

United Artists Theatre Circuit, Inc. and Moving Picture Projectionists, Local No. 150, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada. Case 31-CA-8694

December 4, 1980

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On September 10, 1980, Administrative Law Judge Gerald A. Wacknov issued the attached Supplemental Decision in this proceeding.¹ Thereafter, the General Counsel and the Charging Party filed exceptions and supporting briefs, and Respondent filed an answering brief.

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 Supplemental 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.

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 complaint be, and it hereby is, dismissed in its entirety.

¹ The Board had directed the Administrative Law Judge to make additional findings of fact, as stated in its Decision and Order reported at 250 NLRB 922 (1980).

² The General Counsel and the Charging Party have 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.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge: A Decision was issued in this matter by me on March 17, 1980. Thereafter, on July 23, 1980, the Board issued a Decision and Order¹ remanding the case to me for the purpose of making credibility determinations, particularly with respect to the events of August 9, 1978.

¹ 250 NLRB 922.

As stated in my initial Decision, this case is predicated on the contention of the General Counsel and the Union that the parties reached agreement on the terms of a collective-bargaining agreement during the course of a meeting which occurred on August 9, 1978. More specifically, it is contended that on that date the parties reached agreement on, *inter alia*, payment of holiday pay to projectionists. Respondent not only denies that there was any agreement reached on that date, but, moreover, contends that it expressly advised the union representatives that it would not deviate from its prior position, consistently maintained throughout protracted negotiations, that holiday pay would not be included in any contract negotiated with the Union.

The testimony of Union Business Manager Ralph Kemp and Union President Frank Rubin is exceedingly abbreviated with regard to what transpired during the meeting, which lasted, according to their testimony, 10-20 minutes. Rubin's entire testimony concerning this critical meeting in the office of Robert Naify, president of Respondent, is as follows:

Q. So while you were in Mr. Naify's office, please relate what was said by the parties?

A. I didn't want to waste his time, so I said you sign a full contract; if you would let the two Westwood Theatres go projectionist-manager, subject to approval—I am sorry—subject to interview of our people—and they went out and had a caucus.

Q. Did you say anything else about the conditions of this contract at that meeting?

A. When, after they caucused?

Q. While you were in the meeting with them.

I said that it was subject to interview of our people.

* * * * *

Q. You stated that Mr. Gallagher, Mr. Goldman [2] and Mr. Naify left the office to caucus; approximately how long did they leave for?

A. Around 10 to 15 minutes.

Q. And did they return to the office?

A. Yes, they did.

Q. And what was said after they returned?

A. Mr. Naify said you have yourself a deal.

Q. Did he say anything further?

A. That was it.

Rubin further testified that immediately after the meeting, in the hallway, he stated to Gallagher and Goldman that the agreement was subject to ratification by the membership.³

Kemp's testimony, although equally abbreviated, is not consistent with the testimony of Rubin. Thus, Kemp testified that "the proposal we presented was that the Westwood Theatres would go projectionist-manager sub-

² Jim Gallagher and Richard Goldman occupied the positions of Respondent's vice president and corporate counsel, respectively.

³ Kemp testified that only Goldman was present on behalf of Respondent during this alleged conversation in the hallway. However, Rubin testified that Gallagher was also present and participated in the discussions.

ject to the interview of our people." When asked whether anything else was said during the meeting, Kemp replied that after caucusing, Respondent's representatives returned and said "they would accept the projectionist-manager in Westwood, and they would accept the full contract in the remainder of the theatres." Thus, according to Kemp's testimony, nothing was proposed by the Union nor was anything even mentioned about holiday pay until Respondent's representatives, rather than Kemp or Rubin, allegedly said that they would accept the "full contract" on returning from their caucus. Moreover, unlike Rubin, Kemp testified that during the meeting with Naify, rather than during the subsequent conversation in the hallway, it was stated by either Kemp or Rubin that the agreement would be taken back to the membership for ratification.

The testimony of Naify, Gallagher, and Goldman, which I credit, is eminently more persuasive, in that each was able to recall, in considerably greater detail, the substance of the August 9, 1978, meeting, particularly regarding the matter of holiday pay. Each of Respondent's witnesses testified that the matter of holiday pay was specifically discussed at some length and each recounted the details of this discussion during which Respondent's representatives, particularly Naify, emphasized that under no circumstances would there be movement from Respondent's consistent position that holiday pay would not be included in any contract agreed on. Indeed, as holiday pay was one of the two outstanding issues which had precluded the successful negotiation of a collective-bargaining agreement throughout protracted negotiations, and as this was the first meeting between the union representatives and Respondent's president, Naify, the testimony of Kemp and Rubin that the matter of holiday pay was virtually ignored does not accord with probability.

Additionally, Respondent's subsequent communications with the Union, as set forth in my initial Decision, is consistent with the testimony of Respondent's repre-

sentatives that holiday pay was not agreed on at the August 9, 1978, meeting, and the Union's deficient response to these communications, as explained in my initial Decision, further supports the finding herein that the parties reached no agreement on the holiday pay issue at this meeting.

Analysis and Conclusions

On the basis of the foregoing and the record as a whole, I find the testimony of Rubin and Kemp that, in effect, holiday pay was not specifically discussed to be unconvincing, inconsistent, and unworthy of belief.⁴ Having credited the account of the meeting given by Respondent's representatives, the conclusion is mandated that no agreement on the holiday issue was reached at the meeting. I so find. I shall therefore dismiss the complaint in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No agreement regarding the matter of holiday pay was reached at the August 9, 1978, meeting between the parties.

2. Respondent has not violated the Act as alleged.

Accordingly, upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁵

The complaint is dismissed in its entirety.

⁴ In my final Decision, I specifically discredited their testimony regarding what transpired at a later date.

⁵ 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 of 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.