

John Chiotis d/b/a Worldwide Detective Bureau and Allied International Union of Security Guards and Special Police. Case 2-CA-15234

September 28, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On July 11, 1979, Administrative Law Judge Peter E. Donnelly issued the attached Decision in this proceeding. Thereafter, Respondent filed 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 has decided to affirm the rulings, findings,¹ 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 Respondent, John Chiotis d/b/a Worldwide Detective Bureau, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ 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.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge: The charge herein was filed on November 3, 1977, by Allied International Union of Security Guards and Special Police, herein called Union or Charging Party. A complaint thereon was issued on December 28, 1977, alleging that John Chiotis d/b/a Worldwide Detective Bureau (herein called Employer or Respondent), violated Section 8(a)(5) and (1) of the Act, by failing and refusing to bargain with Respondent for a new collective-bargaining agreement. An answer thereto was timely filed by Respondent. Pursuant to notice a hearing was held before the Administrative Law Judge at New York, New York, on January 10 and 11,

1979. Briefs have been timely filed by General Counsel and Respondent and have been duly considered.

FINDINGS OF FACT

I. EMPLOYER'S BUSINESS

John Chiotis is an individual proprietor doing business under the trade name and style of Worldwide Detective Bureau. Employer maintains its principal office and place of business in New York, New York, and is at all times material herein engaged in providing security guards and related services. During the calendar year ending December 31, 1976, Respondent in the course and conduct of its operations furnished services valued in excess of \$50,000 in States other than the State of New York. The jurisdictional allegations are not denied in Respondent's answer and therefore are deemed admitted.¹ Based on these facts, I conclude that the Employer is an employer as defined in Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The record discloses that the Union represents, under contract as collective-bargaining representative, the employees of several employers and clearly deals with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work. Accordingly, I conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The Union and Respondent were parties to a collective-bargaining agreement which expired by its terms on April 12, 1977.² Prior thereto, on January 14, Daniel Cunningham, president of the Union, wrote to John Chiotis, owner of Respondent, confirming arrangements for a contract negotiating session on January 24.

On January 24, a meeting took place at a Manhattan restaurant.³ At this meeting, the parties discussed several contract provisions with a view towards negotiating a new contract. On February 14, Cunningham wrote to Chiotis outlining certain contract provisions dealing with holidays, wages, paid sick time, and vacations, as well as health and life insurance benefits. In this letter, Cunningham requested Chiotis to call his office to schedule a meeting to conclude the negotiations. Having received no response from Chiotis, Cunningham again, by letter dated February 21, requested Chiotis to call to arrange a meeting date to conclude nego-

¹ Rules and Regulations of the National Labor Relations Board, Sec. 102.20.

² All dates refer to 1977, unless otherwise indicated.

³ Contrary to Cunningham, both Chiotis and Patrick Sottile, Executive Director of the Security Industry Association, attending as a representative of Respondent, testified that the meeting took place on February 28. However, I credit Cunningham's testimony in this regard in view of the Union letters of January 14 and February 14, both citing the date as January 24, and the failure of Chiotis to recall any date for the meeting in an affidavit submitted on December 2, 1977.

tiations. After the letter of February 14, Cunningham attempted on an average of two or three times a week to contact Chiotis to set up a negotiating session. At these times, some 12 times in all, he spoke to a Mrs. Russell, the Respondent's office manager, and was told that his messages were being given to Chiotis and that it was not her problem if Chiotis did not call back. Again on March 7 Cunningham wrote to Chiotis as follows:

We have made numerous attempts to arrange an appointment to conclude negotiations on the collective-bargaining agreement.

Since we had no reply from you to this date, we must now insist that you contact our office to arrange a mutual convenient date and time for negotiations or we will be forced to take legal action.

It is undisputed that no bargaining sessions on a new contract took place thereafter at anytime.⁴

On April 12, the contract expired by its terms. According to Chiotis, the contract automatically renewed itself for one year.

