WDIV Post-Newsweek Stations, Michigan, Inc. *and* International Photographers of the Motion Picture Industry, Local 666, IATSE, AFL-CIO and National Association of Broadcast Employees and Technicians, AFL-CIO, Party in Interest. Case 7-CA-16620

January 14, 1981

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

On September 9, 1980, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,[1] the Party in Interest filed exceptions and a supporting brief, the Charging Party filed a brief in answer to the exceptions filed by Respondent and the Party in Interest, and the General Counsel filed a brief in answer to Respondent'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,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, WDIV Post-Newsweek Stations, Michigan, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

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

WE WILL NOT refuse to recognize and bargain collectively with International Photographers of the Motion Picture Industry, Local 666, IATSE, AFL-CIO, as the exclusive collective-bargaining representative of all of the full-time and regular part-time cameramen employed at our Detroit, Michigan, television station for the purpose of photographing news, factual and documentary films, including but not limited to operators of sound and photographic equipment known as "mini-cams," and excluding office clerical employees, guards, and supervisors as defined in the Act.

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

WE WILL, upon request, recognize and bargain collectively with International Photographers Of the Motion Picture Industry, Local 666, IATSE, AFL-CIO, as the exclusive collective-bargaining representative of all of the full-time and regular part-time cameramen employed at our Detroit, Michigan, television station for the purpose of photographing news, factual and documentary films, including operators of sound and photographic equipment known as "mini-cams," and excluding office clerical employees, guards, and supervisors as defined in the Act, and, if an agreement is reached, WE WILL embody the terms of said agreement in a signed written contract.

WDIV POST-NEWSWEEK STATIONS, MICHIGAN, INC.

DECISION

STATEMENT OF THE CASE

FINDINGS OF FACT

WALTER H. MALONEY, JR., Administrative Law Judge. This case came on for hearing before me in Detroit, Michigan, upon an unfair labor practice complaint[1], issued by the Regional Director for Region 7,

[1] Respondent's request to reopen the record for the introduction of additional evidence is hereby denied as the record as made at the hearing is adequate for the purposes of our decision.

[2] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. We also find totally without merit Respondent's allegations of bias and prejudice on the part of the Administrative Law Judge, since we do not perceive any evidence that the Administrative Law Judge prejudiced the case, made prejudicial rulings, or demonstrated a bias against Respondent in his analysis or discussion of the evidence.

[3] We find no merit in the Charging Party's request for litigation expenses. *Heck's Inc.*, 215 NLRB 765 (1974). See also *Wellman Industries, Inc.*, 248 NLRB 325 (1980). We have modified the Administrative Law Judge's notice to conform with his recommended Order.

[1] The principal docket entries in this case are as follows:

Continued

which alleges that the Respondent, WDIV Post-Newsweek Stations, Michigan, Inc.,[2] violated Section 8(a)(1) and (5) of the National Labor Relations Act, herein called the Act. More particularly, the complaint alleges that Respondent unlawfully withdrew recognition from Local 666 in July 1979 as the exclusive collective-bargaining representative of its minicam operators. Respondent contends that it was justified in withdrawing recognition because it was presented with evidence that NABET, not Local 666, represented the employees in the bargaining unit in question and such evidence raised a good-faith doubt of Local 666's majority status. Upon these contentions, the issues herein were joined.[3]

I. THE UNFAIR LABOR PRACTICES ALLEGED

A. *Prologue*

Prior to the filing of the charge in this case, there existed a long and involved dispute arising out of technological change in Respondent's news gathering operation, including litigation between the parties to this proceeding and others over who should represent cameramen assigned to operate minicams used in televising local news. Since June 26, 1978, Respondent WDIV-Post Newsweek Stations, Michigan, Inc., has owned Channel 4 in Detroit, which it operates under the call letters WDIV-TV. Before that time, Channel 4 was owned by the Evening News Association, which operated the station under the call letters WWJ-TV. The Evening News Association also publishes the Detroit *Evening News*, a large afternoon newspaper of general circulation in the Detroit area.

Before June 1978, The Washington *Post* operated Channel 9 in the Washington, D.C., metropolitan area. It published and continues to publish a large morning newspaper of general circulation in the Washington metropolitan area. Because of a ruling of the Federal Communications Commission to the effect that a newspaper cannot own and operate a television station in the same market area where it sells and distributes the bulk of its papers, The Washington *Post* and the Evening News Association now operates Channel 9 in Washington and Respondent took over the ownership and control of Channel 4 in Detroit. When Respondent acquired Channel 4, it retained most of the managerial personnel, includng the WWJ labor relations director, and assumed the obligations imposed by WWJ's existing collective-bargaining agreements.

The relationships of Local 666 and NABET with Respondent's predecessor began in 1970. Both were accorded recognition by WWJ without the necessity of Board certifications and both entered into collective-bargaining relationships with WWJ concerning different groups of employees. The NABET unit was by far the larger bargaining unit and was composed of engineers and technicians employed in WWJ's engineering and program departments. Local 666 represented film cameramen employed by the news department, while another Local 812 bargaining unit (for soundmen) has ceased to exist and no complaint has been lodged herein concerning its disappearance.

