

AEROVOX CORPORATION *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)

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AEROVOX CORPORATION *and* INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, CIO, Petitioner. Cases Nos. 1-CA-1031, 1-CA-1068, 1-CA-1088, and 1-RC-2079. April 21, 1953

### SUPPLEMENTAL DECISION AND ORDER

On February 19, 1953, the Board issued its Decision and Order in the above-entitled case finding that the Respondent had engaged in and was engaging in certain unfair labor practices and ordering that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act. On February 25, 1953, the Respondent filed a motion for reconsideration and for a stay of the Board's Order of February 19, 1953, pending determination of the motion, in which it alleges that the Board had failed to rule on certain motions and had incorrectly resolved the issues of the case.

In its exceptions to the Trial Examiner's Intermediate Report in this case, the Respondent had asked the Board to dismiss the complaint and, if that request were denied, to reopen the record for the purpose of taking further evidence. The Board considered these motions and, while not specifically denying them in its Decision, did so impliedly by failing to dismiss the complaint or to order the record reopened. However, we hereby grant the Respondent's request for specific rulings upon its motions as indicated below.

1. The Respondent moved to dismiss the complaint on the grounds that United Electrical, Radio and Machine Workers of America (UE), herein called the UE, one of the charging unions, was Communist dominated, that the affidavits filed by its officers under Section 9 (h) of the Act were untrue and constituted an abuse of the Board's processes, and that certain individuals who had not complied with the filing requirements were officers of the UE although not designated as such. Under Section 102.13 (b) (3) of the National Labor Relations Board Rules and Regulations, only an individual holding a position identified as an "office" by a labor organization's constitution and bylaws is an "officer" who needs to comply with the filing requirements unless it can be shown that a labor organization had omitted the designation of a position as an "office" in order to evade or circumvent the filing requirements of the Act. No such showing was made here and no information was made available to the Board which would cause it to order a further investigation. We therefore find, in accord-

ance with our administrative determination, that all officers of the Union have complied with the filing requirements of the Act. As under the terms of a recent court decision<sup>1</sup> we have no authority to require affirmance of the truth of the affidavits filed with the Board, we deny the Respondent's motion to dismiss the complaint on the ground of noncompliance by the UE.

2. The Respondent also moved to dismiss the complaint on the ground that the UE, by signing a waiver of unfair labor practice charges in connection with its participation as an intervenor in Case No. 1-RC-2079, had waived its unfair labor practice charges for the purposes of this proceeding. The waiver signed by the UE, however, waived the unfair labor practices only to the extent that they might constitute objections to the election directed in Case No. 1-RC-2079, but did not waive them for the purposes of an unfair labor practice proceeding.<sup>2</sup> Accordingly, we deny the Respondent's motion to dismiss the complaint on the ground that the unfair labor practice charges had been waived by the UE.

3. The Respondent moved to reopen the record in order to adduce evidence to show that Manuel Cordeiro, who was found to have been discriminatorily discharged, was denied unemployment compensation by the Division of Employment Security for the Commonwealth of Massachusetts, and did not appeal from such decision. The Respondent does not allege, nor does the record show, that the facts concerning the action of the Division of Employment Security for the Commonwealth of Massachusetts were not available to the Respondent at the time of the hearing in this case. Moreover, while such a decision has some probative value, it is not binding upon the Board. Furthermore, even if this decision had been considered, it would not have caused us to alter our finding that Cordeiro was discharged in violation of Section 8 (a) (3) and (1) of the Act. Accordingly, we deny the Respondent's motion to reopen the record for this purpose.

4. The Respondent also moved to reopen the record for the purpose of showing that since the hearing in this case, the Respondent had entered into two classified Government contracts, and that the purpose and function of the Aerovox Plant Committee, herein called the Committee, which the Board found to be dominated and interfered with by the Respondent, had changed since the Respondent again became a national defense contractor. As such a showing would, under the circumstances, be irrelevant to the issues herein involved, the motion to reopen the record for this purpose is denied. However, while the Respondent is precluded from dealing with the Committee as a labor organization because it was ordered to disestablish the Committee as such an organization, nothing contained herein or in our original Decision and Order is to be

<sup>1</sup>United Electrical Workers v. Herzog, 110 F. Supp 220 (D.C., D.C., 1953).

<sup>2</sup>W. C. Nabors, d/b/a W. C. Nabors Company, 89 NLRB 538, enforced 196 F. 2d 272 (C.A. 5, 1952), cert. den. 344 U.S. 865 (1952).

construed as precluding the Respondent from conferring with a committee of its employees in order to find means of avoiding sabotage, espionage, and accidents.

5. The Respondent also attacked the Board's action in making corrections in the transcript of the hearing. It contended that as none of the parties requested the corrections, they must have been framed pursuant to consultation with the Trial Examiner "or the Board raised the question sua sponte." There is no basis in fact for these contentions. The Respondent raised this issue when it sought, in its exceptions to the Intermediate Report, to support its claim that the Trial Examiner was biased and prejudiced by quoting from the transcript the statements here in question. In order to determine the merits of the Respondent's exceptions, the Board considered these statements in their context and in their relation to the record as a whole. On the basis of such consideration, the Board found, for the reasons set forth in the Decision and Order, that the statements obviously contained typographical errors which distorted what the Trial Examiner had said. Correcting the record, under these circumstances, was equivalent to making a finding as to what was said by construing the statements in question in their context. Such a construction, and our review of the entire record, convinced us that no bias or prejudice on the part of the Trial Examiner was shown regardless of whether or not the portions of the transcript in question were corrected. Therefore, we find without merit the Respondent's objection to this correction of the record.<sup>3</sup>

As the Respondent's request for reconsideration of the merits of the case and its renewed request for oral argument raise no matters which were not presented in the record and in the briefs and exceptions, or which were not previously considered and disposed of by the Board, these requests are denied.

### ORDER

IT IS HEREBY ORDERED that the Respondent's motion for reconsideration and for a stay of the Board's Order be, and it hereby is, denied.

Chairman Herzog and Member Murdock took no part in the consideration of the above Supplemental Decision and Order.

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<sup>3</sup>United Mine Workers of America, 92 NLRB 916, enforced 195 F. 2d 961 (C.A. 6, 1952), cert. den. 344 U. S. 920 (1953); The Wallingford Steel Company, 53 NLRB 404.