

Vitek Electronics, Inc. and International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC. Case 22-CA-9695

May 28, 1980

DECISION AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND TRUESDALE**

Upon a charge filed on January 11, 1980, by International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, herein called the Union, and duly served on Vitek Electronics, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint on February 4, 1980, against Respondent, alleging that Respondent had engaged in and was engaging 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 December 14, 1979, following a Board election in Case 22-RC-7833, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about January 7, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 13, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 7, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 12, 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 Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.

¹ Official notice is taken of the record in the representation proceeding, Case 22-RC-7833, 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), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 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), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

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 its answer to the complaint, and in both its "Opposition to General Counsel's Motion for Summary Judgment" and its subsequent letter filed on April 14, 1980, in further opposition to General Counsel's motion, Respondent admits its refusal to bargain² but denies that it thereby violated Section 8(a)(5) and (1) of the Act. Respondent contends that (1) the election must be set aside and a new election directed because the Union misrepresented material facts concerning cost-of-living clauses, wages, job safety, seniority, and job security at a time when Vitek lacked adequate time to reply; (2) the election must be set aside and a new election directed because threats by the Union and its agents against unit employees created a general atmosphere of fear of reprisal which prevented a free election; and (3) the Regional Director erred in denying Vitek a hearing in Case 22-RC-7833, notwithstanding the Employer's submission of specific evidence of objectionable conduct, and by resolving *ex parte* against the Company credibility issues raised by the Company's affidavits.

Counsel for the General Counsel argues that Respondent's contentions are without merit as they raise issues which were presented to and decided by the Board in the underlying representation case. Counsel for the General Counsel also argues that since all material issues have previously been decided by the Board, or admitted in Respondent's answer to the complaint, there exists no factual issue litigable before the Board, and therefore no matter requiring a hearing before an administrative law judge.

A review of the record herein, including the record in Case 22-RC-7833, shows the following: On April 5, 1979, the Union filed a petition for an election seeking to determine if the production and maintenance employees and the shipping and receiving employees employed at Respondent's Edison, New Jersey, facility desired to be represented by the Union. A Stipulation for Certification Upon Consent Election was executed by the parties on April 23, 1979, and approved by the Regional Director on April 24, 1979.

On June 7, 1979, an election by secret ballot was conducted under the direction and supervision of

² By implication, Respondent thereby acknowledges that the Union made a demand for bargaining.

the Regional Director among the employees in the bargaining unit set forth in the stipulation.³ A majority of the employees in the unit designated and selected the Union as their representative for the purposes of collective bargaining. Thereafter, Respondent filed timely objections to the election alleging, in substance, that (1) the Board agent conducting the election misled and confused prospective voters; (2) the Union's observers engaged in improper electioneering; (3) the Union created a general atmosphere of fear of reprisal which prevented a free election; (4) the Union misrepresented material facts at a time when Respondent lacked adequate time to reply. After investigation, the Acting Regional Director of Region 22 issued on September 7, 1979, a Report on Objections in which he found the objections to be without merit and recommended that they be overruled, and the Union certified. Respondent filed detailed exceptions and a supporting brief, essentially reiterating its objections and requesting that a new election be directed or, alternatively, that a hearing be held on its objections. After considering the record in light of Respondent's exceptions and brief, the Board issued a Decision and Certification of Representative in which it adopted the Acting Regional Director's finding that Respondent had raised no substantial or material issues warranting a hearing, and certified the Union.

The issues which Respondent seeks to raise at this time were raised and decided by the Board in the underlying representation proceeding. It thus appears that Respondent is attempting to raise issues which were specifically considered and resolved by the Board in the underlying representation case.