In 1976, WWJ began to cover news events with the use of minicams. The film camera previously used required that any film which was shot at a news event be developed and processed before it could be shown on television. By contrast, the minicam also transmits sound, so the audio portion of a remote telecast no longer needs to be separately recorded. Such work was formerly done by an employee who accompanied the cameramen to the scene of the news event with a tape recorder. However, the use of a minicam requires, in addition to the cameramen, a technician who must be present at the scene of transmission to operate certain electronic equipment which is attendant to the use of a minicam. As found in certain unit clarification decisions growing out of this innovation, the operator of the minicam and his assistant frequently interchange functions, so what actually occurred was that WWJ (and later Respondent) still performed remote telecasting (except for certain sports events) with three-man crews. However, instead of employing a crew composed of a separately identified cameraman and a separately identified (and separately represented) soundman, a minicam crew now is composed of two individuals who perform a variety of functions—operating the minicam and operating the related equipment which goes with a minicam. At all times the news-gathering team has also included a third member, the so-called talent or television reporter, who actually appears and speaks during the telecast. "Talent" are separately represented by AFTRA and have never been involved in this ongoing dispute over who should represent minicam operators.

When WWJ began to introduce minicams in 1976, it had eight news gathering teams, each composed of a cameraman, a soundman, and a reporter. On November 23, 1977, when the Regional Director issued a Decision and Order Clarifying Unit in Case 7-UC-131, he recited that WWJ then employed five traditional film crews and three minicams crews. By the time this litigation commenced, minicams had completely replaced film cameras so there are no longer any traditional film camera crews employed by Respondent.

Charge filed by International Photographers of the Motion Picture Industry, Local 666, IATSE, AFL-CIO (herein called Local 666), against Respondent on July 23, 1979; complaint issued by the Regional Director for Region 7, on November 21, 1979; answer filed by National Association of Broadcast Employees and Technicians, AFL-CIO (herein called NABET), on January 9, 1980; amended answer filed by Respondent on March 19, 1980; hearing held in Detroit, Michigan, on March 26, 1980; Briefs filed with me by the General Counsel, the Charging Party, the party in interest, and Respondent on or before May 28, 1980.

[2] Respondent admits, and I find, that it is a Michigan corporation which maintains its principal place of business in Detroit, Michigan, where it is engaged in the commercially televised broadcasting of news, entertainment, and public interest materials for consumption by the general public in the metropolitan Detroit area. During the calendar year ending December 31, 1978, Respondent, in the course and conduct of these business operations, derived gross revenues in excess of $200,000 and derived in excess of $50,000 from broadcasting commercial advertisment of nationally advertised products for customers located outside the State of Michigan. Accordingly, Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. Local 666 and NABET are, respectively, labor organizations within the meaning of Sec. 2(5) of the Act.

[3] Certain errors in the transcript are hereby noted and corrected.

As film camera work was phased out and minicam work was phased in, WWJ assigned the minicam work to the same individuals who had been manning the film cameras and who had been represented by Local 666. NABET made a claim to WWJ that the work belonged to them. When this claim was made, Peter Kaiser, the vice president and general manager of WWJ, determined that minicam operators would be represented by NABET and presumably covered by the terms and conditions of the existing NABET contract. At that time, the highest salary classification under the NABET contract for technicians and engineers was $357.50 per week for an employee with 4-1/2 years or more of service. Local 666 had just concluded a contract with WWJ, to run from May 1976 to May 1979. During the first year of that contract, cameramen were to receive $394 per week and were also to receive increments of $23 in each of the next 2 years. This contract contained no scale based upon seniority or longevity in service.[4]

When the cameramen were required to switch their allegiance from Local 666 to NABET, the NABET shop steward, Ron Van Allen, informed them that, so long as litigation was in progress concerning this dispute, he would not enforce the union-security clause in the NABET contract. The clause required bargaining unit members to become NABET members after 30 days or forfeit their jobs. However, Van Allen testified that this policy was followed despite the insistance of the president of the local, an employee at another station, that the union-security clause in the NABET-WWJ contract be invoked with respect to former Local 666 members. According to Van Allen, seven cameramen who were former Local 666 members signed NABET designation cards between 1977 and the spring of 1979.

While NABET was claiming and receiving recognition as the bargaining agent for WWJ minicam operators, Local 666 was pursuing its claim to represent them. By letter dated October 26, 1976, sent by Local 666 Business Representative Arthur W. Beeman to WWJ Labor Relations Director Robert Benyi, Local 666 insisted that it should be recognized as the bargaining agent for the same individuals. When WWJ refused, Local 666 filed unit clarification petition (Case 7-UC-131), dated June 3, 1977, asking that its bargaining unit should be clarified by the Board to include minicam operators. Both WWJ and NABET actively participated in a lengthy hearing on this issue which the Regional Director held on August 9 and 10, 1977.

In addition to presenting evidence and arguments on the merits of the contested claim, NABET and WWJ also asserted that the matter at issue in Case 7-UC-131 actually was not a representation question arising under Section 9 of the Act but was in truth a work assignment dispute which the Board should address by means of a 10(k) hearing. In resolving this contention, the Regional Director viewed the issue in the case before him as one involving which labor organization was to represent the same discrete grouping of employees, namely, minicam operators, not a question of which labor organization should be awarded certain work. Citing the Supreme Court's decision in *Carey* v. *Westinehouse Electric Corporation*,[5] the Regional Director determined that the controversy actually presented a unit issue, not a work assignment dispute, because it arose out of technological changes in the Employer's operations causing an alleged accretion and because the Employer had recognized NABET as the bargaining agent for minicam operators rather than having assigned this operation to the NABET-represented bargaining unit. This conclusion was supported by the prior finding that the work at issue—news gathering—was being done by the same people after the introduction of the minicam who had been doing it before the introduction of this device. Therefore, since the same people had been assigned to do the same work but with different machines, a work assignment dispute within the meaning of Section 10(k) of the Act had not arisen.