On November 1, Cunningham again wrote to Chiotis reciting Chiotis' failure to respond to prior bargaining requests and advising him that an unfair labor practice charge was filed on that date. By letter of February 2, 1978, Chiotis notified the Union of his intention to terminate the contract on its expiration date, and by letter dated February 9, 1978, Cunningham reminded Chiotis that the Union remained the collective-bargaining representative of the employees and requested confirmation of a mutually convenient date to negotiate.

On March 2, 1978, Chiotis wrote to the Union that Respondent was ready to comply with its legal bargaining obligations and requested the Union "to write setting forth your contract proposals and several alternative dates and times for meetings at the office of my attorney, Mr. Peter J. Curley, 170 Broadway, New York, New York 10038."

On March 21, 1978, Cunningham wrote to Curley to arrange a negotiating date during the week of March 27, 1978, and Curley replied by letter of March 24, 1978, saying, "Your attention is directed to my above captioned clients letter of March 2, 1978, in which you were requested to submit written contract proposals. In view of the fact that the proposals have not been received any meeting prior to our receipt of same would be of no avail."

On March 27, 1978, Cunningham wrote to Curley enclosing the Union's contract proposals and requesting counter-proposals in writing within 10 days.⁵

⁴ Chiotis testified that about a week after the first meeting, he called Cunningham to tell him that the Union's proposals were too high and "left word with a lady in his office saying that I did not agree." Chiotis also admits having been advised of Cunningham's attempts to contact him, but testified that Cunningham was unavailable when he returned those calls.

⁵ Despite this exchange of correspondence, ostensibly with a view toward negotiations on a new contract, Chiotis testified that he stop negotiating for a new contract with the Union just before his February 2, 1978, termination letter. Chiotis testified "I sent this letter because, after speaking to several men, and many of the men who were all dissatisfied, plus the not coming to terms with Mr. Cunningham because he gave me the increases which were a little above what should have been, then I decided that I would terminate and see what else transpires after that."

With respect to Respondent's contention that it had a good-faith doubt that the Union represented a majority of its guard employees, Chiotis testified that in his contacts with employees, they expressed to him their dissatisfaction with certain deficiencies attributable to the Union. These included the Union's failure to furnish health insurance or welfare and membership cards. Chiotis testified that some 4 employees in the unit of about 25 quit because of dissatisfaction. According to Chiotis, most of his complaints were voiced in 1976 with some in 1975 and 1977 as well.

With respect to the matter of the Union's affiliation with a nonguard union, it appears that in January or February 1977, Cunningham and Herman Jaffe, secretary of the Union, were involved in the formation of a labor organization called the Association of Public and Private Labor Employees (APPLE). At that time, Cunningham was the president of APPLE, and Jaffe was a trustee. Both labor organizations occupied offices in the same building. About May 1977, upon the advice of counsel, both Cunningham and Jaffe withdrew from any further participation in the affairs of APPLE. While APPLE did admit to membership employees other than guard employees, Cunningham testified that to his knowledge APPLE's organizing efforts were fruitless and never represented any employees at all.

B. Analysis and Recommendation

Clearly, the record in this case discloses that Respondent, since January 1977, has engaged in a course of conduct designed to undermine the bargaining process, despite repeated efforts by the Union to involve Respondent in contract discussions. Beginning in January 1977, Respondent rejected the Union's written and verbal bargaining requests, and, in essence, took a position that could only be described as categorically opposed to, and in derogation of, the collective-bargaining principle. Thereafter, despite the Union's continuing demands to negotiate a new contract, Respondent assumed the posture that on April 12, 1977, the contract, by its terms, extended itself for another year. In my opinion, the contract never was extended properly, and Respondent, by treating it as extended, was in derogation of its obligation to bargain with the Union. Thus, it is apparent that since January 1977, and continuing to date, Respondent has had a bargaining obligation to the Union and has failed to meet that obligation. Thus it follows that Respondent was not privileged on February 2, 1978, to terminate its bargaining relationship with the Union. However, Respondent contends that it has available to it several legal defenses which insulate its conduct from any violation of Section 8(a)(5) of the Act.

