

SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions and New York Typographical Union No. 6, International Typographical Union, AFL-CIO. Case 2-CA-17214

September 29, 1980

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

Upon a charge filed on April 29, 1980, by New York Typographical Union No. 6, International Typographical Union, AFL-CIO, herein called the Union, and duly served on SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions, herein called Respondents, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint on April 30, 1980, against Respondents, alleging that Respondents had engaged in and were in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on January 31, 1980, following a Board election in Case 2-RC-18557, the Union was duly certified as the exclusive collective-bargaining representative of Respondents' employees in the unit found appropriate;¹ and that, commencing on or about April 11, 1980, and at all times thereafter, Respondents have refused, and continue to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting them to do so. On July 2, 1980, Respondents filed their answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On July 8, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on July 10, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary

¹ Official notice is taken of the record in the representation proceeding, Case 2-RC-18557, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV ElectroSystems, Inc.*, 166 NLRB 938 (1967), enf'd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Judgment should not be granted. Respondents did not file a response to the Notice To Show Cause.

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.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In their answer to the complaint, Respondents admit all of the operative factual allegations of the complaint other than their alleged failure and refusal "since on or about April 11, 1980," to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in a unit described below which they deny. Apparently, based on this denial, Respondents also deny the conclusionary averments of the complaint that they have violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union. The General Counsel contends that Respondents: (a) raise no issues which have not been litigated and determined by the Board in the underlying representation proceeding; or (b) raise matters which are conclusively proved by the exhibits attached to the Motion for Summary Judgment. We agree with the General Counsel.

Review of the record herein, including the record in Case 2-RC-18557, discloses that the Union initially sought to represent certain composing room employees of Respondents. Following the close of a hearing in the underlying representation proceeding, the Regional Director for Region 2 issued his Decision and Direction of Election on December 7, 1979. In that decision, he found the requested unit, with the addition of certain messengers, appropriate for collective-bargaining purposes. The Union thereafter filed a request for review of the Regional Director's decision with the Board in Washington, D.C., contending that the messengers should not be included in the unit. The Board denied the request for review but amended the Decision and Direction of Election to permit the messengers to vote under challenge.

An election was thereafter held, on January 4, 1980, which the Union won. The challenged ballots of the messengers were not determinative of the election's results. On January 11, 1980, Respondents filed timely objections to the election. On January 31, 1980, the Regional Director issued a Supplemental Decision and Certification of Representative, overruling Respondents' objections and certifying the Union as the exclusive collective-bargaining representative of the employees in the unit found appropriate. Respondents did not file excep-

tions to the Regional Director's Supplemental Decision.

As noted, Respondents have filed no response to the Notice To Show Cause. In their answer to the complaint, however, Respondents denied the factual allegation of paragraph 10 of the complaint that "[s]ince on or about April 11, 1980," Respondents have refused to recognize and bargain with the Union in the appropriate unit described below. In rejecting this contention, we find that certain complaint allegations admitted by Respondents along with various exhibits attached to the General Counsel's Motion for Summary Judgment conclusively establish the date on which Respondents first refused to bargain as April 11, 1980.

We note that paragraph 9(b) of the complaint, which was admitted by Respondents, states that, "[o]n or about April 11, 14, and 18, 1980, the Union, by phone call, requested Respondents to meet and bargain collectively with it as the exclusive bargaining representative of Respondents' employees" in the unit described below. Also, appended to the General Counsel's Motion for Summary Judgment, as Exhibit J, is a letter dated April 21, 1980, from Respondent Ace Typographers which declines the Union's request to bargain because "we want to challenge the validity of the certification." This letter appears to be an affirmation of an earlier stated position by Respondents since, also appended to the General Counsel's Motion for Summary Judgment, as Exhibit I, is an April 22, 1980, letter from the Union to Respondents which states:

Pursuant to our three (3) telephone conversations (April 11, 14 and 18, 1980) and a letter dated April 14, requesting a meeting for the purpose of negotiating a mutually satisfactory contract covering those certified employees represented by this Union has [sic] met with resistance on your part. Your constant replies were that "you were checking the invalidity of the authority vested by the Regional Director, NLRB, Region 2 certification dated January 31, 1980." [Emphasis supplied.]