Having made this determination, the Regional Director went on to review the merits of competing claims by Local 666 and NABET to represent the unit employees. He decided, based upon several factors set forth in this decision, that Local 666 was the appropriate bargaining representative and that the scope of its unit should be clarified to include minicam operators. Both NABET and WWJ asked the Board to review this decision. On February 9, 1978, the Board upheld the Regional Director's determination by denying the requests for review. NABET and WWJ then asked the Board to reconsider its refusal to review the decision. The Board ultimately declined to do so. The decision of the Board declining to reconsider its decision in Case 7-UC-131 was communicated to the parties by telegram dated February 28, 1979, along with its decision not to grant review in another related clarification case.

While the unit clarification issue involving minicam operators was in litigation, IATSE Local 812 filed another petition, dated January 28, 1978, on behalf of soundmen whose bargaining unit was also being eroded by the introduction of the minicam (Case 7-UC-146). The Regional Director noticed this petition for hearing but later decided that an administrative investigaton was sufficient to resolve the issues presented by that petition. In an administrative Decision and Order, dated February 10, 1978, the Regional Director found the former soundmen who had been represented by Local 812 were now members of a two-man minicam crew and functioned interchangeably with camera operators in the performance of news-gathering functions. He recited that this innovation now meant that the taking of pictures and recording of sound became part and parcel of the same operation. The Regional Director noted in his decision that, at the hearing in the earlier unit clarification case involving

[4] In one of many briefs filed by WWJ in the unit clarification cases, it argued that Local 666 members who were taken over by NABET retained both their seniority and their pay rate. However, in April 1979 when Local 666 was again recognized as their collective-bargaining agent, cameramen were given increases ranging from $30 to $80 per week because of disparities between the NABET and Local 666 contracts. I conclude from this fact that cameramen suffered pay cuts as a result of being incorporated into the NABET unit.

[5] 375 U.S. 261 (1964). In that case, the Supreme Court noted that a "blurred line often exists between work assignment disputes and controversies over which of two or more unions is the appropriate bargaining (agent)." *Supra* at 269.

cameramen (Case 7-UC-131), extensive testimony had been taken concerning the impact upon the soundmen of the introduction of the minicam and evidently concluded that this data was sufficient to form the basis of an administrative judgment on the issues then before him. Hence, he decided to avoid the necessity of a hearing involving a rehash of the same evidence. He concluded that soundmen would be represented by Local 666 because it was impossible to split up an interchangeable minicam crew into separate and distinct segments and because Local 666 had previously been found to be the proper bargaining agent for minicam operators.

The Employer and NABET also petitioned the Board to review this decision. In addition to addressing the merits of the issue, NABET argued to the Board in Case 7-UC-146, as it argues here, that the Regional Director had denied it procedural due process in considering the case because it had been misled by Regional Office personnel into believing that a hearing would be held in Case 7-UC-146 but was later told that no hearing would be held if the parties to the dispute would submit it to the internal union procedures set forth in article 20 of the AFL-CIO constitution. NABET told the Board that a complaint had been filed by NABET under the AFL-CIO's internal jurisdictional dispute procedures. However a decision by the Regional Director was issued in Case 7-UC-146, notwithstanding assurances that nothing of the sort would be done. The Board considered these arguments but refused to grant review and notified the parties of its decision on February 28, 1979, together with the aforementioned notice that it would not reconsider its decision in Case 7-UC-131.

B. *The Events at Issue Herein*

On December 28, 1978, while the decisions in the two unit clarification cases were still pending before the Board, the Charging Party in this case filed a refusal-to-bargain charge against Respondent herein (Case 7-CA-15903). When the Board disposed of the unit clarification cases on February 28, 1979, the Regional Director immediately issued a complaint based upon that charge alleging that Respondent had unlawfully refused to bargain with Local 666 in the recently clarified bargaining unit. Early in March 1979, Fred Elarbee, Respondent's counsel, phoned Bernard M. Mamet, the Charging Party's counsel,[6] and asked Mamet if he would agree to a 30-day extension of time in which to file an answer to the outstanding unfair labor practice complaint. In the course of this long-distance telephone conversation, Elarbee told Mamet that he and his clients were exploring a number of options, one of which was to comply with the provisions of the unit clarification orders, and he would need more time to answer the complaint. Mamet agreed to the request, so Elarbee sent a telegram to the Regional Director in Detroit, dated March 9:

> Respondent herewith requests thirty days extension of time to answer or respond to complaint issued in above case. The undersigned counsel for Respondent has recently become counsel for WDIV, the successor respondent. Counsel is attempting to familiarize himself with the background and legal position of respondent. Settlement of case by bargaining with charging union is being considered and is a possibility. Other avenues of solution of all issues are being explored with other unions. Extension of time is needed because of above stated facts and circumstances. No further extension will be requested.

The requested extension of time was granted.