First, Respondent contends that it has a good-faith doubt that the Union represented a majority of Respondent's employees and was therefore privileged to decline to bargain with the Union. This position obviously conflicts with Respondent's contention that the contract was extended to April 12, 1978, because it was clearly extending contract recognition to the Union during that period of time. But apart from that fact, the evidence adduced by Respondent to show its good-faith doubt is unconvincing. Nowhere does there appear any truly objective considerations upon which to base such a belief. The evidence produced in this regard

was general, undocumented, and uncorroborated. Essentially, they were self-serving declarations totally insufficient to rebut the presumption of the majority status. *Cornell of California, Inc.*, 222 NLRB 303 (1976).

Second, Respondent takes the position that in view of the fact that it originally extended voluntary recognition to the Union, without a Board certification, the General Counsel has the burden of establishing that the contract unit herein is appropriate and that since this was not done, no bargaining order can be issued. The evidence shows that Respondent under a series of contracts, the last expiring by its terms on April 12, 1977, has recognized the Union as the collective-bargaining representative of substantially the same unit of guard employees since 1971. The propriety of the overall guard unit has never been contested, and it was not contested at this hearing. In these circumstances, I find that the overall guard unit described in the complaint is the appropriate unit for the purposes of collective bargaining.

Respondent further defends its refusal to bargain on the grounds that the Union is affiliated with another union which admits to membership employees other than guards.⁶ As noted above, at the inception of APPLE, Cunningham and Jaffe were chief officials in both the Union and APPLE, and while APPLE did admit to membership employees other than guards, it does not appear that it ever represented any employees. Thus, it would appear that from January 1977 until April or May 1977, when Cunningham and Jaffe left APPLE, there was a substantial affiliation. Respondent contends that such an affiliation negates its duty to bargain with the Union. I do not agree.

Section 9(b)(3) of the Act provides, *inter alia*, that the Board shall not "decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the Employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership employees other than guards." However, these considerations do not apply with respect to 8(a)(5) situations so as to privilege an employer to refuse to bargain in all circumstances where its employees are represented by a union which admits to membership nonguard employees. In the instant case, the guard unit had been extended recognition by Respondent in 1971, and the Union has represented the guard unit under contract beginning in 1971. The Union does not and never has represented any other of the employees of Respondent. The brief affiliation between the Union and APPLE in 1977 did not privilege Respondent to refuse to bargain with the Union, especially when no employees of Respondent were involved. These circumstances bear no resemblance to the danger of "divided loyalties" with which Congress appears to have been concerned when it enacted Section 9(b)(3).⁷

⁶ Curiously, although this issue was litigated, it was not treated in Respondent's brief.

⁷ The Board has previously passed on the propriety of a similar affiliation between Federation of Special Police and Law Enforcement Officers (Federation), a labor organization in which both Cunningham and Jaffe hold office

particularly since the Union not only did not represent any other of Respondent's employees, but never represented any employees at all, at least during the period of affiliation. *Amoco Oil Company*, 221 NLRB 1104 (1975).

Respondent also contends that the complaint should be dismissed under the provisions of Section 10(b) of the Act, which provides that no complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge. Respondent's position is that it has had a bona fide good-faith doubt of the Union's majority status since the 10(b) date (May 3, 1977) dating back before the expiration date of the contract on April 12, 1977. This being the case, Respondent argues that nothing it did thereafter could be construed as an undermining of the Union's majority status. Therefore, any allegations of the refusal to bargain thereafter are misplaced because Respondent was not at any time during the 10(b) period obliged to bargain with the Union. This position is untenable. Apart from the fact that this argument is inconsistent with its contention that the contract was automatically renewed, thereby extending recognition for an additional year, I have concluded that Respondent's "good-faith doubt" defense is without merit. In these circumstances I conclude that Respondent's 10(b) argument is also without merit.

