International Brotherhood of Electrical Workers, Local 1228, AFL–CIO *and* RKO General, Inc. (WNAC–TV, WRKO & WROR). Case 1–CB–3330

June 21, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

On January 28, 1977, Administrative Law Judge Eugene George Goslee issued the attached Decision in this proceeding. Thereafter, counsel for the General Counsel filed exceptions and a supporting brief. Respondent filed exceptions and a brief in support of exceptions and in opposition to the General Counsel's 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 briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]

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, International Brotherhood of Electrical Workers, Local 1228, AFL–CIO, Brighton, Massachusetts, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

[1] Member Murphy would order reimbursement of litigation costs, including counsel fees, incurred by the General Counsel and the Charging Party as a result of Respondent's unfair labor practices. She believes that Respondent's conduct in refusing to sign the agreed-upon collective-bargaining agreement constituted an indefensible act under the circumstances existing in this case. Thus, while Respondent had executed a summary agreement containing the parties' agreement as to wages, hours, and terms and conditions of employment, final contract language had not been agreed upon or prepared. Consequently, Respondent was obligated to execute the collective-bargaining agreement ultimately presented to it for signature, especially since it voiced no objection to the agreement's language or form. Its failure to do so, therefore, only can be characterized as frivolous. Accordingly, Member Murphy would grant the relief from costs requested by the General Counsel. *Tiidee Products, Inc.*, 194 NLRB 1234, 1236 (1972). See also *Crystal Springs Shirt Corporation*, 229 NLRB 4 (1977), and her similar position there noted at fn. 1.

DECISION

STATEMENT OF THE CASE

EUGENE GEORGE GOSLEE, Administrative Law Judge: This case came on to be heard before me at Boston, Massachusetts, on December 3, 1976, upon a complaint[1] issued by the General Counsel of the National Labor Relations Board and an answer filed by International Brotherhood of Electrical Workers, Local 1228, AFL–CIO, hereinafter sometimes called the Respondent. The issues raised by the pleadings relate to whether or not the Respondent violated Section 8(b)(3) of the National Labor Relations Act by failing and refusing to execute a collective-bargaining agreement with RKO General, Inc. Briefs have been received from the General Counsel, the Respondent, and the Charging Party and have been duly considered.

Upon the entire record in this proceeding, and having observed the testimony and demeanor of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. COMMERCE AND JURISDICTION

The complaint alleges, the answer admits, and I find that RKO General, Inc. (WNAC–TV, WRKO & WROR), hereinafter called RKO or the Employer, (1) operates radio and television broadcasting facilities in the City of Boston; (2) its operations satisfy the Board standards for the assertion of jurisdiction; and (3) RKO is engaged in commerce within the meaning of the Act.

II. THE STATUS OF THE RESPONDENT AS A LABOR ORGANIZATION

The complaint also alleges, the answer admits, and I find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE APPROPRIATE BARGAINING UNIT AND THE RESPONDENT'S STATUS AS THE BARGAINING AGENT

The complaint further alleges, the answer admits, and I find that at all times since November 1, 1972, the Respondent has been, and continues to be, the sole and exclusive collective-bargaining agent of the employees of RKO in the following described unit:

> All recording, broadcast and television technicians, film cameramen, and film editors, excluding all other employees and supervisors.

[1] The complaint in this case was issued on July 29, 1976, upon a charge filed June 17, 1976, and duly served on the Respondent.

IV. THE UNFAIR LABOR PRACTICES ALLEGED

The complaint alleges and the answer admits that on November 18, 1975, after negotiations, the Respondent and RKO reached and executed a Summary of Agreement describing changes or modifications to a collective-bargaining agreement which had previously been in effect for the period from November 1, 1972, to October 31, 1975. The complaint further alleges that since February 19, 1976,[2] notwithstanding RKO's requests, the Respondent has neglected, failed, and refused to sign the new collective-bargaining agreement. The Respondent's answer admits that on or about February 19, it received six copies of the newly drafted collective-bargaining agreement, together with a request for execution, but denies all alleged subsequent requests, and similarly denies that its refusal to sign the new agreement violated Section 8(b)(3) of the Act. The Respondent adduced no testimony in this proceeding, has asserted no factual defense to its refusal to execute the new agreement, but asserts as a matter of law that its execution of the Summary of Agreement on November 18, 1975, which merely modified the 1972–75 bargaining agreement, satisfies the requirement of Section 8(d) of the Act. For the reasons explicated below, I find the Respondent's legal contention to be without merit.