On April 2, Elarbee called Mamet and told him that Respondent would agree to comply with the provisions of the unit clarification decisions but he would need time to "put it together" because the employees in question had been covered by the NABET contract. Mamet replied that he would withdraw a charge but that he needed in his possession a settlement agreement. He suggested that they call it a compliance agreement, adding that he did not want Respondent to be required to post a notice[7] or do anything else which would mean rubbing Respondent's nose in it. Mamet and Elarbee met on April 4 in Mamet's office in Chicago and worked out the substance of written compliance agreement which was executed on April 11.[8]

The recollections of opposing counsel herein sharply differ concerning the various details of events which occurred in April and May of 1979 regarding the dealings between Local 666 and Respondent. It is not necessary for purposes of this case to resolve most of those differences. Documents in the record indicate the following events took place leading up to the disposition of the charge in Case 7-CA-15193. On April 5 at noon, Elarbee directed a telegram to Mamet and sent a copy of the wire to the Regional Director in Detroit. The telegram read:

> This is to advise that WDIV Post Newsweek Stations, Michigan, Inc., intends to comply with the National Labor Relations Board in Case Nos. 7-UC-131 and 7-UC-146. Therefore WDIV pursuant to said orders hereby extends recognition to International Photographers of the Motion Picture Industry Local 666, IATSE (AFL-CIO) as the collective bargaining representative of the employees who operate the "mini-cam" as set forth in complaint in NLRB Case 7-CA-15,903 and for those employees assigned to the "mini-cam" crews as defined in the unit clarification contained in case numbers 7-UC-131 and 7-UC-146. The Company is willing to bargain upon request by Local 666 concerning all matters relating to wages, hours, and conditions of employment.

On the same day, at 3:39 p.m., Mamet sent a telegram to the Regional Director in Detroit which read as follows:

[6] Elarbee's office is in Atlanta, Georgia; Mamet's office is in Chicago.

[7] The execution of a conventional formal or informal Board settlement agreement almost invariably carries with it an obligation on the part of a respondent to post a standard Board notice for a period of 60 days.

[8] According to Elarbee, when he met Mamet in Chicago on April 4, he told Mamet that his people were thinking about complying with the UC determinations and asked what Mamet was going to do about the charge. Mamet's reported reply was, "If you recognize [Local 666] we won't need it any more and I will withdraw it."

> Re: WDIV Post Newsweek, 7-CA-15193. On behalf of Local 666, Charging Party, based upon employer's recognition and compliance with unit clarification as set forth in Elarbee's telegram (of) April 5, 1979, we hereby request withdrawal of charge and complaint.

On April 6, 1979, the Regional Director issued an order approving the withdrawal of the charge and dismissing the complaint in Case 7-CA-15903. The order contained the following recitation of facts and conclusions:

> On February 28, 1979, [I] issued a Complaint in the above-captioned matter.
>
> On April 5, 1979, the Respondent notified the . . . . Regional Director [for Region 7] that it had recognized the Charging Party as the exclusive collective bargaining representative of its "mini-cam" operators employed for purposes of news gathering.
>
> On April 6, 1979, the Charging Party herein requested withdrawal of the charge upon which the aforesaid Complaint is based.
>
> It appearing that the Respondent has recognized the Charging Party as the exclusive collective bargaining representative of its "mini-cam" operators employed for purposes of news gathering and as the Charging Party does not desire to proceed, and it does not appear that further formal proceedings are necessary herein to effectuate the purposes of the Act. . . .

On April 11, 1979, the following agreement was executed in Chicago at Mamet's office:

> COMPLIANCE AGREEMENT
>
> This Compliance Agreement made and entered into and effective this 11th day of April, 1979, (except as otherwise indicated herein) by and between WDIV-POST NEWSWEEK STATIONS, MICHIGAN, INC., ("Company") and INTERNATIONAL PHOTOGRAPHERS OF THE MOTION PICTURE INDUSTRY, LOCAL 666, IATSE (AFL-CIO), ("Union").
>
> WITNESSETH:
>
> WHEREAS, the National Labor Relations Board has issued a unit clarification determination in Case No. 7-UC-131 and has made related rulings in other matters as well as issuing a complaint against the Company in Case No. 7-CA-15903; and WHEREAS, it is the intent and desire of the Company to comply with federal law and specifically, in this instance, the determinations of the National Labor Relations Board, the result of which would cause the National Labor Relations Board to withdraw its unfair labor practice complaint heretofore issued.
>
> NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:
>
> 1. The collective bargaining agreement between the parties expiring May 3, 1979, is hereby extended to and including June 3, 1979, or until a new agreement is reached, whichever is sooner, with the understanding that all monies and economic benefits shall become effective May 3, 1979.
>
> 2. The following is added to paragraph 3A of the collective bargaining agreement between the parties (the last period in said paragraph being removed):
>
> > and for all employees employed by the Company in its "mini-cam" crews who operate "mini-cam" and associated equipment as defined and clarified by the National Labor Relations Board in Case No. 7-UC-131 and related cases involving members of the crews.
>
> 3. All employees in the foregoing paragraph shall, from this date forward, be in the bargaining unit described herein and represented by the Union and, in instances where any of the employees are not members of the Union, the 30-day requirement applicable to membership as set forth in paragraph 3B of the Agreement shall commence running on this date. It is understood that only employees in the bargaining unit shall perform the work of the bargaining unit as described above.
>
> 4. Effective April 5, 1975, employees shall receive at least the salary set forth for "cameramen" in the collective bargaining agreement ($440.00 per week).
>
> 5. No additional notice shall be required with respect to termination, the parties agreeing that the requirements of Section 8(d) of the National Labor Relations Act have been satisfied. The Union shall notify the Federal and State Mediation Services.

It is a matter of dispute as to who called whom between April 11 and May 29 to set up a meeting for the purpose of negotiating a new contract between Local 666 and Respondent. On or about May 25, Mamet spoke with Elarbee by phone. They arranged for a bargaining session in Detroit to take place on Friday, June 1. On that date, Elarbee, Benyi, Mamet, and Local 666 Business Representative Hal Harmon met in Benyi's office at Respondent's station in Detroit for this purpose. At this meeting, Mamet told Elarbee that Local 666 wanted to talk about money. Elarbee replied that Respondent did not want to discuss the economic aspects of a new contract until it had all of Local 666's proposals before it and asked for a set of written demands. Mamet said that he did not think that arriving at a new contract should be all that involved but told Elarbee he did not have a package to present at that time and would have to meet with his people before formulating an entire contract demand. The bargaining session then adjourned for lunch.

