOFING & METAL Co., 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.

Employees may communicate directly with the Board's Regional Office, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans 12, Louisiana, 70113, Telephone No. 529-2411, if they have any question concerning this notice or compliance with its provisions.

Economy Food Center, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99. Case No. 25-CA-1651. June 4, 1963

DECISION AND ORDER

On March 11, 1963, Trial Examiner Samuel M. Singer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,¹ conclusions,² and recommendations³ of the Trial Examiner.

¹ Member Leedom does not agree that Supervisor Schroer's statements, insofar as they indicate that the advent of a union would lead to strikes and lost wages, violated the Act. See *Texas Industries, Inc.*, 139 NLRB 365, at footnote 5.

² We agree with the Trial Examiner that the cards of Peak and Watson were properly counted in determining the Union's majority status. See *Gorbea, Perez, & Morrell, S. en C.*, 142 NLRB 475, Member Leedom dissenting on other grounds. We note, in any event, that the Union would have a majority in the appropriate unit, even if these two cards were excluded.

³ We hereby correct the apparently inadvertent error in the section of the Intermediate Report entitled "The Remedy," which refers to violations of Section 8(a)(1), (2), and (3), whereas the Trial Examiner found violations of Section 8(a)(1), (3), and (5). For the reasons set forth in the dissenting opinion in *Isis Plumbing & Heating Co.*, 138 NLRB 716, Member Leedom would not award interest on backpay.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.⁴

⁴ The Trial Examiner found that Barton, the only employee discharged in violation of the Act, had refused the Respondent's offer of reinstatement. The notice attached to the Intermediate Report is accordingly hereby amended by deleting the paragraph beginning "NOTE" immediately below the signature line.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed September 24, 1962, by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99 (herein called the Union), the General Counsel on November 14, 1962, issued a complaint alleging that Economy Food Center, Inc. (herein called Respondent or the Company), has violated Section 8(a)(1), (3), and (5) of the Act by engaging in certain acts of interference, restraint, and coercion; by discharging and refusing to reinstate an employee because of his union membership or activities; and by refusing to bargain collectively with the Union. Respondent in its answer, denied the commission of the alleged unfair labor practices.

Pursuant to notice, a hearing was held before Trial Examiner Samuel M. Singer in Evansville, Indiana, on January 22 and 23, 1963. All parties appeared and were afforded full opportunity to be heard and to examine and cross-examine witnesses. All parties thereafter filed briefs which have been carefully considered.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent, an Indiana corporation, with places of business at Evansville, Indiana, operates retail supermarkets. During the past year, a representative period, Respondent, in the course and conduct of its business operations, sold and distributed products with a gross value exceeding \$500,000. During the same period, Respondent received goods valued in excess of \$50,000 transported to its retail stores in Evansville, Indiana, in interstate commerce directly from States other than the State of Indiana. Respondent admits, and I find, that at all times material herein, Respondent has been, and is, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE

A. *The chronology of events*

About July 10, 1962,¹ two of Respondent's meat cutters, Albert E. Barton and Charles W. Brooks, contacted Charles R. Goss, the Union's business representative. Goss later met with the two employees and told them "about the Union," including the benefits to be derived from self-organization and the "procedure" for organizing the employees. Brooks and Barton supplied Goss with the names and addresses of some of the employees of the Company and agreed to give him a complete list later.

Union Representative Goss thereafter visited employees at their homes and secured from them union authorization cards. The complaint alleges that on various occasions, in July and August, company supervisors interrogated employees concerning their union membership and activities and threatened that the Company would close or sell its business if the business were unionized. The complaint further alleges that on September 20, Respondent discharged Barton because of his union membership or activities.

¹ Unless otherwise noted, all dates herein refer to the year 1962.

On or about August 2, Union Representative Goss requested the Company to recognize and bargain with the Union, stating that the Union represented a majority of the employees in the meat departments. As hereafter related in greater detail, Respondent rejected the Union's request, professing doubt of its majority status in a unit appropriate for collective bargaining. On August 7, the Union filed a petition with the Regional Director for an election among Respondent's meat department employees in all of its Evansville stores (Case No. 25-RC-2267, not published in NLRB volumes) and a hearing on the petition was held on August 28. On September 11, 1962, the Regional Director issued a Decision and Direction of Election, directing that an election be held among Respondent's employees in its meat departments which, he found, comprised an appropriate bargaining unit. Subsequently, the Regional Director issued an order dismissing the petition in view of the pendency of the instant charges and complaint, and no election has been held.

B. *Interference, restraint, and coercion*

It is not disputed that Respondent opposed the unionization of its business. Respondent so informed its employees in a letter dated September 25, 1962, in which Respondent expressed the "hope" that there would be "a big vote against this Union" in the forthcoming election. Referring to the Union's defeat in an election conducted among the employees of another food store (Simpson's Food Fair) a year previously, the letter continued:

The Union will try to make all kinds of promises to you. It is easy for the Union to make big promises to you, BUT it is something else for the Union to fulfill these promises. This union made these big promises to the employees at Simpson's, but the employees were not fooled. I ask you not to be fooled by this Union.

The foregoing expressions, although antiunion in tenor, fall within the free-speech protection of Section 8(c) of the Act and are, of course, not illegal. The General Counsel produced several witnesses purporting to show that Respondent, however, went further by engaging in unlawful interrogation and threats:

1. Benjamin N. Augustine, who worked in the meat department in the Barker Avenue store, testified that sometime in July 1962, Edgar L. Schroer, the personnel supervisor, asked him "if I had heard of any union activities, if the employees had told me they had been contacted" Augustine denied any knowledge regarding the matter. The conversation continued as Augustine returned to work "at the block" in the cutting room in the rear of the store. According to Augustine, Schroer, within earshot of several other employees, stated that he (Augustine) knew how the Company felt about the Union² and Schroer then referred to a newspaper article reporting the large amount of time lost by the employees at Bedford-Nugent, a sand and gravel company, due to strikes at that plant. Schroer stated that he "wouldn't want that to happen to us."

Schroer on direct examination denied the substance of Augustine's testimony except that he recalled discussing the Bedford-Nugent strike. On cross-examination, he stated that he also recalled discussing the matter of the Union's contacts with the employees but insisted that Augustine "volunteered that information." When asked if he made any comment, Schroer replied that he did not because he was "rather shocked" as "we didn't know it was going on that strong." Store Manager Powers, a witness for Respondent who testified that he was present at the conversation between Augustine and Schroer, stated that the only matter discussed was the subject of the Union's contact of the employees.