Paragraph 1 of the Summary of Agreement signed by RKO and the Respondent on November 11, 1975, recites as follows:

> 1. All terms and conditions of our November 1, 1972, Agreement and its supplemental Agreement are to be continued effective November 1, 1975, except as hereinafter expressly modified, deleted, or added to.

The initial paragraph of the Summary of Agreement is followed by approximately 17 paragraphs of changes, modifications, or continuances respecting wages and terms or conditions of employment of the employees in the bargaining unit. Paragraph 20 of the Summary recites as follows:

> 20. The foregoing changes hereinabove contained are not in final contract language but merely express the main elements of the parts of our Agreement, and final contract language will have to be drafted.

Jeffrey Ruthizer, Vice President of Labor Relations, assumed his duties with RKO in December 1975, and became aware of the results of the negotiations between the Respondent and RKO shortly thereafter. Using a signed copy of the Summary of Agreement, Ruthizer drafted the new contract. Under a cover letter of explanation dated February 19, Ruthizer sent six copies of the final agreement to Winfield S. Jones, Business Manager and acknowledged agent of the Respondent. In the final paragraph of his February 19 letter, Ruthizer requested Jones to sign and date all six copies and return them to RKO for the Company's signature. The record is specific in this proceeding that Jones neither signed the bargaining agreement, nor afforded RKO any explanation for his failure to do so.

In late March Ruthizer directed his secretary to call Jones to inquire why the bargaining agreement had not been signed and returned to the Employer. On May 12 Ruthizer sent a second letter to Jones, relating the elapse of time since the bargaining agreements were first submitted for signatures, and Ruthizer insisted that Jones sign the agreement and return it to RKO within a week or so. As in the case of the prior communications, Jones ignored Ruthizer's request, and no copy of the 1975–78 bargaining agreement has ever been executed by the Respondent.

It is also clear from the record in this proceeding that the changes and modifications agreed to by the parties in the Summary of Agreement signed on November 18, 1975, have been put into effect, and there is uncontradicted evidence that the Respondent has relied on the provisions of the Summary in processing grievances and arbitration proceedings. There is no evidence that the Respondent ever voiced any objection to the drafted language of the new bargaining agreement submitted by Ruthizer on February 19, and there is no contention on the part of the Respondent that Ruthizer's draft is contrary in any respect to the agreement reached by the parties on November 18, 1975. On the contrary, the Respondent admitted during the course of this proceeding that it voiced no objection to Ruthizer's draft, and has in fact operated under the terms of operative language drafted by Ruthizer.

Section 8(b)(3) of the Act makes it an unfair labor practice for a labor organization or its agents to refuse to bargain collectively with an employer, if the labor organization is the representative of the employer's employees within the meaning of Section 9(a) of the Act. The duty to bargain collectively is defined in Section 8(d) of the Act, and provides in pertinent part that:

> . . . to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, *and the execution of a written contract incorporating any agreement reached if requested by either party* . . . .[3]

The legal issue in this case equates clearly with the Board's decision in *International Union of Operating Engineers, Local Union No. 12,* [4] where the Board required the Union to execute a collective agreement, notwithstanding the execution of a prior "memorandum of agreement." The Respondent argues, nevertheless, that the rationale in *Local Union No. 12* is inapplicable here because there was no contingency in the Summary of Agreement here, so that the Summary embodied the full understanding of the parties, and, upon execution, satisfied the requirement of Section 8(d). The Respondent's argument fails to take into consideration a salient fact in evidence. Like the "memorandum of agreement" in *Local Union No. 12,* the

[2] All dates hereinafter are in 1976, unless specified to the contrary.

[3] Emphasis supplied.

[4] *International Union of Operating Engineers, Local Union No. 12 (Tri-County Association of Civil Engineers and Land Surveyors),* 168 NLRB 173 (1967).

Summary of Agreement executed by the parties in this case did contain a contingency. It is true, as the Respondent argues, that the Summary of Agreement contained the full agreement of the parties as to wages, hours, and terms and conditions of employment. Nevertheless, it was explicitly agreed in the Summary of Agreement that the parties had not agreed to final contract language, that the Summary expressed only the main elements of the agreement, and that contract language would have to be drafted. When Ruthizer drafted the final bargaining agreement and submitted it to the Respondent on February 19, the contingency was met, there was full and complete agreement on all terms and conditions of the bargaining agreement, and the Respondent was obligated to execute the agreement.