After lunch, the parties returned to Respondent's office. It appeared clear that they were not going to be able to complete negotiations on that day. From the conversations which occurred both during the morning meeting and an extended luncheon, it also appeared that

Benyi, who normally participated in all collective-bargaining negotiations for Respondent, was making preparations for a long awaited European trip. For this reason and because Harmon and Mamet wanted to meet with their members, the parties agreed to extend the compliance agreement, executed on April 11, until August 15, a date following Benyi's expected return to Detroit. Mamet and Elarbee took the compliance agreement which had been executed on April 11, circled the June 3 expiration date which appeared thereon, wrote "6/1/79 date changed by mutual agreement to 8/15/79," and then signed it. The parties then parted company.

Immediately after Respondent had agreed early in April to comply with the Board's clarification decisions and had extended recognition to Local 666 for its minicam operators, NABET filed a representation petition, dated April 16, 1979, seeking an election in the unit which the Board had determined to be represented by Local 666 or, in the alternative, a self-determination election (Case 7-RC-15369). On May 1, the Regional Director dismissed this petition on the basis that a question concerning representation could not be raised at that time because Respondent had recently agreed to bargain with Local 666 as a result of the decisions in 7-UC-131 and 7-UC-146 and because of the resolution of the complaint which had been issued against Respondent in Case 7-CA-13903. Apparently this determination was not appealed by NABET to the Board. Simultaneous with the filing of this representation petition, NABET also filed a charge against Respondent, alleging that it had violated Section 8(a)(2) and (5) of the Act by recognizing and bargaining with Local 666 as the representative of Respondent's minicam operators (Case 7-CA-16279). On April 30, the Regional Director dismissed this charge.

NABET and Respondent were in negotiations early in July with respect to a new contract covering the technicians and engineers. On or about July 2, upon advice of counsel, NABET business agents requested various cameramen and others to resign or reexecute NABET designations cards which it had in its possession. During a bargaining session with Respondent on July 12, NABET told Elarbee that it represented the employees in the minicam bargaining unit, demanded recognition, and offered to prove its majority status to Respondent. Immediately Benyi provided a Federal mediator with a list of the individuals currently employed in the minicam unit. The mediator and NABET representatives met privately and compared the cards with the list furnished by Benyi. Upon completion of this examination, the mediator told Elarbee that NABET represented all or almost all of the employees whose names appeared on the list. On the following day, July 13, Elarbee filed an RM petition with the Board seeking an election in the minicam operator unit (Case 7-RM-1157).

When Mamet received a copy of the RM petition he phoned Elarbee and angrily accused him of sandbagging Local 666. Elarbee explained that he had been in negotiations with NABET when NABET presented him with cards and demanded recognition. Elarbee explained to Mamet that he had the cards checked and it appeared that Local 666 did not represent a majority in the unit. Mamet asked him, "What the hell did you think we represented when you took the unit over? You forced everyone into NABET anyhow." Elarbee replied that he did not want to argue because Local 666 did not represent a majority, to what Mamet replied, "if we don't, its because you took it away from us." Elarbee concluded the conversation by saying that the Company would wait to see what happened to the pending RM petition. On July 23, Mamet filed the charge in this case.

On July 30, 1979, the RM petition was dismissed by the Regional Director on the basis that a question concerning representation could not be raised at that time because of the settlement of the unit clarification cases and the agreement of Respondent to bargain in accordance with those determinations. His dismissal letter was couched in almost the same language that was used to dismiss NABET's petition on May 1. Mamet then called Elarbee and asked him to negotiate a new contract with Local 666. Elarbee declined, telling Mamet that he thought the Regional Director was wrong and that he was going to seek review of the decision by the Board. Respondent then filed a petition for review with the Board. This petition was denied on October 24. Mamet then wrote Elarbee on October 29, noting that the petition for review had been denied and requesting a resumption of bargaining. No reply was received. Respondent filed with the Board a motion to reconsider its denial of review of the Regional Director's decision. The motion for reconsideration was denied on November 29, 1979. No bargaining has taken place since that time.

II. ANALYSIS AND CONCLUSIONS

A. *The Settlement Agreement*

In a line of cases beginning with *Pool Foundry and Machine Company*[9] the Board has held that, for a reasonable period following the execution of a settlement agreement relating to a refusal-to-bargain charge, the majority status of the bargaining agent may not be questioned so that the parties may have an opportunity to establish a bargaining relationship and to engage in collective bargaining. When the incumbent union has been certified and a refusal to bargain has taken place during the initial certification year, the Board will extend the certification year for a period of time which is equal to the period in which the employer ignored the union's certificaton.[10] In other cases, the insulated period will be merely a "reasonable time" sufficient to permit the bargaining relationship to succeed.[11] To warrant the application of this rule, the settlement between the parties need not be conventional Board settlement agreement executed on standard form 4775, with notice form 4727 attached. A

[9] 95 NLRB 34 (1951), enfd. 192 F.2d 740 (4th Cir.). See also *Theodore P. Mansour's, d/b/a Ted Mansour's Market*, 199 NLRB 218 (1972); *Gebhardt-Vogel Tanning Company*, 154 NLRB 913 (1965); *Vantran Electric Corporation*, 231 NLRB 1014 (1977); *Yellow Front Stores d/b/a Sel-Low Discount*, 205 NLRB 449 (1973).