Under all the circumstances I must credit the version of the incident as related by Augustine and not Schroer or Powers. It is hardly likely that Schroer who, as he himself stated, was "shocked" at Augustine's revelation of the Union's strength would have made "no comment." Nor can I accept Powers' purported corroboration of Schroer's testimony. His failure even to refer to the Bedford-Nugent matter, as to which both Schroer and Augustine testified, leads me to believe that he either was not present during the entire conversation between Schroer and Augustine or that he deliberately withheld material facts. Augustine's testimony appeared to be plausible and, as hereafter noted, consistent with the pattern of Schroer's conduct.

2. Dan D. Bircher, a meatcutter, testified that during the week of August 14, he heard Personnel Manager Schroer tell Augustine, in the presence of Store Manager Powers, that the Union had requested a card check and filed a petition for an election "and if we voted a union in, the Company could sell out." Schroer and Powers

² Augustine had at one time been a store manager and he indicated that as part of management he learned that the Company opposed unions

denied that the conversation took place. I do not credit Bircher's testimony. It is not clear from the record whether Bircher was referring to the conversation between Schroer and Augustine referred to in (1) above or to an entirely new conversation. In any event, it is strange that Augustine in his testimony made no reference to any threat to "close" the plant—a threat which, if uttered, he would hardly have failed to mention. Nor did Barton who, among others, allegedly also overheard this threat, testify regarding it.

3. Albert Barton testified that shortly after Union Representative Goss asked for recognition of the Union from the Company, Personnel Manager Schroer told the employees in the meatcutting room at the Barker Avenue store, that "we had all better stop and think it over or we would be unemployed and be out of work if the Union got in. The president of the Company couldn't pay the wages that the Union would set up and he would sell the Company." Schroer conceded that he had told the employees that Goss had requested recognition but denied the balance of the statement attributed to him. As hereafter noted, Barton was, in general, a credible witness and I credit his testimony as to Schroer's alleged threat. Moreover, considering Schroer's opposition to the Union it is quite likely that Schroer followed up his statement regarding recognition with the threat attributed to him.

4. Henrietta English, a meat wrapper at the Ross Center store, testified that 3 or 4 days after she signed her union authorization card,³ Schroer told the employees in the back of the meat department that "there was a rumor that the Union was trying to organize, and he said that Mr. Reible [the Company's president] was going on vacation and he wasn't going to let these rumors spoil this vacation, that he would sell before he would let the Union come in." Schroer also said that they should use their "own judgment as to what to do." Schroer, while admitting that he told the employees that the Union requested recognition and mentioned Reible's name, denied making the threat attributed to him. James Bartley, the head meatcutter at the store and a witness for Respondent, could not "recall" the conversation.

English was a credible witness and I accept her testimony. She is still in the employ of Respondent and I cannot lightly assume that her testimony, so sharply in conflict with that of the personnel manager who has overall supervision over her, was without substance. Moreover, it is noteworthy that Schroer did not question the date on which the statement allegedly was made, although he questioned its contents. But the subject of the conversation could hardly have dealt with union recognition as testified to by Schroer, for the statement was made on or about July 20, at least 10 days before the Union requested recognition.

5. James C. Welch, a meatcutter, testified that sometime after he signed his union authorization card,⁴ Schroer told him, "I have heard something about the Union trying to get It's a bad situation." Schroer then said that "he knew a fellow that was about 50 years old and Bedford-Nugent went on strike and all the old man could do now was walk a picket line . . . he had a family and what was he going to do now." According to Welch, Schroer also said that "if the Union was to get in that more than likely we would all be out of jobs, and he just said, 'I sure hope you boys and girls know what you are doing . . . if you hear anything I will appreciate you telling me.'" Schroer admitted that "we talked about Bedford-Nugent" and some other matter attributed to him but he could not "remember" stating anything about loss of job or requesting that the employees report to him about the Union. I credit Welch's version of the incident rather than Schroer's. Welch appeared to be a credible witness and his account of the conversation is more inherently probable.⁵

6. Mary C. Deys, a meat wrapper at the Fairlawn store, testified that in the latter part of August, Store Manager Lee, asked her "if I had any company in my home while I was on vacation." According to Deys, Lee did not specifically mention the "Union" and Lee in his testimony indicated that the question pertained not to a visit by a union representative but to one by Miss Devss' boyfriend who was in the service, about whom "we all more or less kidded her." I credit Lee's version and explanation of the incident and find that the questioning did not pertain to Devss' union sympathies and activities.

³ The record shows that English signed the card on July 17, 1962.

⁴ Welch signed the card on July 23.

⁵ In making my credibility resolutions in the case of Welch, as well as Augustine, *supra*. I have taken into consideration the possibility that these men might well be disgruntled employees as both were discharged by Respondent allegedly for cause. Cf. *NLRB v. Walkick & Schwalm Co.*, 198 F. 2d 477, 482 (C.A. 3).

7. Albert M. Thiry testified that in the middle of August, Charles Nunn, his manager at the Franklin Avenue store, asked him "if a union representative had been to my house." Thiry replied that he was. About 2 weeks later, Nunn asked him if the representative "had ever been back." Nunn flatly denied that he made these inquiries.

Thiry was a sincere and truthful witness and I credit his testimony. Like many of the witnesses that testified in support of the General Counsel's case, Thiry is still in the employ of the Company. Nunn admitted that he had talked about the Union to Schroer and to others on many occasions, that he knew that the Union had been contacting the employees, and that he had never received any instructions from his superiors as to what he "should or should not do with regard to [his] employees and their union activity. In my view, it is more than likely that Nunn did question Thiry concerning the union representative's visits to his home.

Conclusions

In view of the foregoing, I find and conclude that Respondent interfered with, restrained, and coerced its employees, in violation of Section 8(a)(1) of the Act by the following threats uttered by Personnel Manager Schroer which, in my view, tended to coerce the employees in their right to self-organization guaranteed by Section 7 of the Act:

a. Schroer's statement to Barton and other employees that if the Union came in, there would be no work for them because the president of the Company could not pay the union wages and he would sell the stores.

b. A similar statement uttered by Schroer to English and other employees that the Company's president would sell the business before he would let the Union come in.

c. Similar remarks made by Schroer to Welch about the employees losing their jobs if the Union came in and, in the context of these remarks, Schroer's reference to his 50-year old acquaintance who, as a result of the strike in the neighboring plant, was walking a picket line and was unable to care for his family.⁶

d. Schroer's statement to Augustine, within earshot of other employees, as to the time lost by strikers at a neighboring plant in the context of his interrogation of Augustine concerning union matters, his statement that he knew how the Company felt about the Union, and his contemporaneous threats to other employees.

In the context of the foregoing conduct and other conduct herein found violative of the Act, I further find that the following inquiries by Respondent's supervisors constituted unlawful interrogation, tending to impede the employees in regard to their self-organizational rights:

a. Schroer's inquiry if Augustine had heard of any union activities and if the employees had told him that they had been contacted.

b. Store Manager Nunn's questioning of Thiry if a union representative had visited him in his home and, later, his inquiry as to whether the union representative had returned.