Respondents have not disputed the authenticity of Exhibits I or J. Accordingly, notwithstanding Respondents' denial of paragraph 10 of the complaint, we find that Respondents' admission of paragraph 9(b) of the complaint along with Exhibits I and J of the Motion for Summary Judgment establish that Respondents did refuse to bargain on or about April 11, 1980. Therefore, we find paragraph 10 of the complaint to be true.²

² Respondent Ace Typographers' letter of April 21, 1980, also indicated as a further reason for refusing to bargain that it had "been informed

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³ Respondents do not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor do they allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENTS

At all times material herein, AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions, at times herein individually called Respondent AVJ, a New York corporation, with an office and place of business in New York, New York, herein called Respondent AVJ's facility, has been engaged in providing typographical, phototypesetting, and related services to commercial customers.

At all times material herein, SSS Typographers, Inc. d/b/a Ace Typographers, at times herein individually called Respondent Ace, a New York corporation, with an office and place of business in New York, New York, herein called Respondent Ace's facility, has been engaged in providing typographical, phototypesetting, and related services to commercial customers.

At all times material herein, Respondent AVJ and Respondent Ace have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise.

By virtue of their operations described above, Respondent AVJ and Respondent Ace constitute a

that [the] Union does NOT represent a majority of the employees in the unit, by a written petition which was submitted to [its president]." This refusal to bargain based on this alleged petition is without merit as it is well established that, absent unusual circumstances not shown to exist here, a certified union's majority status is irrebuttably presumed for 1 year from the date of certification. As the alleged petition was submitted within the certification year, this petition did not justify the refusal to bargain. See, e.g., *Brooks v. N.L.R.B.*, 348 U.S. 96 (1954).

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

single integrated business enterprise and a single employer.

Annually, Respondent AVJ and Respondent Ace, in the course and conduct of their operations described above, collectively, perform services valued in excess of \$50,000 for various enterprises located in States other than the State of New York.

We find, on the basis of the foregoing, that Respondents are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

New York Typographical Union No. 6, International Typographical Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondents constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by Respondents, but excluding office clerical employees, salesmen, guards, and supervisors as defined in the Act.⁴

At all times material herein, a majority of the employees in the above-described unit have designated or selected the Union as their representative for the purposes of collective bargaining with Respondents.

2. The certification

On January 4, 1980, a majority of the employees of Respondents in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 2, designated the Union as their representative for the purpose of collective bargaining with Respondents.

The Union was certified as the collective-bargaining representative of the employees in said unit on January 31, 1980, and the Union continues to be

⁴ The classification of messengers is neither included nor excluded from this unit since, in denying the Union's earlier request for review, the Board permitted the messengers to vote in the election subject to challenge. Although the messengers involved were challenged at the election, the challenged ballots were not determinative of the results of the election. Accordingly, no further findings with respect to the unit placement of the messengers have since been made.

such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about April 11, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about April 11, 1980, and continuing at all times thereafter to date, Respondents have refused, and continue to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondents have, since April 11, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents set forth in section III, above, occurring in connection with their operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that they cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondents commence to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328

F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions, are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. New York Typographical Union No. 6, International Typographical Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees employed by Respondents, but excluding office clerical employees, salesmen, guards, 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. Since January 31, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 11, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondents in the appropriate unit, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions, New York, New York, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with New York Typographical Union No. 6, International Typographical Union, AFL-CIO, as the exclusive bargaining representative of all employees in the following appropriate unit:

All full-time and regular part-time employees employed by Respondents, but excluding office clerical employees, salesmen, 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 in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at their facility in New York, New York, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondents' representatives, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment

with New York Typographical Union No. 6, International Typographical Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

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, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and condi-

tions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time employees employed by us, but excluding office clerical employees, salesmen, guards, and supervisors as defined in the Act.

SSS TYPOGRAPHERS, INC. D/B/A ACE
TYPOGRAPHERS AND AVJ GRAPHICS,
INC. D/B/A MANHATTAN GRAPHIC
PRODUCTIONS