[10] *Pride Refining, Inc.*, 224 NLRB 1353 (1976).

[11] *Keller Plastics Eastern, Inc.*, 157 NLRB 583 (1966). A bargaining unit is subject to Board clarification under Sec. 9 of the Act, regardless of whether recognition was originally extended on a voluntary basis or as the result of a Board certification. *Brotherhood of Locomotive Firemen and Enginemen*, 145 NLRB 1521 (1964).

non-Board agreement which accompanies or accomplishes the withdrawal of a charge and an outstanding complaint is entitled to the same deference during the post-settlement period.[12] The rationale behind the Board's policy of insulating a reasonable period of time from challenges to the bargaining agent's status was recently restated by the Seventh Circuit in *N.L.R.B.* v. *Key Motors Corporation*, 579 F.2d 1388, 1390-91 (1978), as follows:

> The Board has implicitly made the determination that employee free choice may be temporarily sacrificed (in that an employer may be forced to bargain with a union that no longer has the support of a majority of the employees) for a "reasonable time" so as to give the bargaining relationship an opportunity to succeed and thereby promote industrial stability. We have no difficulty with this determination.

Respondent attempts herein to avoid the impact of this rule by contending that it never entered into a settlement agreement disposing of the unfair labor practice complaint issued in Case 7-CA-15903, in which it was charged with an unlawful refusal to bargain with Local 666, and that the document which it executed with Local 666 on April 11 is not a settlement agreement disposing of a Board complaint but a collective-bargaining agreement, the terms and conditions of which would not preclude any party from raising a question concerning representation upon the expiration thereof. The Regional Director acted in a manner contrary to these contentions on two occasions, the Board by implication disposed of this contention adversely to Respondent on one occasion, and so will I.

As noted above, no particular formalities need attend the settlement of a refusal to bargain complaint in order to invoke the *Poole Foundry* doctrine. What is important is that parties litigating recognition decide to end their dispute and negotiate a contract. In this case, what operated to settle the outstanding unfair labor practice complaint in Case 7-CA-15903 were the telegrams sent by Elarbee and Mamet on April 5 and the Regional Director's order dated April 6, not the document which the parties executed thereafter on April 11. By that time the complaint had been withdrawn. Had the parties never executed the April 11 compliance agreement set forth above, the refusal-to-bargain complaint would still have been disposed of and the nascent bargaining relationship between Local 666 and Respondent would have been legally entitled to a reasonable time from that point forward to become established. In the first of these telegrams Elarbee told Mamet that Respondent would comply with the unit clarification decisions, extend recognition to Local 666 as the representative of minicam operators, and negotiate a contract covering these employees. Then 3-1/2 hours later, Mamet sent a telegram to the Regional Director withdrawing the charge because the Respondent had extended recognition. On the following day, the Regional Director approved the withdrawal of the charge and dismissed the outstanding complaint, reciting in the preamble to his order the fact that Respondent had notified him that it was extending recognition to Local 666[13] and that Local 666 had withdrawn the charge. In light of this exchange, as well as Elarbee's own versions of his conversation with Mamet on April 4, it is idle for Respondent to argue now that an agreement to grant recognition contained in the April 5 telegram was not a *quid pro quo* for Mamet's telegram to the Regional Director withdrawing the charge. Certainly the Regional Director understood it as such when he approved of this action and brought the proceedings in Case 7-CA-15903 to an end, and so did Mamet.[14] It is from this event that a reasonable time to permit the bargaining relationship to succeed, demanded by *Poole Foundry* and its progeny, should be measured. Moreover, this agreement, accomplished by an exchange of telegrams and the issuance of a regional office order, is unsullied by reference to any particular terms or conditions of employment which the Fifth Circuit in *Pride Refining, Inc.* v. *N.L.R.B.*[15] and the Seventh Circuit in *N.L.R.B.* v. *Vantran Electric Corporation*[16] looked upon as transforming a settlement agreement into a collective-bargaining contract. Accordingly, I will count a reasonable time for bargaining by Respondent and Local 666 as beginning on April 6, 1979.

Nor should the execution of the compliance agreement 5 days later terminate the running of a "reasonable time." As discussed more fully *infra*, this agreement and the extension thereof should be deemed to define reasonableness rather than to frustrate it. When Local 666 and Respondent agreed to establish a bargaining relationship for the first time, there was already in existence a contract which had been dormant for nearly 3 years but which still had, by its terms, about 30 days to run. In this agreement, WWJ, the predecessor in interest of this Respondent, and Local 666 had agreed upon a salary scale for technicians amounting to $440 per week for the final year, had agreed to a union-security clause, and had agreed to a recognition clause, although the latter provision did not provide for minicam operators. Respondent herein has never disavowed its status as successor to WWJ. A Board order emanating from the complaint in Case 7-CA-15903 could have called upon Respondent to give effect to the terms and conditions of the WWJ Local 666 agreement[17] and, in so doing, could have applied and extended the recognition agreement and the union-security clause therein to the members of the recently clarified bargaining unit. The only provisions of the April 11 compliance agreement which could not have found their way into a Board order are the items

[12] *Straus Communications, Inc.*, 246 NLRB 846 (1980), enfd. 625 F.2d 458 (2d Cir.).

[13] Elarbee was simply in error when he testified that he did not communicate with the Regional Office in regard to the settlement of the unfair labor practice complaint. The language of the telegram, a copy of which was sent to the Regional Director, speaks for itself.

[14] I am at a loss to understand Respondent's argument that Board law or policy prevented it from promising recognition in order to obtain the withdrawal of the refusal-to-bargain charge. The Regional Director had no trouble with this arrangement and neither do I.

