

Westchester Plastics of Ohio, Inc. and United Electrical, Radio and Machine Workers of America (UE). Case 8-CA-4475.

June 8, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS JENKINS
AND ZAGORIA

Upon a charge filed by United Electrical, Radio and Machine Workers of America (UE), herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued his complaint, dated February 16, 1967, against Westchester Plastics of Ohio, Inc., herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the Respondent and the Union.

The complaint alleges that on or about December 21, 1966, the Union was duly certified as the exclusive bargaining representative in an appropriate unit, and that, since on or about December 16, 1966, and at all times thereafter, Respondent has refused to meet and bargain with the Union, although the Union has requested it to do so. On February 24, 1967, Respondent filed its answer admitting that it refused to bargain, upon request, following the Union's certification, but denying that the Union had been designated by a majority of the employees or validly certified by the Regional Director as the exclusive bargaining representative, or that it has at all times since the certification been the representative of the employees in the appropriate bargaining unit.

On March 30, 1967, the General Counsel moved to have this proceeding transferred to the Board for issuance of a Decision and Order on the basis of the pleadings without a hearing on the ground that no material issue of law or fact was in dispute since the only matter in issue, the employee status of Larry Stolzenburg, had been determined by the Board in a representation proceeding. On March 31, 1967, the Board, having duly considered the matter, ordered that the proceeding be transferred to and continued before it, and that cause be shown why the General Counsel's Motion for Summary Judgment should not be granted. On April 14, 1967, Respondent filed with the Board an Opposition to Motion for Summary Judgment, contending that Section 10(b) of the Act requires a hearing in the litigation of unfair labor practices and a denial of a hearing herein would, by

precluding Respondent from adducing additional relevant evidence which it now offers via an affidavit by leadman Robert Truesdale, deprive Respondent of due process. For the reasons set forth below, the Board¹ finds no merit in the Respondent's position and grants the Motion for Summary Judgment.

Upon the basis of the aforementioned pleadings and the entire record in this case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is an Ohio corporation with its principal office and place of business at Wapakoneta, Ohio, where it is engaged in the custom compounding of thermoplastics. In the course of its business, Respondent annually ships its products valued in excess of \$50,000 directly to points outside the State of Ohio and purchases and receives goods valued in excess of \$50,000 from outside the State of Ohio. Respondent admits, and we find, that it is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America (UE) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

On January 19, 1966, the Respondent and the Union executed, and the Regional Director approved, a Stipulation for Certification upon Consent Election, and pursuant thereto, on February 4, an election was conducted among the employees in the following stipulated unit:

All production and maintenance employees at the Employer's two plants in Auglaize County, Ohio, including leadmen and laboratory employees, but excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Upon the conclusion of the balloting, the parties were furnished a tally of ballots which showed that of approximately 41 eligible voters, 40 cast ballots, of which 20 were for and 20 against the Union. The tally did not include the ballot of Larry J. Stolzenburg, who was initially challenged by the Board agent conducting the election because Stolzenburg had arrived after the close of the polls following one of the early sessions of the split-session election. At the

¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel

conclusion of the balloting, but before the ballots were counted, the Union and the Respondent agreed to exclude Stolzenburg's challenged ballot upon the Respondent's representation that Stolzenburg had been terminated prior to the election. During the course of the investigation conducted on objections filed by the Union to conduct affecting the results of the election, the Union raised an issue regarding the ballot cast by Stolzenburg, contending that he was eligible to vote, and that the Respondent had misrepresented his status as an employee before the ballots were counted.

On March 17, 1966, the Regional Director issued his Report on Objections, recommending to the Board that the Union be held to its postelection agreement relating to the eligibility of Stolzenburg, and that the objection based upon the failure of the Regional Director to include his challenged ballot in the tally of ballots be overruled. Thereafter, the Union filed exceptions to the Regional Director's report, urging that a hearing be held to resolve the issue raised by its objection.

The Board, on June 1, 1966, after due consideration in the matter, issued an Order Directing Hearing to resolve the issues raised by the challenge to Stolzenburg's ballot. Pursuant to notice and in conformance with the Board's Order, a hearing was conducted on July 12, 1966, before a Hearing Officer of the National Labor Relations Board. On August 30, the Hearing Officer issued his Report on Challenged Ballot in which he recommended that the challenge to Stolzenburg's ballot be overruled and that the ballot be counted. On December 9, 1966, the Board issued its Decision and Direction² in which it adopted the recommendations of the Hearing Officer and directed the Regional Director for Region 8 to open and count the ballot of Stolzenburg, and thereafter to prepare and cause to be served on the parties a revised tally of ballots, including Stolzenburg's ballot therein, and, if according to the revised tally, the Union had received a majority of the valid ballots cast in the election, to certify the Union as the exclusive bargaining agent for the employees in the appropriate unit. Thereafter, on December 16, 1966, the Regional Director opened and counted the ballot in question, issued a revised tally of ballots showing the Union had received a majority of the valid votes cast, and on December 21 issued a Certification of Representative to the Union.