In summary, it is my conclusion that the Union has at all times relevant herein represented a majority of Respondent's guards in a unit appropriate for collective-bargaining and that Respondent has failed to meet its obligation to bargain with the Union. Of course any misconduct outside the 10(b) period, while regrettable, is not actionable. The beginning of Respondent's misconduct in this case occurred prior to the 10(b) date, starting after the single bargaining session in January of 1977. However, the misconduct begun at that time continued into the 10(b) period. The Union communicated its desire to bargain with Respondent by telephone and letter, and Respondent avoided these attempts by the Union to bring it to the bargaining table to negotiate a new contract. The justifications offered by Respondent for failing to respond to these repeated union requests are unconvincing.⁸ Indeed, once having taken the position, as Respondent does, that the Union's loss of majority status prejudiced Respondent's refusal to recognize the Union, why should Respondent have bargained with the Union for a new contract? In addition, I conclude that unilaterally renewing the existing contract while the Union sought bargaining on a new contract was an independent refusal to bargain on the part of Respondent. Finally, I conclude that Respondent also violated its bargaining duty to the Union by withdrawing recognition and terminating its bargaining relationship with the Union as of February 2, 1978, since the Union remains the legal collective-bargaining representative of Respondent's guard employees.

as president and vice president, respectively, and APPLE; the Board concluding that the affiliation was insufficient to disqualify Federation, under Section 9(b)(3), from participation in an election. *Wells Fargo Guard Services, Division of Baker Protective Services, Inc.*, 236 NLRB 1196 (1978).

⁸ Chotis' telephone call to a Union secretary, leaving word that he did not agree to the Union's proposal, was not an adequate response.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON
COMMERCE

The activities of Respondent, set forth in section III, 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 unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent has unlawfully withdrawn recognition from the Union and has failed and refused, despite a valid demand, to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit. It will therefore be recommended that Respondent be required to recognize, and upon request, bargain with the Union as the exclusive representative of the employees in an appropriate bargaining unit.

Upon the basis of the foregoing findings of fact, and upon the entire record in this case, I hereby make the following:

CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein, the following unit has been an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time guards employed by Respondent within the United States and its possessions, excluding executives, professional, confidential, clerical, and nonguards employees, and all supervisors as defined in Section 2(11) of the Act.

4. At all times material herein, the Union has been and now is the exclusive representative of the employees in the above described appropriate bargaining unit, for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to meet and bargain to negotiate a new contract, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. The contract, by unilaterally being treated as having been renewed, expired on April 12, 1977, while the Union was attempting to negotiate a new contract; Respondent therefore has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By terminating, on or about February 2, 1978, its collective-bargaining relationship with the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

8. By virtue of its conduct, Respondent has interfered with, restrained, and coerced employees in the exercise of

rights guaranteed under Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

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

ORDER⁹

The Respondent, John Chiotis, d/b/a Worldwide Detective Bureau, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to recognize and bargain collectively with the Union as the exclusive representative of all the employees in the appropriate bargaining unit, as herein above described, with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) In any like or related manner, interfering with, restraining, or coercing their employees in the exercise of their rights to self-organization, to form labor organization, to join or assist the Union, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other protected concerted activity within the purpose of mutual aid or protection, or to refrain from any or all such activities as guaranteed by Section 7 of the Act, as amended.

2. Take the following affirmative action which is found will effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively with Allied International Union of Security Guards and Special Police, as the exclusive representative of all employees in the appropriate unit described above, with regard to rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such an understanding in a signed agreement.

(b) Post, at its principal place of business in New York, New York, copies of the attached notice marked "Appendix."¹⁰ Copies of this notice on forms provided by the Regional Director for Region 2, after being duly signed by a representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by

⁹ 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.

¹⁰ 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."

Respondent to ensure 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 Respondent has taken to comply herewith.

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 upon request bargain with Allied International Union of Security Guards and Special Police as the exclusive representative of our employees in the appropriate unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Allied International Union

of Security Guards and Special Police or any other labor organization, to bargain collectively with representatives of their own choosing, or to engage in other protected concerted activity for the purposes of mutual aid or protection, or to refrain from any and all such activities, as guaranteed by Section 7 of the Act.

WE WILL, upon request, bargain collectively with Allied International Union of Security Guards and Special Police, as the exclusive representative of all our employees in the appropriate unit described below, with regard to rates of pay, hours of employment, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

All full-time and regular part-time guards employed by Respondent within the United States and its possessions, excluding executives, professional, confidential, clerical and nonguards employees, and all supervisors as defined in Section 2(11) of the Act.

JOHN CHIOTIS D/B/A WORLDWIDE DETECTIVE BUREAU