

Wilson-Crissman Cadillac, Inc. and Local Union No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-16346

August 14, 1979

DECISION AND ORDER

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

Upon a charge filed on May 4, 1979, by Local Union No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Wilson-Crissman Cadillac, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 7, issued a complaint and notice of hearing on May 9, 1979, 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, 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 March 29, 1979, following a Board election in Case 7-RC-15027, 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 April 19, 1979, 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 and to furnish relevant information, although the Union has requested and is requesting it to do so. On May 22, 1979, Respondent filed its answer to the complaint admitting in part and denying in part the allegations of the complaint.

On June 1, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and for transfer to the Board for decision, with exhibits attached. Respondent filed an answer in opposition thereto and the Board subsequently, on

June 7, 1979, issued an order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Thereafter, Respondent filed its 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 its answer to the complaint, its opposition to the General Counsel's Motion for Summary Judgment, and its response to the Board's Notice To Show Cause, Respondent admits its refusal to bargain and contends that the unit for which the Union is certified is not appropriate. In this regard Respondent argues, in substance, that the Board erred when it included order writers in the unit found appropriate. It further argues that the laboratory conditions were destroyed because the Board agent failed to inform it that the Union had informed him before the election that it intended to challenge the ballots of certain employees. The General Counsel contends that Respondent is improperly seeking to relitigate issues which were or could have been raised and decided in the underlying representation case. We agree with the General Counsel.

Review of the record herein, including the record in Case 7-RC-15027, reveals that on August 10, 1978, in the representation proceeding the Union sought to represent certain of Respondent's employees. Following a hearing on the petition in Case 7-RC-15027 the Acting Regional Director for Region 7 issued a Decision and Direction of Election on September 8, 1978. Thereafter, Respondent filed a request for review of said Decision and Direction of Election with the Board, which was denied on September 28, 1978, as it raised no substantial issues warranting review. On October 6, 1978, the election was conducted by the Regional Director for Region 7 among the employees in the unit set forth in the Decision and Direction of Election. The tally of ballots was 20 for and 19 against the Union, and there were 2 determinative challenged ballots. On October 17, 1978, the Regional Director issued a supplemental decision and notice of hearing on determinative challenges. The Hearing Officer subsequently issued his report recommending that both challenges be overruled, that the ballots be opened and counted, and that the appropriate certification be issued. Respondent filed exceptions only to the recommendation regarding the overruling of the challenge to the ballot of Carl G. Roehling, and on January 15, 1979, the Regional Director adopted the

¹ Official notice is taken of the record in the representation proceeding, Case 7-RC-15027, 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.

Hearing Officer's report. Respondent thereafter filed a request for review with the Board in Washington, D.C., and on March 12, 1979, the Board denied the request as it raised no substantial issues warranting review. On March 29, 1979, the Regional Director issued a Certification of Representative. The appropriate unit is:

All full-time and regular part-time service department employees employed by Respondent at its facilities located at 1350 N. Woodward Avenue, Birmingham, Michigan, and 2502 N. Woodward Avenue, Royal Oak, Michigan, including mechanics, bumpers and painters, order writers, partsmen, dispatchers, porters, polishers, drivers, new car check-in, and janitors; but excluding new- and used-car salesmen, office clerical employees, guards and supervisors as defined in the Act.

The sole issue raised by Respondent in its answer to the complaint, opposition to the General Counsel's Motion for Summary Judgment, and response to the Board's Notice To Show Cause is the validity of the certification in Case 7-RC-15027. It thus appears that Respondent is endeavoring to relitigate issues considered and determined in the representation proceedings.

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.²

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

At all times material herein Respondent, a Michigan corporation, has maintained its principal office

² 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).

and place of business at 1350 N. Woodward Avenue, Birmingham, Michigan, and another installation in Royal Oak, Michigan. Respondent is and has been at all times material herein engaged in the retail sale and distribution of new and used automobiles and related products at both locations. During the year ending December 31, 1978, which period is representative of its operations during all times material herein, Respondent, during the course of its retail operations noted herein, derived gross revenues in excess of \$500,000. During the same period it sold and delivered products and goods valued in excess of \$50,000 directly to customers outside the State of Michigan.