I further find that Respondent did not breach Section 8(a)(1) by (a) Store Manager Lee's alleged questioning of employee Deyss; and (b) Schroer's alleged threat testified to by Bircher—which threat, as I found, was not in fact uttered.⁷

C. *The discharge of employee Barton*

1. The employment of Barton

Albert E. Barton had been employed by Respondent as a meatcutter for 2 years prior to his discharge on September 20, 1962. Prior to April or May 1962, when Respondent closed its last superette, Barton worked as a relief man the first 3 days of the week and as a meatcutter in its supermarkets during weekends. Thereafter, he worked as a relief man in the meat departments of the various supermarkets until September 1, 1962, when he was transferred as a regular employee

⁶ The Charging Party in its brief also points to Schroer's further remark asking "If you hear anything [about the Union], I will appreciate you telling me," claiming that Schroer thereby solicited espionage. I make no finding with respect to this claimed violation as no such violation was alleged in the complaint.

⁷ At the hearing I also dismissed, without objection on the part of the General Counsel, the allegation in the complaint that Store Manager Simpson had engaged in objectionable conduct.

to Respondent's Fairlawn store. At the time of the transfer, the manager of the Barker Avenue store (Tom Powers) told Barton, that "they needed an experienced meatcutter over at Fairlawn Economy and Mr. Schroer wanted [him] to report there to work the next day."⁸

2. Barton's union activities and Respondent's knowledge of these activities

Barton was one of the two instigators of the union movement. As already noted, it was Barton, along with Brooks, who contacted Union Representative Goss about unionizing the stores. Both employees then furnished the names and addresses of fellow employees to the Union. Barton signed a union authorization card on July 18, 1962. The solicitation of employees to sign the cards was actually done by Goss but Barton did speak to employees about aligning with the Union. In July 1962, while at work in the Barker Avenue store, Barton asked two employees what they thought about the Union and whether they "would go along" with it. When one of the two evinced interest, Barton undertook to contact Goss and Goss, in turn, signed up the employee.

The record shows, and I find, that Respondent was aware of Barton's union sympathies. One day in August, Barton visited the Town Center store where he met Chester Brace. Brace had signed a union authorization card on July 30. Barton asked Brace what he then thought of "the union deal," adding "well you're not going to back out now, are you?" Apparently concerned about Barton's remarks, Brace mentioned his encounter with Barton to a fellow employee, Kempf. Kempf in turn asked Brace if he intended to report the matter to Luther Cain, the store manager, adding, "by God if you don't, I will." Brace later in the afternoon reported to Cain his conversation with Barton. While in Cain's office, Brace also heard Cain conversing on the telephone with a party whom he addressed as "Ed," telling "Ed" that "I have some names" and asking him "if he was anywhere where he could talk."⁹ This conversation establishes, and I find, that Supervisor Cain was aware of Barton's union sympathy and activity. Cain's knowledge is, of course, attributable to Respondent. In any event, I infer that Cain reported this knowledge to Personnel Manager Edgar Schroer, who was commonly known as "Ed."¹⁰ Cf. *N.L.R.B. v. Edward F. Tepper, d/b/a Shoenberg Farms*, 297 F. 2d 280, 283 (C.A. 10).

As already noted, Barton was one of the employees to whom Schroer remarked, in referring to the Union's request for recognition, that the employees "had all better stop and think it over or we would be unemployed and be out of work if the Union got in." Schroer further stated that the Company "couldn't pay the wages that the Union would set up" and "would sell the Company."

3. Barton's dismissal on September 20

On Wednesday, September 19, Barton worked in the meat department of the Fairlawn store. Meat in this supermarket is sold in one of two ways: (1) through a self-service meat case or meat counter, and (2) through specific customer orders for particular or special meat cuts. Monday through Wednesday are the slowest

⁸ The last stated finding is based on the credited testimony of Barton. Neither Powers nor Schroer denied Barton's testimony in this regard and, as hereafter noted, Lee, the store manager at Fairlawn, conceded that Schroer told him that he was sending him an "experienced" meatcutter.

⁹ The foregoing finding is based on the testimony of Brace, an employee still employed by Respondent, whom I find to be a credible witness. Barton in his testimony referred to his conversation with Brace but he did not supply the details. Cain admitted that Brace came to see him and that Brace had informed him that Barton had been in the store and asked him if he was going to "chicken out." Cain claimed that Brace told him that he (Brace) "didn't know what Barton was referring to" and that Brace appeared "very excited" and "very irrational." I do not credit Cain's testimony. Brace, whom I observed on the witness stand, did not appear to be an easily excitable person and one likely to speak in a confusing and irrational manner. His testimony was unequivocal and convincing. Moreover, it is hardly likely that Cain, who had known Brace for a long time (even as a "part-time schoolboy"), would have permitted Brace to leave his office without finding out what caused his allegedly excited and "irrational" behavior; at the very least, it would seem that Cain would have sought to ascertain the situation after Brace left his office. It should also be noted in this connection, that Cain admitted knowledge of the organizational drive through discussions with Schroer although he was rather vague as to when these discussions took place.

¹⁰ Witnesses at the hearing sometimes referred to Schroer as "Ed."

days in the week, and 4:30 to 8 p.m. closing time are the busiest hours in the day. Working with Barton in the Fairlawn store during the period here involved were Bob Williams, the assistant head of the meat department, Delbert Schmadel, the head of the department, and a female meat wrapper or clerk. All of the work, of course, is under the direction of the store manager who, in the case of the Fairlawn store, was Earl Lee.

On Wednesday, September 19, Barton worked from about 8 a.m. to 8 p.m., closing time. Williams and the meat wrapper left at 4 or 4:30 p.m., and Schmadel was off that day. According to Lee, sometime after 4 p.m., when Barton was the only employee in the meat department, he found that the department was "in pretty fair shape" but the meat counter was "awfully low" on several items (including chicken parts, whole chickens, and ground beef), and it contained some "dark" and "unappetizing" meat cuts which apparently required replacement. Lee then directed Barton to get the counter "straightened up and get it filled up and ready for business." Lee testified that he returned a half hour or 45 minutes later only to find that it looked "as bad as it did before" whereupon, feeling "pretty well disgusted" and without further confronting Barton, he telephoned Schroer and requested Barton's discharge. Schroer told Lee to "cool off and let's talk about it in the morning."

