

American Federation of Television and Radio Artists (AFTRA), Its Los Angeles Local, and Its Agent, Claude L. McCue [Coast Radio Broadcasting Corporation, Radio Station KPOL] and Munger, Tolles, Hills & Olson. *Case No. 31-CB-8 (formerly 21-CB-2365). November 1, 1965*

DECISION AND ORDER

On August 19, 1965, Trial Examiner Wallace E. Royster issued his decision in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Respondent Unions filed exceptions to the Trial Examiner's Decision and briefs in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Brown and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modification.

The Trial Examiner found that Respondent McCue sent each of the employees in the unit here involved the following telegram:

WE WANT EVERY MAN AT KPOL TO KNOW THAT KPOL MANAGEMENT IS COMMITTING UNFAIR LABOR PRACTICES. IF ANY ANNOUNCER OR NEWSMAN THINKS HE CAN IMPROVE HIS POSITION WITHOUT A UNION, I SUGGEST HE TALK TO ANY KFWB MAN WHO MADE THE SAME MISTAKE. ANYONE WHO RENOUNCES AFTRA WILL GIVE UP HIS RIGHT TO SUCH REPRESENTATION FOREVER. AS YOUR UNION REPRESENTATIVE, I AM ASKING YOU TO PHONE ME TOMORROW, WEDNESDAY, HO 4-5123.

The Trial Examiner found that this telegram threatened to discontinue representation of the unit, but that such threat did not constitute a violation of Section 8(b)(1)(A) of the Act as alleged in the complaint. The General Counsel urges that the "clear language" of the telegram can mean only that Respondent AFTRA would withhold representation from any employee in the unit who engaged in activity protected under Section 7 of the Act. We find, however, that the word-

ing of the telegram is ambiguous, that it does not on its face contain any unlawful threat, and that the General Counsel failed to present evidence as to context which would establish the alleged unlawful threat. Accordingly, we adopt the Trial Examiner's ultimate conclusion that no violation of the Act has been established. We therefore find it unnecessary to resolve the issue as to the joint responsibility of the Respondent AFTRA and the Local for this conduct.

[The Board adopted the Trial Examiner's Recommended Order dismissing the complaint.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This matter was tried before Trial Examiner Wallace E. Royster in Los Angeles, California, on July 13, 1965. At issue is whether American Federation of Television and Radio Artists, herein AFTRA, its Los Angeles Local, herein the Local, and Claude L. McCue, alleged to be an agent of AFTRA, restrained and coerced employees of KPOL in the exercise of rights guaranteed by Section 7 of the Act and thus engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.¹

Upon the entire record in the case and from my observation of the witness, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

KPOL is a California corporation engaged in Los Angeles, California, in radio broadcasting. Its annual gross revenues are in excess of \$500,000 and more than \$50,000 of this amount derives from advertising products which are marketed nationally. It is conceded, and I find, that KPOL is an employer engaged in commerce and in an operation affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

AFTRA and the Local are labor organizations within the meaning of Section 2(5) of the Act.

Claude L. McCue is the executive secretary of the Local and is western regional director of AFTRA.

The Local is a chartered member of AFTRA.

III. THE ALLEGED UNFAIR LABOR PRACTICES

From February 1962 until April 1964, KPOL and AFTRA were parties to a collective-bargaining agreement covering the wages, hours, and working conditions of the staff announcers employed by KPOL. On February 4, 1964, Claude L. McCue sent to each of the 12 men in the bargaining unit at KPOL a telegram reading:

WE WANT EVERY MAN AT KPOL TO KNOW THAT KPOL MANAGEMENT IS COMMITTING UNFAIR LABOR PRACTICES. IF ANY ANNOUNCER OR NEWSMAN THINKS HE CAN IMPROVE HIS POSITION WITHOUT A UNION, I SUGGEST HE TALK TO ANY KFWB MAN WHO MADE THE SAME MISTAKE. ANYONE WHO RENOUNCES AFTRA WILL GIVE UP HIS RIGHT TO SUCH REPRESENTATION FOREVER. AS YOUR UNION REPRESENTATIVE, I AM ASKING YOU TO PHONE ME TOMORROW, WEDNESDAY, HO 4-5123.

