

for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

4. The Union was, on January 1, 1959, and at all times since has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

5. By refusing to bargain collectively with the Union, as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By discriminating in regard to the tenure of employment of Billy W. Head, Ned L. Warren, and Newall T. Wyatt, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

7. By the foregoing conduct the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them by 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.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

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**Martin Theatres of Georgia, Inc., d/b/a WTVC and Radio & Television Workers Local No. 662, International Brotherhood of Electrical Workers, AFL-CIO.** *Case No. 10-CA-4045.*  
*March 10, 1960*

#### DECISION AND ORDER

On October 8, 1959, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that said complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions and a supporting brief. The Respondent subsequently filed a brief in reply to that of the General Counsel.

The Board<sup>1</sup> has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions,<sup>2</sup> and recommendations.

[The Board dismissed the complaint.]

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<sup>1</sup> Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

<sup>2</sup> We find, in agreement with the Trial Examiner, that Respondent did not violate Section 8(a)(1) by Morgan's remark to Lyle on February 9, 1959. However, unlike the Trial Examiner, we do not rely at all upon the isolated nature of the statement but rather upon the fact that in our view the statement itself was an innocuous one which, even presuming Morgan to be a supervisor at that time, would not support a finding of a violation of the Act.

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

## STATEMENT OF THE CASE

This proceeding involves allegations that the Respondent, Martin Theatres of Georgia, Inc., d/b/a WTVC, violated Section 8(a)(1) and (5) of the National Labor Relations Act, 61 Stat. 136. On June 29 through July 1, 1959, I conducted a hearing at Chattanooga, Tennessee, at which all parties were represented. For the reasons appearing below, the Respondent's motion to dismiss the complaint is granted. Upon the entire record in the case, and from my observation of the witnesses, I make the following:

## FINDINGS OF FACT

## I. THE RESPONDENT

The Respondent, a Georgia corporation, has its principal office at Columbus, Georgia. It operates a television station, WTVC, at Signal Mountain, Tennessee. During a representative 12-month period, the gross volume of business at WTVC exceeded \$100,000. I find that the Respondent is engaged in commerce within the meaning of the Act.

## II. THE UNION

Radio & Television Workers Local No. 662, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization admitting to membership employees of the Respondent.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues*

Our issues are whether the Respondent refused to bargain collectively with the Union during February 1959 in violation of Section 8(a)(5); whether the Respondent prepared a letter of withdrawal from the Union and solicited its employees to sign the letter in violation of Section 8(a)(1); and whether Robert Morgan was a supervisor when he spoke with Maston Lyle, an employee, on or about February 9.

B. *The events*

WTVC's business office is located in downtown Chattanooga, Tennessee. Its television station is located on top of Signal Mountain, about 13 miles outside Chattanooga. During January 1959, organizational activity began among employees at the station. By February 4, when a meeting was held at the home of 1 of the employees, 10 of them had designated the Union as their representative.

On February 6, John S. Andrews and Robert B. Smith, the Union's business manager and president, respectively, called upon Reeve Owen, general manager of WTVC. Owen, who had been a member of the Union during the early 1940's while working in Chattanooga, knew both Andrews and Smith. Andrews said to Owen that the Union represented a majority of certain classifications of employees and he requested recognition. After a discussion in which Owen neither granted nor rejected the request but said that he would confer with his superiors at the Respondent's main office in Georgia, the three men agreed to meet again on February 16.

On or about February 9, Robert Morgan, whose status as supervisor or employee on that date is in issue, spoke with Maston Lyle, a cameraman who had signed a union card. They were in Lyle's automobile en route to work on the mountaintop. Morgan raised the subject of union activity and said that if the employees "went through [with] it, it was possible that the Company could lay us off, but couldn't fire us."<sup>1</sup>

At this point the factual recital will be interrupted for a discussion of Morgan's status and whether his remark to Lyle was an unfair labor practice. The General Counsel asserts, and the Respondent denies, that Morgan was a supervisor on February 9, 1959. WTVC began operations on February 11, 1958. During 1958 Morgan was not a supervisor. He was primarily the senior cameraman and he also directed some live telecasts. In late January 1959, Production Director Burdick,