The next morning Lee discussed the matter first with Schmadel and early in the afternoon with Schroer who visited the store, and it was decided to separate Barton. According to Lee, he and Schmadel agreed that Barton should go "because he just wasn't capable of doing the business. He should have prepared ahead in order to take care of business like he should have." However, Lee testified that when Schroer actually discharged Barton, Schroer told Barton that he did so because "none of the managers wanted him because of his capability and he just didn't get along with the other people in the department, and he just wasn't what he should be for a man of his type."

Both Schmadel and Schroer confirmed Lee's testimony as to the role they played in the discharge of Barton. In addition, Schmadel characterized Barton as a "slow" worker and one who displayed an "I don't care attitude." Barton himself conceded that Lee had directed him to fill the meat counter the night before the discharge as the meat case was "a little low on some ground beef and something else" but Barton claimed that he filled up the case.¹¹

Conclusions

I have no doubt, and I herein find, that Barton was derelict in the performance of his duties on the night of September 19, the day before his discharge, when he failed to keep the meat case properly filled for business. But this finding does not dispose of the issue whether it was this dereliction (and perhaps others relied on to which reference will hereafter be made), which motivated Respondent's action in discharging Barton. For the presence of valid grounds for an employee's discharge does not legalize it where "other circumstances reasonably indicate that the union activity weighed more heavily in the decision to fire him than did dissatisfaction with his performance." *N.L.R.B. v. Whittin Machine Works*, 204 F. 2d 883, 885 (C.A. 1). Viewing the record as a whole and bearing in mind that "human qualities, such as motive, can only be shown circumstantially where the possessor has not previously revealed them directly" (*N.L.R.B. v. Edward F. Tepper, etc.*, 297 F. 2d 280, 284 (C.A. 10)), I am constrained to conclude that the preponderance of evidence and the reasonable inferences to be drawn therefrom establish that the discharge of Barton was in fact motivated by Respondent's opposition to his union activities.

The record shows, as I have found, that Respondent opposed the organization of its stores. Apart from expressing its opposition, the Company through its personnel man and supervisor, the "boss of the stores," threatened that the company would close or sell the stores if the Union came in. Barton himself was the target of one such threat. He was one of the two ringleaders of the union movement, having made initial contact with Union Representative Goss. As previously found, Barton's union sympathy and activity came to the attention of management when he sought to hold in line a wavering union employee who, he apparently thought, might "chicken out." While it is quite true that even union animus on the part of an employer does not in itself establish discriminatory motivation, "Still, where the discharge in question involves the 'key' employee in an organizational drive, it may supply shape and substance to otherwise equivocal circumstances." *N.L.R.B. v.*

¹¹ When pressed on cross-examination Lee testified that Barton could well have put in "very little" meat but not enough to make a significant difference

Davidson Rubber Co., 305 F. 2d 166, 169 (C.A. 1). See also, *N.L.R.B. v. W. C. Nabors Company*, 196 F. 2d 272, 275 (C.A. 5), cert. denied 344 U.S. 865.

Barton's dereliction in failing to fill the meat case prior to his discharge is, of course, a significant factor to be considered along with the whole congeries of the facts leading to his discharge. I am, however, convinced that this offense, even when considered with others to be mentioned below, would not have prompted his discharge were it not for Barton's union advocacy. Store Manager Lee conceded on cross-examination that except for the incident in question, he had no occasion to caution or criticize Barton's performance either while working as a regular meatcutter in September or as a relief worker on loan from another store prior to September.¹² Moreover, Lee acknowledged that at the time of Barton's transfer to his store on September 1, Schroer informed him that he was sending him an "experienced" meatcutter. Lee's statement accords with that of Augustine, head meatcutter at the Barker Avenue store, who testified that Schroer made a similar complimentary statement regarding Barton when the latter reported to work in his store some months earlier. And it was stipulated at the hearing that sometime in July, only about 2 months before the discharge, Respondent's spot checker gave a highly satisfactory report about Barton's performance as a meatcutter. Schroer visited the store next morning and, in the presence of the store manager (Powers) and the store employees, lauded Barton's "excellent job," and stated that he should "Keep up the good work."

Moreover, I further find that Barton, though at fault in the incident in question, was not solely responsible for the condition of the meat case. As already noted, Williams, the assistant head meatcutter, worked in the store until 4 or 4 30 p.m. It would appear, as Lee in effect admitted, that as the senior man in the department, it was up to Williams to see that there was sufficient meat in the counter for whatever evening business might ensue. And insofar as the "dark" meat was concerned, it is obvious that this meat could have been replaced by Williams before he left.¹³ Indeed, Store Manager Lee testified that Williams "was brought in and talked to" the next morning by himself and Schmadel. Williams, however, was not disciplined or admonished.¹⁴

In addition to the September 19 meat counter incident, Respondent adduced evidence, through the testimony of several head meatcutters, purporting to show various complaints against Barton, while a relief man prior to September 1. Bartley, head meatcutter at the Ross Center store, testified that on one occasion 8 months previously Barton answered a customer's inquiry as to where the hams were located in a "loud voice." On another occasion, also about 8 or 9 months ago, Barton told a customer who showed a knife sharpener to Bartley "Well, that kind of knife sharpener is not worth a damn." Both customers continued to patronize the store.¹⁵ Schmadel, the head meatcutter at Fairlawn, testified that 4 or 5 months before Barton's discharge, Barton threatened to walk out because he was "pretty heavy" on him in getting him to prepare ground beef, but Barton did the work and Schmadel did not report the incident to Schroer. Frank Barwe, head meatcutter at the Town Center store, could not pinpoint any specific incident but stated that he complained about Barton's work attitude and performance.¹⁶

I do not deem it necessary to decide whether the incidents referred to above actually occurred, although it is quite likely that a number of complaints may well have been lodged against Barton as he wandered from store to store as a relief meat-

¹² In the light of the foregoing and other evidence in the record I cannot credit Head Meatcutter Schmadel's vague and unsupported testimony in response to leading questions that he (Schmadel) had complained to Lee about Barton's work each of the three weekends in September.

¹³ According to Lee, it takes as much as 3 days for meat to become dark.

¹⁴ Justifying his failure to discipline Williams, Lee explained that it was up to Barton, "a capable man, or supposedly a capable man to do the job."

¹⁵ Bartley apparently did not think enough of these incidents to mention them to Schroer until months after they occurred. At first Bartley testified that he mentioned the incidents a couple of months after they happened but he could not recall why they were brought up; later he testified it "might have been around September" when, according to Bartley, Schroer asked him if he wanted Barton transferred to his store.