B. *The Refusal to Bargain*

Beginning on or about December 16, 1966, and continuing to date, the Union has requested, and is

² Cases 8-RM-439 and 8-RC-6170, not published in printed volumes of Board Decisions.

³ In substance, Truesdale alleges that in January 1966 he had a conversation with Plant Manager Rhind about no longer using part-time employees. However, Truesdale admits that the only statement he ever made to Stolzenburg was that he did not have any work for him, but did not tell him he was fired or give him any other reason for not recalling him. In addition, the record shows

requesting, that Respondent meet and bargain with it with respect to the wages, hours, and working conditions of the employees in the appropriate unit. The Respondent admittedly declined, and has continued to decline, through its representative and agent, Donald W. Rhind, to bargain with the Union since that time.

As noted, Respondent affirmatively defends the allegations in the complaint on the ground that the Board erred in finding that Stolzenburg was an employee and eligible to vote in the representation election. It further urges a hearing herein for the limited purpose of presenting testimonial evidence of leadman Robert Truesdale regarding Stolzenburg's employment status.³

In the absence of newly discovered or previously unavailable evidence, issues which were or could have been raised in a related representation proceeding may not be relitigated in an unfair labor practice proceeding.⁴ Admittedly, the issue which Respondent seeks to raise in the instant proceeding relates to the correctness of the Board's disposition of the challenge to Stolzenburg's ballot. Inasmuch as the Respondent has already litigated this issue, and there is no allegation that the evidence which it now seeks to offer is either newly discovered or was previously unavailable, we find no merit in Respondent's contention regarding the necessity of a hearing before a Trial Examiner. Accordingly, as all material issues herein have been decided by the Board or admitted in the answer to the complaint, the General Counsel's Motion for Summary Judgment is hereby granted.

Accordingly, we find, on the basis of the Board's Decision, that the Union received a majority of the valid ballots cast in the election on February 4, 1966. Since it is thus apparent that Respondent was obligated to meet and bargain with the Union, upon request, we find that the Respondent's refusal, on and after December 16, 1966, to bargain collectively with the Union as the exclusive bargaining representative of the employees in the appropriate unit was and is violative of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, *supra*, occurring in connection with the operations of the Respondent described in section I, *supra*, have a close, intimate, and substantial relation to trade, traffic, and commerce among the

that Truesdale asked Stolzenburg to report for work on February 9, following the election. In these circumstances, and even if we were to accept as true Respondent's proffered evidence, it would not serve to alter the determination reached in the representation proceeding.

⁴ *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, *Collins & Aikman Corporation*, 160 NLRB 1750, *United States Rubber Company*, 155 NLRB 1298

several States and lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Westchester Plastics of Ohio, Inc., 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. United Electrical, Radio and Machine Workers of America (UE) is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees at the Respondent's two plants in Auglaize County, Ohio, including leadmen and laboratory employees, but excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since December 16, 1966, the Union has been the representative for the purpose of collective bargaining of a majority of the Respondent's employees in the appropriate unit.

5. By refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit on and after December 16, 1966, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

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 Trial Examiner and hereby orders that the Respondent, Westchester Plastics of Ohio, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Electrical, Radio and Machine Workers of America (UE) as the exclusive bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees at the Respondent's two plants in Auglaize County, Ohio, including leadmen and laboratory employees, but excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to bargain collectively through said Union.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Electrical, Radio and Machine Workers of America

(UE) as the exclusive representative of the employees in the appropriate unit found above and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plants in Auglaize County, Ohio, copies of the attached notice marked "Appendix."⁵ Copies of said notice, to be furnished by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 8, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

⁵ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL bargain collectively, upon request, with United Electrical, Radio and Machine Workers of America (UE) as the exclusive bargaining representative of all employees in the bargaining unit described below concerning rates of pay, wages, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

All production and maintenance employees at our two plants in Auglaize County, Ohio, including leadmen and laboratory employees, but excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively as aforesaid, nor will we, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their right to bargain collectively through said Union.

WESTCHESTER PLASTICS
OF OHIO, INC.
(Employer)

Dated

By

(Representative)

(Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be

altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may

communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio 44115, Telephone 621-4465.