<sup>1</sup> The findings concerning this conversation are based upon Lyle's testimony. Morgan was not a witness. Lyle testified also that he did not tell anyone of Morgan's remark. There is no evidence that at any material time the remark became known to anyone other than the two men.

who was the principal director of WTVC's live telecasts and who also acted as an assistant to Program Director Jack Sausman, submitted his resignation to become effective on February 9. The Respondent decided to divide Burdick's duties among several persons, one of whom is Morgan, and about February 1 Morgan was informed of the decision. Although Burdick's resignation was scheduled for February 9, a Monday, he last worked on February 6, a Friday, the Respondent having decided not to require him to return after the weekend for only 1 day's work. On February 7 Morgan, who had taken over some of Burdick's duties as director of live telecasts, and whose work as a cameraman had decreased, assumed more of Burdick's directing duties. According to the Respondent, the change in Morgan's duties began on February 1 and continued for an unspecified time after February 9. Although the record does not disclose Morgan's exact duties on February 7-9, and the extent to which he directed live telecasts then, it is reasonable to infer that with the departure of Burdick, Morgan became the principal director of live telecasts.<sup>2</sup> As such director, it may be held, consistent with Board decisions, that Morgan was a supervisor on February 9.<sup>3</sup> But it does not follow that Morgan's remark to Lyle on that day constitutes a violation of Section 8(a)(1) by the Respondent. Lyle was a cameraman, having been hired about January 11, 1959. Thus, for a brief period both Lyle and Morgan were cameramen. As a witness for the General Counsel, Lyle testified that "quite a bit in the mornings" he picked up Morgan in Chattanooga for the drive of about 13 miles to work, and thus it appears that Lyle had begun a practice of riding to work with a fellow cameraman. In view of the state of the record concerning Morgan's exact duties on February 9, coupled with the fact that Lyle and Morgan had been fellow cameramen just prior thereto, I am constrained to hold that there was no unfair labor practice in Morgan's remark to Lyle. If the remark had been made as the two men rode to work a few days earlier, the remark would have been from one employee to another. To hold that it was Supervisor Morgan, instead of Cameraman Morgan, who was speaking on February 9 is a legalistic view but not a practical one. In any event, as will appear, if Morgan's remark was an unfair labor practice, it was isolated and I would not recommend that a cease and desist order be issued because of it.

We now resume the discussion of events. Lyle aspired to cease his work as a cameraman and to become a director, eventually to advance to a more responsible position in the production aspects of television. He also had begun to question whether he would be benefited in this ambition by membership in a labor organization which was composed primarily of licensed audio and video engineers. Within a day or so after his conversation with Morgan, Lyle went to General Manager Owen and asked whether Owen was satisfied with his work as a cameraman and whether there were prospects for his advancement in production work. Owen answered affirmatively.<sup>4</sup> Lyle then said that he had decided not to continue with his application for union membership. Owen answered that he was happy with Lyle's decision. The General Counsel does not contend that an unfair labor practice occurred during this conversation.<sup>5</sup>

At about the time of Lyle's conversation with Owen, some other employees were having second thoughts about union representation. D. W. Bearden, a staunch union member, is the employee who was most active in the organizational efforts

<sup>2</sup>The Respondent televised about 22 to 25 hours of live telecasts weekly. The only other persons then directing were Program Director Sausman and an announcer named Reynolds, but Sausman did so only occasionally and Reynolds did so to an undisclosed extent during mornings only.

<sup>3</sup>By the time of the hearing in June 1959, Morgan's duties had changed substantially from those of a cameraman. There is much evidence concerning his duties at that time, but I do not believe that it is necessary to recite this evidence and to detail the bases of my opinion (contrary to the Respondent's contention) that by June 1959 Morgan had become a supervisor. This is so because the question is whether Morgan was a supervisor when he made the remark to Lyle on or about February 9. It may be noted, however, that by June 1959 Morgan's duties consisted in substantial part of directing live telecasts. The Board has held that a director of such telecasts is a supervisor, even in small studios, because he responsibly directs other employees in the presentation of such telecasts. Cf. *Radio & Television Station WFLA (The Tribune Company)*, 120 NLRB 903, 905.

