

**The A. S. Abell Company and Baltimore Typographical Union No. 12.** Case 5-CA-7980

June 28, 1979

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND PENELLO

On June 8, 1977, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding. The Board found, in agreement with Administrative Law Judge Thomas A. Ricci, that Respondent violated Section 8(a)(5) and (1) of the Act when in 1976 it bypassed the Charging Party, the collective-bargaining representative of Respondent's composing room employees, and dealt directly with its employees by offering and paying them, in return for their early retirement, pension and retirement benefits exceeding those provided for in the applicable collective-bargaining agreement.<sup>1</sup> In addition, the Board adopted the Administrative Law Judge's recommended Order which required Respondent, *inter alia*, to offer reinstatement to those employees unlawfully induced to retire early and to provide backpay.

Thereafter, on January 9, 1979, the United States Court of Appeals for the Fourth Circuit issued a decision in which it granted enforcement to the Board's Order relating to the violations of Section 8(a)(5) and (1) of the Act.<sup>2</sup>

In agreeing with the Administrative Law Judge and the Board that Respondent's conduct violated the Act, the court noted that in fashioning a proposed remedy the Administrative Law Judge concluded that the measure of interim earnings would include the judgments made to any employee by Respondent in the form of preferred benefits under the pension plan, including any single or lump sum payments. However, inasmuch as the Administrative Law Judge's proposed Order, adopted by the Board, did not "address the issues of interim earnings and benefits in any definitive fashion" the court remanded the case to the Board, and directed that the Board's Order be amended to provide: (1) specifically that payments received by employees who retired under the unlawfully altered early retirement scheme be included in the measure of interim earnings for any of those em-

ployees returning to work pursuant to the offer of reinstatement required in the Board's Order and (2) that if an employee who retired pursuant to the unlawfully altered early retirement plan received benefits under the plan in excess of his gross backpay he be required to repay that excess amount to Respondent as a condition of his reinstatement.

On March 9, 1979, the Associate Executive Secretary of the Board advised the parties that they might file statements of position with respect to issues raised by the remand. Thereafter, the General Counsel, the Charging Party, and Respondent filed statements of position, and Respondent filed a response to the General Counsel's statement of position.

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.

In view of the court's remand in this proceeding, we shall modify our previous Order in accordance with the court's opinion and directions.<sup>3</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts, as modified below, the Order previously issued and hereby orders that the Respondents, The A. S. Abell Company, Baltimore, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Administrative Law Judge's original recommended Order, as so modified:

1. Add the following at the end of paragraph 2(a):

"If a retired employee received payments pursuant to the above-mentioned early retirement plan which exceed the amount of his gross backpay, said employees shall be required to repay that excess amount to Respondent as a condition of his reinstatement pursuant to this Order."

2. Add the following at the end of paragraph 2(b):

"Interim earnings for an employee who was unlawfully induced to retire early but who desires to return to work pursuant to this Order shall include any payments received pursuant to the early retirement plan."

<sup>3</sup> In their respective statements of position, the parties raised numerous questions concerning the manner in which compliance with the Board's Order, as enforced by the court, is to be effectuated. These matters should be resolved in the backpay proceeding which evidently has not yet been initiated by the Regional Director. Sec. 102.52 of the Board's Rules and Regulations, Series 8, as amended. Accordingly, we shall defer passing on these matters until such time as the applicable backpay procedures have been exhausted. See Sec. 102.52-102.59 of the Board's Rules and Regulations, Series 8, as amended.

<sup>1</sup> 230 NLRB 17 (1977).

<sup>2</sup> 590 F.2d 554 (4th Cir. 1979). Although the cases were argued separately, the court's decision enforced in like manner the Board's Order in this case and its Order in *The Baltimore News American Division, The Hearst Corporation*, 230 NLRB 216 (1977), which involved the same issues.