A labor organization which is the exclusive bargaining representative of employees has a duty to treat those who comprise the bargaining unit impartially and without discrimination in dealings with the employer.² The record suggests that some of the employees at KPOL were dissatisfied with the representation afforded them and

¹ Charge filed August 3, 1964; amended complaint issued April 27, 1965.

² *Peerless Tool and Engineering Co.*, 111 NLRB 853, 858.

were disposed to terminate the bargaining agency of AFTRA. There is no intimation that these employees were thus engaged in any conduct violative of the contract then in effect and they had a right, protected by Section 7 of the Act, to support AFTRA³ or to refrain from doing so. Had AFTRA failed, as long as it remained the bargaining representative, thereafter to afford these dissidents representation without discrimination, a violation of Section 8(b)(1)(A) would probably exist. I think it to be no less a violation in the circumstances given for a bargaining representative to threaten such a reprisal.

But, back to the telegram. "Anyone who renounces AFTRA will give up his right to such representation forever." That conveys a clear message; be true to us or we'll never help you again. But, "Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all take their purport from the setting in which they are used . . ." ⁴ The whole of the telegram must be considered as well as the situation to which it was addressed. In respect to the latter, the evidence is meager and it already has been described to the extent that the record permits. Faced with elements of discord, AFTRA told *all* the employees that if they did not support it they would be making a mistake, that their situation would not be improved, and if they failed to heed the advice offered them AFTRA would wash its hands of them forever. Although the telegrams were sent to individuals and speak in the first person, everyone in the unit received one. The threat to withhold representation "forever" was directed, I find, to the group rather than to any lesser number. If the employees in the KPOL unit withdrew authority from AFTRA to represent them it would have no status to do so. A threat not to continue a status which by force of law is forbidden is indeed empty. But assume that AFTRA remained the majority choice as, for all that the record reveals, it may have. Assume further that because some of the employees in the unit failed to support AFTRA, that organization decided that it wanted nothing more to do with a group containing such ingrates and declined to provide the service of representation. Would it have been obliged to do so? I think that the answer is "No."

The establishment of a bargaining agency arises only by consensual arrangement. The Act guarantees the right of employees freely to choose who is to represent them but there is nothing in the statute or in the decisions I have read to compel a labor organization so chosen to accept the burden of representation. This would seem obviously to be so where a union desires to respect the jurisdictional claims of other unions or where it decides that it has not the staff or the funds to take on additional duties. Of course a bargaining representative can be compelled to function. Section 8(b)(3) of the Act requires that and Section 8(d) provides guide lines for bargaining conduct. I am aware, however, of no holding to the effect that a union, absent contractual commitments, may not resign its office as bargaining representative. Certainly this action would have to be unconditional and without hint of temporizing for if such a union were to take a dog-in-the-manger attitude Section 8(b)(3) would have application.

As a union is free "to prescribe its own rules with respect to the acquisition or retention of membership" I think it to be as free to accept or reject designation as bargaining representative. I find that AFTRA was under no compulsion imposed by the Act to continue to represent the KPOL unit. It follows, and I find, that a threat to discontinue such representation even if published in an attempt to bring apostates back to the fold does not constitute a violation of Section 8(b)(1)(A) of the Act.

Upon the basis of the entire record in the case I reach the following:

CONCLUSIONS OF LAW

1. KPOL is an employer engaged in commerce or in an activity affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. AFTRA and the Local are labor organizations within the meaning of Section 2(5) of the Act.
3. By threatening to discontinue representing employees in the KPOL unit neither AFTRA nor the Local has restrained or coerced employees within the meaning of Section 8(b)(1)(A) of the Act.

RECOMMENDED ORDER

It is recommended that the complaint be dismissed.

³ I find no merit in the claim that AFTRA was not a party to the contract with KPOL. Clearly it was. I find that McCue in sending the telegram was acting as agent for AFTRA and the Local. Within the limits of this case, I treat AFTRA and the Local as a single entity.

⁴ *N.L.R.B. v. Federbush Company, Inc.*, 121 F. 2d 954 at 957 (C.A. 2).