¹⁶ Like the other witnesses, Barwe recommended no disciplinary action. He testified, however, that he subsequently reported the incident to Schroer before Barton was fired, when Schroer inquired about Barton's ability. At a later point, the witness changed his testimony, producing a letter or memorandum dated October 5, addressed to Schroer, purporting to show that he first reported his complaints on October 5, subsequent to the discharge. The document in question was identified but not received in evidence.

cutter during his 2-year span of employment with Respondent. Be that as it may, the complaints involved are trivial and stale and can hardly be said to have motivated the drastic act of discharge meted out to Barton, even when considered along with the final meat counter incident which occurred just prior to his dismissal. Indeed, there is "real significance in the time that [Schroer] elected to revive [the] ancient (and apparently forgotten) complaint[s], and make [them] serve as the proffered excuse or reason for [Barton's] discharge." *Peoples Motor Express v. N.L.R.B.*, 165 F. 2d 903, 906 (C.A. 4).

On the basis of the entire record, therefore—including the evidence establishing Respondent's opposition to the Union, its threats of reprisals if the Union came in, Barton's leading role in the union movement, Respondent's knowledge of Barton's union advocacy, and the nature of the defenses advanced by Respondent to justify the discharge—I find and conclude that Barton's union membership and activity rather than his claimed derelictions motivated his discharge. I am constrained to find that the reasons advanced by Respondent for the discharge are mere pretexts to cloak the true ground for the discharge. It follows, therefore, and I find, that Respondent by its action violated Section 8(a)(3) and (1) of the Act

D. The refusal to bargain

1. Introduction

As already noted at the outset of this Intermediate Report, on August 2, 1962, Union Representative Goss requested the Company to recognize and bargain with the Union as the majority representative of its employees in its meat departments. Goss told the Company's representatives—President Reible and Vice President Jochim—that if they had "a good doubt" that he represented a majority of these employees he would be willing to submit to a card check by the Indiana State secretary of labor. Jochim replied that the Company was in no position to discuss the matter and that he would talk to the Company's attorney, Donovan. He (Donovan) stated at the hearing that he had informed the Company that the unit requested by the Union was in his opinion not appropriate as it excluded the delicatessen, produce, and grocery departments and was contrary to the request the Union had made less than a year earlier at another food store (Simpson's Food Fair).¹⁷ Attorney Donovan further advised the Company not to submit to a card check by the Indiana secretary of labor whom he characterized as "the former head of the CIO Autoworkers" in Evansville and a "buddy" of Goss.¹⁸ Later, when Goss called Donovan and offered to prove his majority through the secretary of labor, Donovan told him also that he would not entrust the card check to that official. Donovan indicated, however, that he would contact Goss later after talking to Company President Reible. In their last conversation, shortly thereafter, Donovan told Goss that he could not get in touch with Reible who "had gone fishing," and the Union thereafter, on August 7, filed its petition for an election.

On August 28, the Regional Director conducted a hearing on the petition. On September 11 the Regional Director issued a Decision and Direction of Election but, as already noted, the election was never held, the petition having been dismissed in view of the pendency of the instant complaint proceeding.¹⁹

2 The appropriate unit

The Regional Director, after hearing, found the following unit appropriate for collective bargaining in the Decision and Direction of Election dated September 11, 1962:

All employees in the meat departments at all of the Employer's Evansville, Indiana, stores including the head meatcutter, journeymen meatcutters, apprentices, wrappers, and cleanup men, but excluding grocery, produce, bakery, and delicatessen employees and all office employees, guards, professional employees, and supervisors as defined in the Act.

¹⁷ By stipulation of the parties, the statement of Mr. Donovan, who represented Respondent at the instant hearing, was received with the same effect as if it were testimony under oath.

¹⁸ Goss identified the State official as the former president of an Autoworker local at the Harvester plant and "a casual friend."

¹⁹ It is the Board's policy not to process representation cases during the pendency of unfair labor practice charges. See, *N.L.R.B. v. Auto Ventshade, Inc.*, 276 F. 2d 303, 307-308 (C.A. 5).

As I understand it, Respondent in this proceeding does not contest the appropriateness of the unit as found above. It merely contends that it had a good-faith doubt as to the Union's majority status in a unit which it in good faith believed, was more comprehensive than the one sought by the Union and thereafter established in the representation proceeding.²⁰ As Respondent puts it in its brief, "Whether a Meat Department Unit by itself is or is not appropriate is immaterial because at the time the Union requested recognition the Company did not believe this Union was asking for recognition in an appropriate unit." In any event, Respondent in its answer to the complaint did not contest the unit finding and at least at one point in the instant hearing company counsel acknowledged that he was "not really" raising this issue.

I find that the unit found by the Regional Director in the representation proceeding, as set forth above, is appropriate for collective bargaining within the meaning of Section 9(b) of the Act. See *Tom Thumb Stores, Inc.*, 123 NLRB 833.

3. The Union's majority status

(a) *The contention of the parties*

The parties stipulated at the hearing that 36 named individuals were employed by Respondent at the time the Union made its bargaining demand on August 2, 1962, and that these should be included in the unit found appropriate. Respondent contends that one additional employee on its payroll, Cammie Jackson, should be excluded as she was but a casual employee whereas the General Counsel contends that she should be included as a regular part-time employee; Jackson signed a union authorization card. As to another employee on the payroll, Pat Bartley, Respondent would include her as a regular part-time employee whereas the General Counsel would include her only if Jackson is included on the theory that both employees occupied similar status; Bartley did not sign a union authorization card.²¹

At the hearing the General Counsel offered in evidence the authorization cards of 22 of the 38 employees on the Company's payroll, one of them being Jackson's card. All of these cards were dated between July 17 and August 1, 1962, and, therefore, prior to the Union's recognition demand. Respondent contends that the cards of four employees (in addition to Jackson's) should not be counted for purposes of determining the Union's majority because the four employees in question were coerced into signing the cards; and that the cards of two additional employees should not be counted because these employees did not appear at the hearing and there is no evidence that they signed their cards voluntarily.

(b) *Jackson's inclusion in the bargaining unit*

Cammie Jackson was first employed by Respondent on May 14, 1960, and is still on Respondent's payroll. She works on a part-time basis as a meat wrapper and weigher in the meat department at one of Respondent's stores alongside other full-time female wrappers and weighers. The balance of the week she is employed as head cook in a local high school. Jackson works Saturdays, normally 7 or 8 hours a day but sometimes, as in slack periods, only 4 or 5 hours. At times, particularly during vacation periods in the summer, Jackson is called in on other additional days and she has some weeks worked as many as 3 days. Jackson's work record, which Respondent introduced in evidence, discloses that she worked during each weekly pay period during 1962.²²

In the light of the Board's usual practice and policy to include in the bargaining unit regular part-time employees along with full-time employees, I find that Jackson should be included in the unit found appropriate and, hence, that her authorization card should be counted in determining the Union's majority status. See, *V.I.P. Radio, Inc.*, 128 NLRB 113, 116; *Southern Illinois Sand Co., Inc.*, 137 NLRB 1490;

²⁰ The Regional Director in the Decision and Direction of Election specifically rejected Respondent's contention that the delicatessen employees be included in the unit. These were the only employees, other than meat department employees, that the Company sought to include. The Regional Director found that "A unit of meat department employees is a traditionally appropriate departmental unit in the industry."

