

Atlantic Business and Community Development Corporation, d/b/a WUSS Radio and American Federation of Television and Radio Artists, Philadelphia Local. Case 4-CA-8416

July 14, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY

Upon a charge filed on January 7, 1977, by American Federation of Television and Radio Artists, Philadelphia Local, herein called the Union, and duly served on Atlantic Business and Community Development Corporation, d/b/a WUSS Radio, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 4, issued a complaint and notice of hearing on February 25, 1977, against Respondent, alleging that Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) 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. Subsequently, Respondent filed an answer to the complaint, admitting in part, but denying in part, the allegations of the complaint, or the commission of any unfair labor practices. Thereafter, on April 14, 1977, the Regional Director for Region 4 issued an amended complaint and notice of hearing, following an amended charge filed on March 24, alleging that Respondent was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the Act. Respondent, by its counsel, subsequently filed an answer to the amended complaint, admitting certain allegations, denying others, and denying the commission of any unfair labor practices.

On June 15, 1977, the Regional Director approved an informal settlement agreement which the parties had executed on June 3. By letter dated January 24, 1978, Respondent was informed that the Regional Director was withdrawing his approval of the informal settlement agreement due to Respondent's "failure to comply with the terms of the settlement agreement." The Regional Director's letter concluded by stating, "Accordingly, I am this date issuing a new amended complaint and notice of hearing in this matter." Also on January 24, the Regional Director issued an amended complaint.¹

Thereafter, on March 7, 1978, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and for issuance of Board order, with attached exhibits, and on the same date filed a memorandum in support of the motion.

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 the Motion for Summary Judgment herein, counsel for the General Counsel avers that Respondent has failed to file any answer to the amended complaint in this matter and that under Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, the Board should find the allegations of the complaint to be true and should issue an Order based on such findings. However, as the Motion for Summary Judgment correctly sets forth, Respondent did in fact file an answer to the original complaint and notice of hearing issued February 25, 1977, and it also filed an answer to the amended complaint and notice of hearing issued on April 14, 1977. In both answers, Respondent denied the commission of any unfair labor practices. As noted above, the substantive allegations of the amended complaint issued January 24, 1978, are the same as those contained in the amended complaint and notice of hearing issued on April 14, 1977. Thus, Respondent has in fact answered those allegations, and, in doing so has denied the commission of any unfair labor practices, and raised litigable issues. In our view, granting a motion for Summary Judgment based on application of Section 102.20 of the Board's Rules is not appropriate in such circumstances.² We shall therefore deny the motion.³

¹ That amended complaint did not include a notice of hearing. Apart from language relating to a notice of hearing, the 16 numbered paragraphs are substantively identical to the amended complaint and notice of hearing issued on April 14, 1977.

² In the memorandum in support of the motion herein, counsel for the General Counsel also avers that Sec. 102.54(c) of the Board's Rules is dispositive, and that the Board should therefore grant the motion. Counsel is in error. Sec. 102.54(c) is applicable only to backpay proceedings after entry of a Board or court order. Contrary to counsel's apparent contention, this is not a backpay proceeding. Moreover, as noted above, the record shows no notice of hearing contained in or accompanying the January 1978 complaint as mandated by Sec. 102.52. Thus, even if this were a backpay proceeding, no answer by Respondent would have been required.

³ Par. 6 of the amended complaint asserts that Respondent, on December 29, 1976, discriminatorily discharged employee Ansel Bartley and, at all times since that date, has failed and refused, and continues to fail and refuse to reinstate Bartley. However, the notice attached to and made a part of the informal settlement agreement approved by the Regional Director on June

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ORDER

It is hereby ordered that General Counsel's Motion for Summary Judgment in the above-captioned

15, 1977, clearly states that Bartley "declines reinstatement to his former or equivalent position." Although neither the Motion for Summary Judgment nor the supporting memorandum explains this apparent inconsistency, we need not reach it at this time, in view of our disposition of this matter on other grounds.

proceeding be, and it hereby is, denied.

IT IS FURTHER ORDERED that the above-entitled proceeding be, and it hereby is, remanded to the Regional Director for Region 4 for further appropriate action.