<sup>4</sup>At the time of the hearing, Lyle was no longer a full-time cameraman. He was directing about 40 percent of WTVC's live telecasts.

<sup>5</sup>The findings concerning this conversation are based upon Lyle's testimony. Owen testified that Lyle's version was accurate. Lyle testified also that Owen's approval of his work was a factor in his decision to withdraw his union designation.

and at whose home the meeting of February 4 had been held. As a witness for the General Counsel, he testified that when he came to work on February 13, he observed that the employees were "disturbed and unhappy" and that they would not talk with him. Bearden also testified that the employees who had signed union cards impressed him that day as believing that "the best thing for them to do" was to discontinue the union activities and that in subsequent days few employees expressed any further interest. In addition to Bearden's testimony, a number of employees testified that by February 13, without solicitation or inducement by the Respondent, they had changed their minds concerning union representation. There is no competent evidence that the changes of mind resulted from unfair labor practices.<sup>6</sup> As will appear, however, only four employees took steps to withdraw their union designations.

On February 16 two events occurred, namely, the four regular cameramen took steps to withdraw their union designations and the Respondent refused to bargain with the Union. During that morning Cameraman Wilbur Elliott went to Program Director Sausman and said that he and the other cameramen, Lyle, Ed Melton, and David Perrin, had decided to withdraw their designations. Elliott asked Sausman to prepare for them a letter of withdrawal to Andrews, the Union's representative who resides in Georgia, with a copy for Owen. Sausman replied that he would do so. Elliott, a witness for the General Counsel, testified that he asked Sausman to write the letter because, being inexperienced in union matters, he believed that Sausman was better qualified to compose it. Elliott could not recall the hour on February 16 when he made the request of Sausman, but the latter, a witness for the Respondent, fixed the time as between 9 and 10:30, perhaps about 9:30.

At 10 o'clock that morning, Andrews and Smith called at WTVC's downtown offices for their appointment with Owen. The evidence concerning the conversation is conflicting, but I believe that it is unnecessary to recite the details and to resolve the conflicts. It suffices to say that the Respondent refused to bargain and that Andrews, the Union's spokesman on the occasion, testified that Owen refused to give any explanation for an unwillingness to talk although Owen made "some reference, broad reference, to he didn't particularly think we represented the men."

When the morning shift for cameramen ended at 11:30, Elliott went to Sausman's office and obtained the original and five copies of a letter to Andrews which Sausman had written on WTVC's letterhead stationery, as follows:

This is to advise that the undersigned have reconsidered our original decision and desire to withdraw our requests for representation by The International Brotherhood of Electrical Workers.

The original indicated that a copy was being sent to Owen. The remaining four copies were for the signers. Elliott signed the original and took it to Lyle and Perrin who were at the station. They also signed. Before the cameramen were scheduled to return to work that afternoon, the three employees took the letter to Melton who was in Chattanooga. He signed and the letter was mailed. The envelope bears a postmark of 3:30. Elliott, as a witness, could not recall whether he mailed or personally delivered the copy to Owen. Andrews received the original 2 days later in Georgia.

The complaint alleges that Sausman, in addition to preparing the letter, solicited employees to sign it. There is no evidence that he solicited Lyle, Melton, or Perrin. Elliott, however, said in an affidavit which he gave to the General Counsel sometime before the hearing that Sausman had said to him that Sausman wished that he would withdraw from the Union. Upon being asked about this portion of his affidavit, Elliott testified that on February 14 or 15 he told Sausman that "we had decided to withdraw" and that Sausman responded that Sausman wished that Elliott would withdraw. I conclude that Elliott's testimony will not support a finding that

<sup>6</sup>There is hearsay testimony by Bearden, given on cross-examination, that an unidentified representative of management spoke to the employees on February 13 before Bearden came to work. There also is a statement in Elliott's affidavit, given to the General Counsel before the hearing, that Sausman said to Elliott that Sausman wished that Elliott would withdraw his union designation, but, as described below, Elliott's testimony concerning the remark places it in a harmless light. Finally, the Respondent asserted in its brief that on February 16, when Owen again met with Andrews and Smith, Owen said ". . . that he had talked to a number of the employees of Respondent and they evidenced no apparent interest in having union representation" There is no evidence to support the quoted statement, as counsel for the General Counsel and the Respondent agreed in letters to me.