Unlike the situation in *Teamsters Local 295,* [5] on which the Respondent also relies, the evidence here does not support the argument that the Respondent should not be required to execute a final and complete contract. In *Teamsters Local 295,* the Board withheld an execution remedy because the parties had not reached a full and complete agreement. These are not the facts here. In their Summary of Agreement the parties reached a full and complete understanding, conditioned solely on the necessity to draft final contract language. RKO drafted final contract language, which the Respondent agrees it accepted and used for the purposes of policing and enforcing the collective-bargaining agreement.[6]

I find and conclude, accordingly, that by failing to sign the collective-bargaining agreement submitted by RKO on February 19, 1976, the Respondent violated Section 8(b)(3) of the Act.[7]

Having found that the Respondent has engaged in, and continues to engage in a violation of Section 8(b)(3) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and take certain affirmative actions to remedy the unfair labor practices and to effectuate the policies of the Act.

The General Counsel and the Respondent, relying on *Tiidee Products,* [8] contend that the remedy in this case should also require the Respondent to pay the costs of this proceeding, including costs of counsel fees. The facts here do not equate with those in *Tiidee,* or with those in the *Heck's* [9] case, and the request for special remedies is denied.

CONCLUSIONS OF LAW

1. RKO General, Inc. (WNAC–TV, WRKO & WROR) is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent Union, International Brotherhood of Electrical Workers, Local 1228, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent Union is now, and has been at all times material to this case, the sole and exclusive collective-bargaining representative of RKO's employees in the following described unit for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment:

> All recording, broadcast and television technicians, film cameramen, and film editors, excluding all other employees and supervisors.

4. By failing and refusing on and after February 19, 1976, to sign the collective-bargaining agreement previously agreed to with RKO, the Respondent Union violated Section 8(b)(3) of the Act.

5. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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

ORDER [10]

The Respondent Union, International Brotherhood of Electrical Workers, Local 1228, AFL–CIO, Brighton, Massachusetts, its officers, agents, and representatives, shall:

1. Cease and desist from: Failing and refusing to bargain collectively with RKO General, Inc. (WNAC–TV, WRKO & WROR) by failing and refusing to sign the collective-bargaining agreement submitted to the Respondent Union on February 19, 1976.

2. Take the following affirmative actions to remedy the unfair labor practice and to effectuate the policies of the Act:

(a) Upon request, forthwith execute the collective-bargaining agreement submitted by RKO General, Inc., on February 19, 1976, and deliver a signed copy of the agreement to the Employer.

(b) Post at its offices and meeting halls copies of the attached notice marked "Appendix."[11] Copies of said notice, on forms to be provided by the Regional Director for Region 1, after being duly signed by an authorized

[5] *Local 295, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Emery Air Freight Corporation),* 197 NLRB 26 (1972).

[6] I find no merit in the Respondent's attempts to distinguish *Amalgamated Meat Cutters and Butcher Workmen of North America, Local 530, AFL–CIO (DuQuoin Packing Company.),* 202 NLRB 478 (1973), from this case on grounds that the preliminary agreement there was initialed and not, as here, signed. I find a similar lack of merit in the Respondent's attempt to distinguish *Local Union Nos. 938, et al., International Brotherhood of Electrical Workers, AFL–CIO (Appalachian Power Company),* 200 NLRB 850 (1972), from this case on grounds that the parties there executed an "interim agreement," whereas here the document was entitled "Summary of Agreement."

[7] In arriving at this finding and conclusion I have ignored, as lacking all evidentiary support, the General Counsel's factual argument appearing at page 4 of his brief, which alludes to prehearing conversations between the General Counsel and the Respondent's attorney.

[8] *Tiidee Products, Inc.,* 194 NLRB 1234 (1972).

[9] *Heck's Inc.,* 215 NLRB 765 (1974).

[10] 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.

[11] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

representative of the Respondent, shall be posted by it immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by other materials.

(c) Mail to the Regional Director for Region 1 sufficient copies of the aforesaid notice for posting by RKO General, Inc., said Employer being willing, to be posted in all places where notices to RKO's employees are customarily posted.

(d) Notify the Regional Director for Region 1, in writing, within 20 days of the date of this Order, what steps have been taken to comply herewith.

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 fail or refuse to bargain collectively with RKO General, Inc. (WNAC–TV, WRKO & WROR) by failing to sign the collective-bargaining agreement submitted to us by RKO General, Inc. on February 19, 1976.

WE WILL, upon request of RKO General, Inc., forthwith execute the collective-bargaining agreement it submitted to us on February 19, 1976, in accordance with our agreement of November 18, 1975, and upon execution we will deliver a signed copy thereof to the Company.

INTERNATIONAL
BROTHERHOOD OF
ELECTRICAL WORKERS,
LOCAL 1228, AFL–CIO