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 INVOLVED

Local Union No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 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 service department employees employed by the Respondent at its facilities located at 1350 N. Woodward Avenue, Birmingham, Michigan, and 2502 N. Woodward Avenue, Royal Oak, Michigan, including mechanics, bumpers and painters, order writers, partsmen, dispatchers, porters, polishers, drivers, new car check-in, and janitors; but excluding new- and used-car salesmen, office clerical employees, guards and supervisors as defined in the Act.

2. The certification

On October 6, 1978, 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 7, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in

said unit on March 29, 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*

Commencing on or about April 5, 1979, 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 19, 1979, 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.

By letter dated April 5, 1979, and at all times thereafter the Union has requested and continues to request that Respondent furnish it with information concerning the employees in the above-described unit including, but not limited to the following: a list of all employees in said unit, dates of hire, classifications and rates of pay, hours of employment and overtime, paid holidays, vacation plans, uniforms and laundry service, pension plans, and all other terms and conditions of employment. Since on or about April 19, 1979, Respondent failed and refused and continues to fail and refuse to furnish the Union with the information described herein.

Accordingly, we find that Respondent has since April 19, 1979, 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 that 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. Wilson-Crissman Cadillac, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time service department employees employed by Respondent at its facilities located at 1350 N. Woodward Avenue, Birmingham, Michigan, and 2502 N. Woodward Avenue, Royal Oak, Michigan, including mechanics, bumpers and painters, order writers, partsmen, dispatchers, porters, polishers, drivers, new car check-in, and janitors; but excluding new- and used-car salesmen, office clerical employees, 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 March 29, 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 April 19, 1979, 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 refusing on or about April 19, 1979, and at all times thereafter to bargain collectively with the

Union as the exclusive bargaining representative of all employees of the Respondent in the appropriate unit by refusing to furnish it information concerning employees including, but not limited to: a list of all employees in said unit, dates of hire, classifications and rates of pay, hours of employment and overtime, paid holidays, vacation plans, uniforms and laundry service, pension plans, and other terms and conditions of employment Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. 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.

8. 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, Wilson-Crissman Cadillac, Inc., Birmingham, Michigan, and Royal Oak, Michigan, 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 Local Union No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time service department employees employed by Respondent at its facilities located at 1350 N. Woodward Avenue, Birmingham, Michigan, and 2502 N. Woodward Avenue, Royal Oak, Michigan, including mechanics, bumpers and painters, order writers, partsmen, dispatchers, porters, polishers, drivers, new car check-in, and janitors; but excluding new- and used-car salesmen, 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 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) Upon request, bargain collectively with Local Union No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive bargaining representative of all employees in the aforesaid appropriate unit by furnishing said labor organization with information concerning the employees in the above described unit including, but not limited to the following: a list of all employees in said unit, dates of hire, classifications and rates of pay, hours of employment and overtime, paid holidays, vacation plans, uniforms and laundry service, pension plans, and other terms and conditions of employment.

(c) Post at its facilities located at 1350 N. Woodward Avenue, Birmingham, Michigan, and 2502 N. Woodward Avenue, Royal Oak, Michigan, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 7, 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.

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

³ 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 Local Union No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representa-

tive of the employees in the following appropriate unit:

All full-time and regular part-time service department employees employed by us at our facilities at 1350 N. Woodward Avenue, Birmingham, Michigan, and 2502 N. Woodward Avenue, Royal Oak, Michigan, including mechanics, bumpers and painters, order writers, partsmen, dispatchers, porters, polishers, drivers, new car check-in and janitors; but excluding new- and used-car salesmen, 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, 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.

WE WILL, upon request, bargain collectively with Local Union No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive bargaining representative of all employees in the aforesaid appropriate unit, by furnishing said labor organization with information concerning the employees in said unit, including but not limited to: a list of all employees in said unit, dates of hire, classifications and rates of pay, hours of employment and overtime, paid holidays, vacation plans, uniforms and laundry service, pension plans, and other terms and conditions of employment.

WILSON-CRISSMAN CADILLAC, INC.