[15] 555 F.2d 453 (1977).

[16] 580 F.2d 921 (1978).

[17] See *C & S Industries, Inc.*, 158 NLRB 454 (1966).

calling for a 30-day extension of the contract, retroactivity of economic benefits which might be negotiated in a future contract, and the expression of compliance with the notification provisions of Section 8(d) of the Act. Such provisions do not make the compliance agreement into something more than its name implies. These sections were designed merely to set the stage for a resumption of bargaining and of a bargaining relationship at a more leisurely pace than would have been the case had the parties felt impelled to negotiate a contract before the May 3 expiration date of the old contract. The same holds true for the extension of the compliance agreement until August 15. Like the original document the extension was designed to accomodate the establishment of a bargaining relationship and further negotiations at times which best suited the schedules of both parties, not to establish wages, hours, and terms and conditions of employment.

B. *The Test of Reasonableness*

In determining what constitutes a reasonable time for purposes of insulating a union's status from challenge, hard and fast limitations are difficult if not impossible to draw. In *Poole Foundry, supra*, the Board found that a 3-1/2-month time period following the resumption of a bargaining relationship was insufficient to give a newly established bargaining relationship a fair chance to succeed. In *Keller Plastics, supra*, 3 weeks was deemed to be enough. In *Yellow Front Stores, supra*, 39 days was found to be reasonable, while in *N. J. MacDonald & Sons, Inc.*, 155 NLRB 57 (1965), a 6-month period was found not be an unreasonable time to wait. Perhaps the most reliable and most practical test of reasonableness is the one the Board used in *Pride Refining Company, supra*, when it concluded that the parties themselves had established their own reasonable time from by agreeing to a settlement which itself set out an expiration date. This approach is well designed to fit the facts of this case, inasmuch as the parties herein established for themselves a time frame for completing work on a new contract. Accordingly, I conclude that a reasonable time for the establishment of a collective-bargaining relationship between the parties to this dispute did not elapse until at least August 15, 1979, when the compliance agreement expired by its own terms. The Regional Director implied as much when he dismissed the NABET petition on May 1 and the Employer's RM petition on July 28. The Board implied as much when it affirmed the Regional Director on October 23, and I explicitly conclude the same herein. Accordingly, when Respondent herein withdrew recognition from Local 666 on July 12 and refused to bargain further with it, it was not free to entertain a challenge to Local 666's majority status and violated Section 8(a)(1) and (5) of the Act by its acts and conduct.

C. *Respondent's Good-Faith Doubt of Local 666's Majority Status*

Respondent premised its withdrawal of recognition from Local 666 not only on the contention that it was free to do so but also that it had been presented with a substantiated claim by a rival union that, in fact, the rival union and not Local 666 was the majority representative in the unit in question. This contention also bears examination.

Respondent based its good-faith doubt of Local 666's continued majority status as as of July 12 upon a report by a mediator that authorization cards presented to him by NABET bore the signatures of individuals whose names appeared on a current list of cameramen employees. The employer never saw the cards nor did I see the cards in this proceeding. Were this a so-called *Gissel*[18] case, in which NABET was relying on these cards to establish its majority status, such evidence would hardly support such a finding. However, assuming that Respondent may do what the Board may not—namely, deprive a union of its status as bargaining agent on the basis of multiple hearsay, the action of Respondent herein on July 12 falls far short of a good-faith doubt.

Back in 1976, Respondent's predecessor in interest discontinued recognizing Local 666 as and when it discontinued the use of film cameras and introduced the use of minicams. As found by the Regional Director and affirmed by the Board, WWJ did not assign work from one bargaining unit to another. It simply reassigned bargaining agents to the same employees as it changed the tools with which they worked. In so doing, WWJ began covering news events with more expensive cameras and less expensive cameramen. As minicams came to replace film cameras entirely, NABET came to replace Local 666 as the recognized bargaining agent of the cameramen to the point where a Local 666 bargaining unit could be found only on paper. There existed an outstanding contract between the parties but it eventually covered no one. Elarbee was well aware of this history when, on April 2, he told Mamet he would need some time to "put it together" because the cameramen were covered by the NABET agreement.

The interference with protected activities and the assistance to NABET, which WWJ perpetrated when its vice president told cameramen that they would be represented by NABET after the introduction of minicams, is now beyond the Board's official reach, but the aroma emanating from this patently illegal conduct lingers on and makes a mockery of any present claim that employee freedom of choice and principles of industrial democracy are somehow in jeopardy if an election cannot immediately take place. NABET presented evidence herein that it told ex-Local 666 cameramen that, so long as litigation was pending concerning the dispute over the introduction of the minicam, it would not enforce the union-security clause in its contract which required all unit members to become NABET members after 30 days of employment. The Employer testified that it assumed that all cameraman were now NABET members and were paying dues. While this forebearance on the part of NABET may have preserved it from the disgorgement of illegally collected dues, it in no way detracts from the inherently coercive impact upon employee rights which stems from the mere existence of a union security clause

[18] *N.L.R.B. v. Gissel Packing Company*, 395 U.S. 575 (1969).