²¹ The parties stipulated that the 39th employee on the payroll and listed on General Counsel's Exhibit No. 7 (Rita Barwe) should be excluded from the unit.

²² Respondent concedes that Jackson "is employed one day a week for a few hours each week." Personnel Manager Schroer testified, "we consider her a part-time worker, although she is pretty regular."

Booth Broadcasting Company, 134 NLRB 817, 820; *Winn-Dixie Stores, Inc.*, 124 NLRB 908, 912; *Taunton Supply Corp.*, 137 NLRB 221. Contrary to Respondent's contention, the fact that Jackson has other full-time employment does not relegate Jackson in the category of a "casual" employee with "no real interest in the unit." See, *V.I.P. Radio, Inc.*, *supra*; *Booth Broadcasting Company*, *supra*.

(c) *The alleged coercion in the procurement of union cards*

(i) Respondent contends that two employees—Henrietta English and Cornelia Dillon—signed their cards after they were threatened that they would lose their jobs. Both employees testified as witnesses for the General Counsel. English specifically denied any "threat" by any union representative although she stated that she was afraid of losing her job if she did not sign, and she so informed a company representative. She also testified that employee Brooks may have said that unless she signed immediately, she might not be allowed to join the Union later, but she further stated that Brooks added that "it would be up to the union members." Dillon, when asked under cross-examination whether Union Representative Goss told her that she would lose her job unless she signed a card, merely answered, "He said if I signed a card, he would protect my job." At one point she specifically denied any union coercion but at another point she admitted that she had informed a company representative, only several days before the instant hearing, that "the union man" had told her that she would lose her job unless she signed.

I find that the credible evidence does not support a finding that these two employees were induced to sign their cards by improper threats or coercion on the part of any union representative. Dillon's testimony was too equivocal to warrant a finding of a union "threat" on the basis of her testimony. Although English gave fear of loss of job as her reason for signing her card, she did not claim that this fear was generated by any union coercion. An "employee's thoughts (or after-thoughts) as to why he signed a union card . . . cannot negative the overt action of having signed a card designating a union as bargaining agent." *Joy Silk Mills, Inc. v. N.L.R.B.*, 185 F. 2d 732, 743 (C.A.D.C.), cert. denied 341 U.S. 914. See also *E. H. Sargent and Co.*, 99 NLRB 1318. In any event, even if I were to find that the Union did tell English and Dillon that they would lose their jobs unless they signed the cards, I would still have to find that the statements did not constitute threats of reprisal which were within the power of the Union to effect but, at worst, they "constituted an accusation against the Employer in the nature of campaign propaganda which the employee was capable of evaluating in choosing a bargaining representative." *Otis Elevator Co.*, 114 NLRB 1490, 1492.

(ii) Respondent points out in its brief that two employees—Edward Peak and Donald Watson—signed their cards only after Union Representative Goss offered to waive the Union's \$75 initiation fee. It in effect contends that the offer was a promise of benefits and thus constituted interference with their freedom of choice. Peak, a witness for the General Counsel, testified, under cross-examination, that at the time of signing Goss told him that "when they was organizing the Union, everybody went in at the same time, there was no initiation fee, but if you went into the Union later, then you would have to pay a fee." Peak signed his card because of this inducement and also because he was told that "we would have more protection and get more money."²³ Watson, also a General Counsel witness, testified that Goss, at the time of signing, told him that anyone "that went in now wouldn't have to pay" initiation fees.²⁴

I find, as credited testimony set forth above indicates, that the Union, as an inducement to membership during its organizational drive, waived the initiation fees for those employees who signed up during the organizational drive and that Union Representative Goss so informed Peak and Watson. However, I cannot find, as Respondent would have me do, that such inducements, without more, had a coercive effect. The Board has repeatedly held that a union's "practice" of offering special reduced initiation fees, or of waiving such fees, during an organizational campaign "has been traditionally used by unions to attract new members" and that "such practice . . . does not in and of itself interfere with the conduct of an election."

²³ Peak testified that he could not afford to pay the \$75 fee. He also testified that he had signed a union card in 1960 or 1961 in a previous union campaign "for more money."

²⁴ In view of the foregoing testimony, which I credit, I do not credit Goss' uncorroborated testimony that it was the Union's practice to waive the initiation fee for all employees on the Company's payroll during the Union's organizational campaign, whether or not the employees signed authorization cards before union recognition and whether or not they were admitted to membership before or after a contract is signed.

Otis Elevator Co., 114 NLRB 1490, 1493.²⁵ Such union practice constitutes legitimate "promotional persuasion" (*N.L.R.B. v. Taitel and Son*, 261 F. 2d 1, 4 (C.A. 7), cert. denied 359 U.S. 944), or "persuasive arguments addressed to the employees' self interest" (*N.L.R.B. v. Dahlstrom Metallic Door Company*, 112 F. 2d 756, 757-758 (C.A. 2)), rather than unlawful promises of benefits.

I am fully aware that the cases in which the Board has heretofore articulated its fees-waiver doctrine were election cases and that the Board in even such cases has cautioned that a dues concession or waiver is "objectionable" where it is "contingent on how the employees voted in the election or on the results of the election." *Lobue Bros.*, 109 NLRB 1182, 1183. I am also aware that the First Circuit Court in *N.L.R.B. v. Gobrea, Perez & Morrell, S. en C.*, 300 F. 2d 886 (the case heavily relied on by Respondent) recently expressed some doubt about the validity of the Board's fees-waiver doctrine where, as here, the Union's majority rests on cards rather than on a secret election.²⁶ However, I note that the Seventh Circuit in *Taitel* drew no distinction between election and cards situations and it held that the card majority in that case was not tainted by the union's fees-waiver offer. There, as here, the concession applied only to those employees who signed cards during the organizational drive. In any event, the court in *Gobrea* remanded the case to the Board for further consideration and did not finally rule that the fees concessions there were coercive. Until the Board holds otherwise, I consider myself bound by its holdings which, as I construe them, would not in this case invalidate the cards signed by Peak and Watson simply because, when signing their cards, the Union had offered them a waiver of the initiation fees.

(iii) Respondent's contention that the cards of two additional employees (Charles W. Brooks and Norma Goebel) should not be counted because they did not appear at the hearing to testify that they signed their cards voluntarily, does not merit extended discussion. The signatures on the cards of the two employees were authenticated by Union Representative Goss who testified that the employees signed in his presence.²⁷ Not only has Respondent failed to show any coercion or unlawful inducement with respect to the signing of these two cards, but Respondent did not even point to any facts casting suspicion on the voluntary character of the designations. Accordingly, I must give effect to the presumption of validity flowing from the authorizations which appear on the face of the union cards.²⁸ See *N.L.R.B. v. Sunshine Mining Co.*, 110 F. 2d 780, 790 (C.A. 9), cert. denied 312 U.S. 678.