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.⁴

All issues raised by Respondent in this proceeding were or could have been litigated in the prior

representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice 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 RESPONDENT

Respondent is a New Jersey corporation with its principal office and place of business at 4 Gladys Court, Edison, New Jersey (herein called the Edison plant), where it is engaged in the manufacture, sale, and distribution of electronic components and related products. During the past 12 months, a representative period, Respondent manufactured, sold, and distributed at the Edison plant products in excess of \$50,000 of which products valued in excess of \$50,000 were shipped from the Edison plant directly to States other than New Jersey.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer 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

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, 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 the Respondent 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 production and maintenance employees including punchers, respoolers, crimpers, connectors, cutters, solderers, benders, ti-ers, technicians, testers, braiders, driver, janitor, group leaders, material handlers, and shipping and receiving employees employed by the Employer at its

³ The bargaining unit set forth is:

All full-time and regular part-time production and maintenance employees including punchers, respoolers, crimpers, connectors, cutters, solderers, benders, ti-ers, technicians, testers, braiders, driver, janitor, group leaders, material handlers, and shipping and receiving employees employed by the Employer at its Edison, New Jersey location, but excluding all other employees, including shift superintendents, forepersons, production control persons, office manager, payroll clerk, purchasing agent, sales employees, marketing employees, personnel administrator, chief engineer, office clerical employees, managers, professional employees, temporary employees, guards and supervisors as defined in the Act and all other employees excluded under the National Labor Relations Act, as amended.

⁴ 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).

Edison, New Jersey location; but excluding all other employees, including shift superintendents, forepersons, production control persons, office manager, payroll clerk, purchasing agent, sales employees, marketing employees, personnel administrator, chief engineer, office clerical employees, managers, professional employees, temporary employees, guards and supervisors as defined in the Act and all other employees excluded under the National Labor Relations Act, as amended.

2. The certification

On June 7, 1979, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 22, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on December 14, 1979, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

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 January 7, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues 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 Respondent has, since January 7, 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, Respondent has engaged in and is 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 Respondent set forth in section III, above, occurring in connection with its 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 Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it 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 Respondent commences 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. Vitek Electronics, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees including punchers, re-spoolers, crimpers, connectors, cutters, solderers, benders, ti-ers, technicians, testers, braiders, driver, janitor, group leaders, material handlers, and shipping and receiving employees employed by the Employer at its Edison, New Jersey location; but excluding all other employees, including shift superintendents, forepersons, production control persons, office manager, payroll clerk, purchasing agent, sales employees, marketing employees, personnel administrator, chief engineer, office clerical employees, managers, professional employees, temporary employees, guards and supervisors as defined in the Act and all other employees excluded under the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 14, 1979, 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 January 7, 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 Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is 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 Respondent, Vitek Electronics, Inc., Edison, New Jersey, its 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 International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees including punchers, respoolers, crimpers, connectors, cutters, solderers, benders, ti-ers, technicians, testers, braiders, driver, janitor, group leaders, material handlers, and shipping and receiving employees employed by the Employer at its Edison, New Jersey location; but excluding all other employees, including shift superintendents, forepersons, production control persons, office manager, payroll clerk, purchasing agent, sales employees, marketing employees, personnel administrator, chief engineer, office clerical employees, managers, professional employees, temporary employees, guards and supervisors as defined in the Act and all other employees excluded under the National Labor Relations Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex-

ercise 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 its Edison, New Jersey, facility copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 22, 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 and Order of the National 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 International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, 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 production and maintenance employees including punchers, respoolers, crimpers, connectors, cutters, solderers, benders, ti-ers, technicians, testers, braiders, driver, janitor, group leaders, material handlers, and shipping and receiving employees employed by the Employer at its Edison, New Jersey location; but excluding all other employees, including

shift superintendents, forepersons, production control persons, office manager, payroll clerk, purchasing agent, sales employees, marketing employees, personnel administrator, chief engineer, office clerical employees, managers, professional employees, temporary employees, guards and supervisors as defined in the Act and all other employees excluded under the National Labor Relations Act, as amended.

VITEK ELECTRONICS, INC.