Sausman solicited Elliott to sign the letter.<sup>7</sup> There still remain two questions: whether, by Sausman's preparation of the letter, the Respondent violated Section 8(a)(1), and whether the four withdrawals should be given effect by the Board. These questions are discussed below in connection with the refusal to bargain.

### C. *The refusal to bargain collectively*

The complaint, as amended, alleges that the appropriate unit consists of all production department and engineering department employees at WTVC's station at Signal Mountain, Tennessee, including the licensed technicians (engineers), cameramen, projectionists, and photographers, but excluding the chief engineer, assistant chief engineer, program director, production manager, announcers, office clerical employees, guards, and professional employees and supervisors as defined in the Act. The Respondent denies that such unit is appropriate, but we pass that issue and go directly to the question whether the Union possessed majority status on February 16, the date of the Respondent's refusal to bargain.<sup>8</sup> On that date the minimum number of employees in the unit was 12. Their names and classifications are set out in the footnote.<sup>9</sup> As already recited, on or before February 4, 10 employees designated the Union as their representative. They are named in the footnote.<sup>10</sup> Four signed the withdrawal letter. Ten minus four are six, which is not a majority of 12. So, the question is whether effect is to be given to the four withdrawals.<sup>11</sup> The General Counsel contends that Program Director Sausman's activity in connection with the withdrawal letter was invalid and that the Respondent may not profit by an unfair labor practice. It is well established that an employer may not prepare, circulate, or solicit employees' signatures to revocations of union designations. But the proof here falls short of the types of employer conduct which the Board has held to be proscribed. Sausman is not shown to have solicited employees to repudiate the Union, as already discussed. The most that can be said is that, upon request, he wrote a letter for four employees who earlier has decided to withdraw their union designations. The basic question in the precedents, I believe, is whether the employees decide of their own free will, independently of employer solicitation, to withdraw their union designations. Here there is evidence that the cameramen decided among themselves, without solicitation by the Respondent, to withdraw their designations. In particular, there is no substantial evidence that the Respondent did anything to influence Elliott, Melton, or Perrin to withdraw his designation. With respect to Lyle, to whom Morgan spoke on or about February 9 concerning possible layoffs of employees who continued their union activity, I have resolved the issue of Morgan's remark in the Respondent's favor. Moreover, I infer from an objection

<sup>7</sup> Sausman's testimony is that he could not recall having talked with Elliott before February 16 about withdrawing from the Union but that on February 13 he was told by Morgan that employees were going to withdraw and that thereafter, but before the 16th, Elliott may have told him that Elliott intended to withdraw. Sausman also testified that he made no attempt to persuade any employee to withdraw.

<sup>8</sup> It is not enough that majority status was possessed on the date of the demand that an employer bargain. Absent unfair labor practices which destroy it, majority status must be possessed on the date of the refusal to bargain. Cf. *Burton-Dixie Corporation*, 103 NLRB 880, enfd. 210 F. 2d 199 (C.A. 10), where the Board held that it is immaterial that a labor organization did not possess majority status when making its demand if it acquired such status by the time of the employer's refusal to bargain.

<sup>9</sup> The audio and video engineers, all licensed by the Federal Communications Commission, were: Bearden, Gay, Harjes, Nolan, Stephenson, and Walcher. The projectionist, who is classified by the Respondent as an engineer but who is not licensed, is Lovern. The cameramen were: Elliott, Lyle, Melton, and Perrin. The photographer is Hawkins. These men total 12. Another man, Bratcher, who is a student at the University of Chattanooga, works for the Respondent a few hours each weekend. About the time of the refusal to bargain, his weekend work became that of a cameraman. His inclusion in, or rejection from, the unit would not affect the Union's claimed majority status. I exclude Morgan who became a supervisor on or after February 7, as discussed above.