In view of all of the foregoing I find that the Union, at the time of its recognition request on August 2, 1962, represented a majority (22 out of 38) of the employees in the appropriate unit.

4. The good-faith doubt defense

Respondent contends that, irrespective of the Union's majority in the unit found appropriate (the meat departments) at the time of its recognition and bargaining request, it was justified in rejecting the Union's request because it had entertained a good-faith doubt that the Union enjoyed such majority in what it deemed to be the appropriate unit (i.e., a broader unit including, in addition to the meat departments, the delicatessen, produce, and grocery departments). While it is quite true, as Respondent urges, that an employer may refuse recognition to a union when motivated by a good-faith doubt as to the union's majority status in the appropriate unit and in such case may insist upon an election to determine the union's majority status, it is equally settled that when "such refusal is due to a desire to gain time and to take action to dissipate the Union's majority, the refusal is no longer justifiable and constitutes a violation . . . [of] Section 8(a)(5) of the Act." *Joy Silk Mills, Inc. v. N.L.R.B.*, 185 F. 2d 732, 741 (C.A.D.C.), cert. denied 341 U.S. 914. "This question of good faith is one which, of necessity, must be determined

²⁵ See also, *Gruen Watch Company, et al.*, 108 NLRB 610, 612; *A R F Products*, 118 NLRB 1456, 1458. A majority of the Board recently reaffirmed this principle in *Gilmore Industries, Inc.*, 140 NLRB 100.

²⁶ Thus the court in *Gobrea* said: "Although waiving initiation fees before an election may be harmless because it brings only membership cards but not votes, it seems to us that it ceases to be harmless when the cards, as in this case, become the equivalent of votes. The Union has then bought the very affirmative action it needed." 300 F. 2d at 888.

²⁷ Cf. *Taitel and Son*, 119 NLRB 910, 912, enfd. 261 F. 2d 1 (C.A. 7). Goss testified that one of the two employees had moved to California.

²⁸ Each card recited in pertinent part: "I hereby authorize the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, to represent me and bargain collectively with my employer in my behalf and to negotiate and conclude all agreements concerning wages, hours, and all other conditions of employment."

in the light of all relevant facts in the case, including any unlawful conduct of the employer," *Laabs, Inc.*, 128 NLRB 374.

On the basis of the record before me I am constrained to find that Respondent's refusal to recognize the Union was not based on a good-faith doubt as to the appropriateness of the unit sought or the Union's majority status therein. First, I note that in their discussion with Union Representative Goss of the Union's recognition request neither the company officials nor company counsel raised the unit question. Admittedly the Union requested recognition only for the meat department employees and the only discussion between Goss and Mr. Donovan pertained to a cross-check of the cards to establish the Union's majority position in those departments. Acting for the Company, Mr. Donovan refused to entrust the card-check to the Indiana Secretary of Labor but he did not propose a check by any other party. Surely, if Respondent's conduct were prompted by a genuine doubt as to the appropriate unit it would at the very least have raised this point—a point upon which it now places crucial reliance—with the Union. Cf. *N.L.R.B. v. Biles-Coleman Lumber Co.*, 98 F. 2d 16, 22 (C.A. 9). And as to the issue of the Union's majority which Respondent did raise, I can only infer that it made "no attempt to learn the facts." *N.L.R.B. v. Remington Rand, Inc.*, 94 F. 2d 862, 869 (C.A. 2). Respondent "in fact deliberately shut its eyes to the facts . . . and . . . avoided giving the Union any opportunity to substantiate its claims. Such conduct is not indicative of good faith." *N.L.R.B. v. Philamon Laboratories, Inc.*, 298 F. 2d 176, 180 (C.A. 2).

Indeed, the real basis for Respondent's good-faith doubt as to the Union's majority was supplied by Edgar L. Schroer, Respondent's personnel supervisor and chief witness, who testified on the question of Respondent's position on bargaining.²⁹ When asked on cross-examination what the Company's "good-faith doubt as to the majority" was predicated upon, Schroer replied, "We just felt we had a real loyal organization and they were all happy." Needless to say, the asserted ground hardly provides a reasonable basis for a good-faith doubt of the Union's majority.

Respondent's claimed doubt as to the appropriateness of the unit is premised on the claim that the Union had earlier requested a broader unit at Simpson's Food Fair. While I do not have any doubt about accepting counsel for Respondent's statement that he had advised the Company that the narrower unit requested in the instant case was inappropriate, I do, however, have difficulty believing that the Company's refusal to deal with the Union was predicated on that ground. The record shows, as I have found, that Respondent, during the Union's organizational drive and also after the Union's request for recognition, engaged in interference, restraint, and coercion. It threatened that if the Union came in the Company would close or sell its business. It also discharged one of the two instigators at its stores. It seems to me that such conduct is tantamount to "an absolute refutation of any good-faith doubt on the part of the Company" (*N.L.R.B. v. Overnite Transportation Co.*, 308 F. 2d 279, 283 (C.A. 4)), both as to the appropriateness of the requested unit and the Union's majority status. Such conduct on the part of Respondent is indicative of a rejection of the principle of collective bargaining and a desire to gain time in which to undermine the Union. See *Allegheny Pepsi-Cola Bottling Co. v. N.L.R.B.*, 312 F. 2d 529 (C.A. 3). *N.L.R.B. v. Marion G. and Valedia W. Denton, d/b/a Marden Mfg. Co.*, 217 F. 2d 567, 570 (C.A. 5), cert. denied 348 U.S. 981.

In addition, insofar as the unit question is concerned, it is strange that if Respondent truly entertained a doubt about its appropriateness why there was no mention of such doubt at the hearing held on the Union's petition for an election on August 28, 1962.³⁰ At that hearing Respondent raised only "a good-faith doubt as to [the Union's] majority claim." And when Respondent did give its position on the unit question it expressed the view that the appropriate unit was not the broad storewide unit in Simpson's (the meat, delicatessen, grocery, bakery, dairy, and produce departments) but just the meat departments requested by the Union plus the delicatessen departments.³¹ Thus it would appear that Respond-

²⁹ Reible and Jochim, the Company's chief executives to whom Goss made his initial request for recognition, were not called as witnesses.

³⁰ The transcript of the hearing in the representation case was incorporated as an exhibit in this proceeding.

