Whittlesea Checker Taxi, Inc. *and* Industrial, Technical and Professional Employees, Local 500, National Maritime Union, AFL–CIO. Case 32 CA-678

August 25, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

Upon a charge filed on January 27, 1978, by Industrial, Technical and Professional Employees, Local 500, National Maritime Union, AFL-CIO, herein called the Union, and duly served on Whittlesea Checker Taxi, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 32, issued a complaint and notice of hearing on March 21, 1978, 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 October 18, 1977, following a Board election in Case 20-RC 14054, 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 November 3, 1977, and at all times thereafter, Respondent has refused and continues 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 March 31, 1978, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. Respondent averred as affirmative defenses: (1) that the Union certified by the Board in Case 20-RC-14054 was not a labor organization and is not currently in existence; (2) that if the Union is currently in existence it is affiliated with organized crime; and (3) that the Board's Decision and Certification of Representative issued on October 18, 1977, was improperly issued because the Board should have (a) sustained or set for hearing Respondent's objections to conduct affecting the results of the election, and (b) resolved or set for hearing the remaining and nondeterminative challenged ballots left unresolved by the Regional Director.

On April 20, 1978, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on April 27, 1978, 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 entitled "Opposition To Motion for Summary Judgment."

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 response to the Notice To Show Cause, Respondent contests the validity of the certification on the basis of its objections to the election in the underlying representation proceeding, Case 20 RC 14054, and avers that it was wrongfully denied a hearing with respect to substantial and material issues raised prior to the Union's certification and during the course of the postelection objections. The General Counsel contends that Respondent is attempting to relitigate matters which were or could have been considered and disposed of in the prior representation proceeding.

A review of the record herein reveals that in Case 20-RC-14054 an election was held on April 29, 1977, pursuant to a Stipulation for Certification Upon Consent Election, in which the Union prevailed by a vote of 62 to 55, with 12 challenged ballots. On May 6, 1977, Respondent filed objections to conduct affecting the results of the election. On July 20, 1977, the Regional Director issued his Report and Recommendations on Challenged Ballots and Objections, in which he recommended that Respondent's objections to the election be overruled in their entirety, that the challenges to the ballots of six voters be sustained, and in view of the nondeterminative nature of the remaining challenged ballots (for which no recommendations were made as to their disposition), that the Board issue an appropriate certification. On October 18, 1977, the Board, upon the entire record of the case, issued a Decision and Certification of Representative (not included in bound volumes of Board

[1] Official notice is taken of the record in the representation proceeding, Case 20-RC 14054, 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 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA, as amended.

Decisions) adopting the Regional Director's findings and recommendations and certifying the Union as the collective-bargaining representative of the employees in the appropriate unit.

Following a request by the Union on or about October 25, 1977, and continuing to date, and more particularly on November 9, 18, and 29 and December 6 and 13, 1977, and January 10, 1978, the Union requested by letter that Respondent meet with it as the exclusive representative for the purpose of bargaining collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the unit found appropriate in Case 20–RC–14054. Respondent has refused to bargain with the Union since November 3, 1977, basing such refusal, in part, on its purported questions concerning the status of the Union as a statutory labor organization.

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]

Respondent argues that the Union certified by the Board in Case 20–RC–14054 was not a labor organization, and that Respondent has a good-faith doubt as to whether the Union is currently in existence.[3] In this regard, Respondent's concern over the relationship between the Union and the National Maritime Union is without relevance, as the Union involved herein is clearly a labor organization within the meaning of Section 2(5) of the Act. Respondent also argues that, if the Union is currently in existence, it is associated with organized crime. However, it is plain that a union's alleged corruption is also immaterial in assessing (1) its status as a labor organization; and (2) Respondent's duty to bargain, upon request, with the Union. *Alto Plastics Manufacturing Corporation*, 136 NLRB 850 (1962). Moreover, an identical assertion of Respondent's concerning the same Union herein was specifically rejected by the Board on January 24, 1978, in its Decision and Order Directing Hearing in *Baker & Drake, Inc., d/b a Deluxe Taxi Service & Yellow Cab Company of Washoe County*, Case 20–RC–14055 (not included in bound volumes of Board Decisions).

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding;[4] 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. BUSINESS OF RESPONDENT

Respondent is now, and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of Nevada, with an office and principal place of business located in Reno, Nevada, where it is engaged in the operation of a taxicab service. During the past 12 months, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000 and purchased and received goods or services valued in excess of $5,000, which originated outside the State of Nevada.

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

Industrial, Technical and Professional Employees, Local 500, National Maritime 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 Respondent constitute a unit appropriate for collective-bargaining purposes

[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).

[3] Respondent contends, *inter alia*, that the correspondence between the parties raises an issue concerning the relationship or lack of relationship between the Union and the National Maritime Union.

[4] In the representation proceeding, Respondent sought to have the Board reverse the Regional Director's dismissal of the objections, or, in the alternative, to order a hearing, because the Union or its agents and adherents allegedly coerced and restrained employees by threats of physical harm, improper electioneering, and an alleged voting irregularity.

within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time drivers, dispatchers, mechanics, and gas pump attendants employed by Respondent at its Reno, Nevada, location; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

2. The certification

On April 29, 1977, 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 20, 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 October 18, 1977, 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 October 25, 1977, and continuing to date, and more particularly on November 9, 18, and 29 and December 6 and 13, 1977, and January 10, 1978, the Union has requested and is requesting 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 November 3, 1977, 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 November 3, 1977, 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 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421, (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

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

CONCLUSIONS OF LAW

1. Whittlesea Checker Taxi, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Industrial, Technical and Professional Employees, Local 500, National Maritime 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 drivers, dispatchers, mechanics, and gas pump attendants employed by Respondent at its Reno, Nevada, location; excluding all other employees, 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 October 18, 1977, 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 November 3, 1977, 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, Whittlesea Checker Taxi, Inc., Reno, Nevada, 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 Industrial, Technical and Professional Employees, Local 500, National Maritime Union, AFL–CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time drivers, dispatchers, mechanics, and gas pump attendants employed by Respondent at its Reno, Nevada, location; excluding all other employees, 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) Post at its Reno, Nevada, facility copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 32, 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, 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 32, 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 Industrial, Technical and Professional Employees, Local 500, National Maritime 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 conditions 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 drivers, dispatchers, mechanics, and gas pump attendants employed by Respondent at its Reno, Nevada, location; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

WHITTLESEA CHECKER TAXI, INC.