<sup>10</sup> Bearden, Elliott, Harjes, Hawkins, Lyle, Melton, Nolan, Perrin, Stephenson, and Walcher. The Respondent alleged in its answer that the Union used deceit and coercion as means to secure some of the 10 designations. The Respondent's proof was far short of substantial.

<sup>11</sup> Under the circumstances, we do not reach the question whether effect is to be given to the changes of mind of several employees who did nothing to withdraw their designations. The General Counsel, citing *Crown Can Company*, 42 NLRB 1160, and *Polish National Alliance, etc.*, 42 NLRB 1375, argues that their designations remained effective.

which the General Counsel made at page 364 of the transcript that he relies upon Sausman's actions, not upon Morgan's remark to Lyle, in contending that the four withdrawals should not be given effect by the Board.<sup>12</sup> In any event, I hold that *Alice B. Hazen, C. P. Jaeger, et al., d/b/a Hazen & Jaeger Funeral Home*, 95 NLRB 1034, is applicable here. In that case the Board held that the employers' assistance to employees in typing withdrawal letters was not an unfair labor practice because earlier the employees had decided independently to withdraw their designations and had drafted a withdrawal letter. Moreover, in *Hazen & Jaeger* the withdrawal letters were prepared and signed after certain unfair labor practices had taken place, but the withdrawals nevertheless were given effect by the Board although they destroyed the labor organization's majority status. Accordingly, I conclude that Sausman's preparation of the letter was not an unfair labor practice and that effect is to be given to the four withdrawals. One question remains, namely, whether the withdrawals became effective upon the date of the withdrawal letter or, instead, upon the date when Andrews later received it at his address in Georgia. The General Counsel did not brief the point, doubtless because of his reliance upon the proposition that Sausman's actions constituted unfair labor practices. If the withdrawals became effective no sooner than Andrews' receipt of the letter, the Union had a majority when the Respondent refused to bargain on the day the letter was mailed. I hold, however, that the withdrawals were effective at the time of the refusal to bargain. Elliott's statement to Sausman that the four cameramen had decided to withdraw, and his request that Sausman write the letter, occurred within minutes before or after the refusal.<sup>13</sup> Notice to Sausman of the employees' intended action was notice to the Respondent. The four employees, in their relations with the Union, were principals. The Union was their agent. The Respondent was the only person designated by the principals as the one with whom the agent was to deal. The principals were free to terminate the agency at any time. Here, where there is no substantial evidence of an unfair labor practice and where the principals mailed written notice of termination to their agent upon the same day that they orally informed the Respondent that the agency was being terminated, I hold that the notice to the Respondent constituted revocation of the agent's authority to represent the four principals.

In summary, I recommend that the complaint be dismissed because the Union did not possess majority status at the time of the Respondent's refusal to bargain and because there is no substantial evidence to support the allegations of independent violations of Section 8(a) (1) of the Act.

<sup>12</sup> When Lyle was asked why he signed the withdrawal letter, the General Counsel objected on the ground that "what his reasons were are purely subjective; that the fact that he did it *and did it voluntarily* is all that is important." [Emphasis supplied.]

<sup>13</sup> Elliott testified for the General Counsel, as already recited, that as early as February 14 or 15 he told Sausman that "we had decided to withdraw."

**Smith's Van & Transport Company, Inc., and Smith's Transfer and Storage Company, Inc.<sup>1</sup> and Drivers, Chauffeurs and Helpers Local No. 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.**  
*Case No. 5-CA-1451. March 10, 1960*

### DECISION AND ORDER

On September 29, 1959, Trial Examiner Ramey Donovan issued his Intermediate Report in the above-entitled proceeding, finding, that Smith's Van & Transport Company, Inc., and Smith's Transfer and Storage Company, Inc., hereinafter sometimes referred to as Respondent, had engaged in and were engaging in certain unfair labor prac-

<sup>1</sup> The name of the Respondent is amended to reflect the Trial Examiner's action in permitting amendment of the complaint to add the name of Smith's Transfer and Storage Company, Inc., as a respondent.