³¹ The unit established at *Simpson's* (Case No. 25-RC-2065, not published in NLRB volumes) is set forth in Respondent's Exhibit No. 1. At the hearing I rejected Respondent's offer to introduce this exhibit and also its Exhibit No. 2 (tally of ballots in that case) on the ground that they were not relevant. In view of the fact that some testimony concerning the *Simpson* case was admitted into the record without objection and, further,

ent's claimed doubt as to the requested unit is but an afterthought and a rationalization for Respondent's refusal to deal with the Union.³²

Accordingly, I find that Respondent's refusal to recognize and bargain with the Union was not based on a good-faith doubt as to the appropriateness of the requested unit or the Union's majority status and, hence, that Respondent's refusal to recognize the Union, the uncoerced majority representative of its employees in an appropriate unit, was violative of Section 8(a)(5) and (1) of the Act.

IV. THE REMEDY

My Recommended Order will contain the conventional provisions entered in cases involving findings of interference, restraint, and coercion, discriminatory discharges and refusals to bargain collectively, in violation of Section 8(a)(1), (2), and (3) of the Act. These will require Respondent to cease and desist from the unfair labor practices found; to reimburse the employee discriminated against for any loss of pay suffered by him as a result of the discrimination from the date of his discharge until the date of Respondent's offer to reinstate him;³³ upon request, to require Respondent to bargain collectively with the majority representative of its employees; to post an appropriate notice; and to make available necessary records for the computation of the backpay. In view of the fact that the unfair labor practices committed are of a character striking at the roots of employee rights safeguarded by the Act, I shall also recommend that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

CONCLUSIONS OF LAW

1. By threatening employees with selling or closing its business and with other forms of reprisal because of their union activities, and by coercively questioning employees about union matters, Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By discharging on September 20, 1962, Albert E. Barton because of his union sympathies and activities, Respondent discriminated in regard to the hire and tenure of his employment, in violation of Section 8(a)(3) and (1) of the Act.

3. All employees in the meat departments at all of Respondent's Evansville, Indiana, stores including the head meatcutter, journeymen meatcutters, apprentices, wrappers, and cleanup men, but excluding grocery, produce, bakery, and delicatessen employees, and all office employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99, was on August 2, 1962, and at all times since has been, the exclusive representative within the meaning of Section 9(a) of the Act of the employees of Respondent in the unit hereinabove found appropriate for the purposes of collective bargaining.

5. By refusing to bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99, as the exclusive representative of its employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

because Respondent relies heavily on the *Simpson* case, I now reverse my ruling and I direct that Respondent's Exhibits Nos. 1 and 2 be admitted in the record.

I note that the Regional Director's decision in the *Simpson* case recites that the broad unit established in that case "is essentially in accord with the agreement of the parties"

³² I also note that insofar as the appropriateness of the unit is concerned, the Board has held that even a good-faith doubt as to this matter does not justify the Employer's refusal to recognize a union, if the unit is in fact appropriate. *Tom Thumb Stores, Inc.*, 123 NLRB 833. See also, *N L R.B. v. Keystone Floors, Inc., d/b/a Keystone Universal Carpet Co.*, 306 F. 2d 560, 563-564 (C.A. 3).

³³ I shall not recommend reinstatement of the employee in question, Albert E. Barton, because the record shows that Barton has rejected Respondent's offer of reinstatement. The backpay to be given Barton shall be computed on a quarterly basis and interest shall be added at the rate of 6 percent per annum. See *F. W. Woolworth Co.*, 90 NLRB 289, 291-293; *Isis Plumbing & Heating Co.*, 138 NLRB 716.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this proceeding, I recommend that Economy Food Center, Inc., its agents, officers, successors, and assigns, shall:

1. Cease and desist from the following:

(a) Threatening employees with selling or closing its business and with other forms of reprisal because of their union activities, coercively questioning employees about union matters, and in any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

(b) Discouraging membership in Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99, or any other labor organization, by discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment.

(c) Refusing to recognize and to bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99, as the exclusive bargaining representative of employees in the meat departments at all of Respondent's Evansville, Indiana, stores, including the head meatcutter, journeymen meatcutters, apprentices, wrappers, and cleanup men, but excluding grocery, produce, bakery, and delicatessen employees, and all office employees, guards, professional employees, and supervisors as defined in the Act.

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

(a) Upon request, recognize and bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99, as the exclusive bargaining representative of all employees in the appropriate unit described above, with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and embody in a signed agreement any understanding reached.

(b) Make whole Albert E. Barton for any loss of wages suffered by him by reason of the discrimination against him, in the manner set forth in "The Remedy" section of this Intermediate Report.

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

(d) Post at its stores in Evansville, Indiana, copies of the attached notice marked "Appendix."³⁴ Copies of said notice to be furnished by the Regional Director for the Twenty-fifth Region, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-fifth Region, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order what steps it has taken to comply herewith.³⁵

³⁴ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "A Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

³⁵ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT threaten employees with the selling or closing of our business or with other forms of reprisals, because of their union activities or coercively question employees concerning union matters.

WE WILL NOT discharge any employee because he is a member of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union No. 99.

WE WILL recognize and bargain collectively with Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, District Union No. 99, as the exclusive bargaining representatives of all our employees in the unit described below with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and will embody in a signed agreement any understanding reached. The bargaining unit is:

All employees in the meat departments at all of the Company's Evansville, Indiana, stores including the head meatcutter, journeymen meatcutters, apprentices, wrappers, and cleanup men, but excluding grocery, produce, bakery, and delicatessen employees and all office employees, guards, professional employees and supervisors as defined in the Act.

WE WILL make Albert E. Barton whole for any loss of pay he may have suffered as a result of the discrimination against him.

All our employees have the right to form, join, or assist any labor union, or not to do so.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of these rights.

ECONOMY FOOD CENTER, INC.,
Employer.

Dated----- By-----
(Representative) (Title)

NOTE.—We will notify Albert E. Barton if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, 46204, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

Keener Rubber, Inc. and Lodge 2222, International Association of Machinists, AFL-CIO. Case No. 8-CA-2748. June 4, 1963

SUPPLEMENTAL DECISION AND ORDER

On September 17, 1962, the Board issued a Decision and Order in the above-entitled proceeding,¹ finding that the Respondent had refused to bargain collectively with the Union, the certified representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

On October 11, 1962, the Respondent filed with the Board a motion to reopen record and consider newly discovered evidence, and supporting affidavits, alleging that newly discovered evidence cast doubt on the credibility of the Union's witnesses who testified in the representation proceeding concerning the supervisory status of one Mowen whom the Board, over the Respondent's objection, found to be a supervisor and ineligible to vote. On October 29, the Union filed with the Board an opposition to the motion, and supporting affidavits, alleging that the information presented in the Respondent's motion

¹ 138 NLRB 613.

142 NLRB No. 102.