agreed upon between an employer and a union not entitled to represent some of the employees covered by the clause. The record herein reflects that none of the NABET authorization cards upon which it based its claim of majority on July 12 had been achieved during a period of time when Respondent herein was performing its statutory duty of recognizing the proper bargaining agent for its cameramen and when the cameramen were free from the terms and conditions of the NABET contract. NABET was simply trying to achieve squatters rights in this bargaining unit, signing up a number of ex-members of Local 666 at a time it had achieved recognition through unlawful assistance and later attempting to preserve those rights by asking the same individuals to reaffirm what it had no business asking of them on the first place. As the inheritor of WWJ's employees and the contracts covering them, Respondent herein cannot acquire present profit from its predecessor's wrongdoing and still maintain that it is acting in good faith. Had WWJ still employed the cameramen whose bargaining agent is here in question and had it, rather than Respondent, been presented with the NABET cards on July 12, it could not assert good faith in doubting Local 666's continuing claim to be the bargaining agent. There is no reason to permit Respondent to disassociate itself from these critical facts in the bargaining history of this unit. Accordingly, in light of this history, I conclude that Respondent herein could not have had, and did not have, a good-faith doubt of Local 666's majority status on July 12 when it received the mediator's report of a NABET card check and that, even if a question concerning representation could have been raised at that time, Respondent's withdrawal of recognition from Local 666 violated Section 8 (a)(1) and (5) of the Act.

D. *NABET's Due Process Claim*

Section 9 of the National Labor Relations Act does not provide for judicial or other further review of the Board's actions in representation matters. An employer aggrieved by an adverse determination in a representation matter can refuse to honor a certification and ultimately obtain further Board and court review by committing a punitive unfair labor practice in refusing to honor the certification. This review takes place in the course of litigating a complaint proceeding. A labor organization aggrieved by an adverse determination in a representation case has no such option and no such opportunity for further appeal. What applies to conventional questions arising before the certification of a representative (or the certification of results of an election) applies with equal force to unit clarification determinations. An employer can challenge them by refusing to bargain but a labor organization that is unhappy with the clarification of a unit has no further recourse. When in April 1979, Respondent herein agreed to honor the unit clarifications which had been made in Cases 7-UC-131 and 7-UC-146, the disputes therein as to who was the proper representative of minicam operators as well as the underlying question of whether the dispute was in fact a representation question at all were brought to a final and unreviewable end.

The same can be said for NABET's contention that it was denied procedural due process by the Regional Director in Case 7-UC-146. NABET brought this contention to the Board in that case without avail. It advanced the same claim in the representation case it filed in April 1979 without avail, and it makes the same claim here. The fact that its attack upon the decision in Case 7-UC-146, on whatever grounds, has been brought to an end by the Employer's agreement to abide by the results in that case does not mean that NABET has a forum in this proceeding to press the same arguments it unsuccessfully advanced in other cases on other occasions. Accordingly, the contentions of the party in interest should be dismissed.

Upon a consideration of the foregoing findings of fact and upon the entire record herein considered as a whole, I make the following:

III. THE REMEDY

Having found that Respondent herein has committed an unfair labor practice, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. I will also require that Respondent recognize Local 666 as the bargaining agent for its minicam operators and to bargain collectively in good faith with it. I will further recommend that Respondent be required to post the usual notice advising its employees of their rights and of the results in this case.

The Charging Party has requested me to recommend to the Board a *Tiidee* remedy, so-called because the Board once ordered such a remedy in 1972 on a case called *Tiidee Products, Inc.*, 194 NLRB 1234 (1972). A *Tiidee* remedy includes a requirement that an employer found guilty of an unfair labor practice be required to reimburse a union for organizing expenses and costs of litigation, including, attorney's fees. This case does not present the same kind or degree of employer misconduct found in *Tiidee*, so I decline to recommend the remedy.

CONCLUSIONS OF LAW

1. Respondent WDIV Post-Newsweek Stations, Michigan, Inc., is now and at all time material herein has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Photographers of the Motion Picture Industry, Local 666, IATSE, AFL-CIO, and National Association of Broadcast Employees and Technicians, AFL-CIO, are respectively labor organizations within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time cameramen employed by the Respondent at its Detroit, Michigan, television station for the purpose of photographing news, factual and documentary films, including but not limited to operators of sound and photographic equipment known as "mini-cams," and excluding office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all time material herein, Local 666 is and has been the exclusive collective-bargaining representative of

all of the employees in the unit found appropriate in Conclusions of Law 3 for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By withdrawing recognition from Local 666 and refusing to bargain collectively with it as the exclusive collective-bargaining representative of the employees employed in the unit found appropriate in Conclusion of Law 3, Respondent herein violated Section 8(a)(1) and (5) of the Act.

6. The aforesaid unfair labor practice has a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and 2(7) of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER[19]

The Respondent, WDIV Post-Newsweek Stations, Michigan, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with International Photographers of the Motion Picture Industry, Local 666, IATSE, AFL-CIO, as the exclusive collective-bargaining representative of all of the full-time and regular part-time cameramen employed at its Detroit, Michigan, television station for the purpose of photographing news, and factual and documentary films, including but not limited to operators of sound and photographic equipment known as "mini-cams," and excluding office clerical employees, guards, and supervisors as defined in the Act.

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

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Upon request, recognize and bargain collectively in good faith with International Photographers of the Motion Picture Industry, Local 666, IATSE, AFL-CIO, as the exclusive collective-bargaining representative of all of its full-time and regular part-time cameramen employed at its Detroit, Michigan, television station for the purpose of photographing news, and factual and documentary films, including but not limited to operators of sound and photographic equipment known as "mini-cams," and excluding office clerical employees, guards, and supervisors as defined in the Act, and, if an agreement is reached, embody the same in a signed written contract.

(b) Post at its television station in Detroit, Michigan, copies of the attached notice marked "Appendix."[20] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by a representative of Respondent, shall be posted immediately upon receipt thereof, and shall be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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[19] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[20] In the 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 rad "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."