

Aerovox Corporation of Myrtle Beach, South Carolina and Local Union No. 382, International Brotherhood of Electrical Workers, AFL-CIO. Case 11-CA-3291.

June 19, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN AND JENKINS

Upon a charge filed by Local Union No. 382, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 11, issued a complaint dated April 25, 1967, against Aerovox Corporation of Myrtle Beach, South Carolina, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 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.

With respect to the unfair labor practices, the complaint alleges, in substance, that on or about March 29, 1967, the Union was duly certified by the Regional Director¹ as the exclusive bargaining representative of Respondent's employees in the unit found appropriate by the Board and that, since on or about April 4, 1967, and thereafter, Respondent has refused and is refusing to recognize or bargain with the Union as such exclusive bargaining representative, although the Union has requested and is requesting it to do so. On May 4, 1967, the Respondent filed its answer, denying the commission of the unfair labor practices alleged.

On May 9, 1967, the General Counsel filed with the Board a Motion for Summary Judgment, asserting that there were no issues of fact or law requiring a hearing, and requesting the issuance of a Decision and Order finding the violations as alleged in the complaint. Thereafter, on May 10, 1967, the Board issued an Order Transferring Proceeding to the Board and, on the same date, a Notice to Show Cause on or before May 24, 1967, why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a return brief in opposition to the motion, and the Union filed a memorandum in support thereof.

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.

Upon the entire record in this case, the Board makes the following:

RULING ON THE MOTION FOR SUMMARY JUDGMENT

The record before us establishes that on December 6, 1966, the Union filed a petition in Case 11-RC-2472, seeking to represent all maintenance employees, including setup men and janitors employed at the Employer's place of business at Myrtle Beach, South Carolina. After a hearing, the Regional Director for Region 11 issued a Decision and Direction of Election on January 26, 1967, in which he found appropriate for bargaining the following unit of employees:

All maintenance employees including setup men and janitors employed at the Employer's Myrtle Beach, South Carolina, plant, excluding production employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

On February 7, the Respondent filed a Request for Review of the Decision and Direction of Election. It contended that the Regional Director's unit finding was inappropriate on the ground that, contrary to Board policy, the setup men and janitors were included in a maintenance unit and that the Regional Director's unit finding was controlled by the extent of organization. On February 23, 1967, the Board denied review, thereby affirming the correctness of the Regional Director's unit determination.²

On April 4, 1967, the Union requested that the Respondent bargain collectively with it. This request was refused, and on April 12, 1967, the Union filed the charge upon which these proceedings are predicated.

In its Opposition to the Motion, the Respondent contends in substance that: (1) the Board is without jurisdiction in these circumstances to hear and determine motions for summary judgment; and (2) a hearing in an unfair labor practice proceeding is a matter of right and therefore must be held. These contentions are without merit. It is well settled that the Board has authority to hear and determine motions for summary judgment and that a hearing in an unfair labor practice proceeding is not a matter of right where there are no factual issues to be determined.³ Here, it is clear that the truth of the allegations of the complaint stands admitted by virtue of the uncontroverted factual averments of the complaint.

The Respondent also contends that the failure to hold a hearing precludes Respondent from offering "additional evidence" and denies to it the due

¹ Supplemental Decision and Certification of Representative in Case 11-RC-2472

² On February 24, 1967, pursuant to the Direction, an election was held in which 40 votes were cast for the Union and 26 against. There were eight challenged ballots, but none were determinative. Thereafter, Respondent timely filed Objections to

Election and to Conduct Affecting Results of Election. The Regional Director overruled the objections and certified the Union. The Respondent did not seek review.

³ E.g., *Pittsburgh Plate Glass Company v. NLRB*, 313 U.S. 146, *Collins & Akman Corporation*, 160 NLRB 1750, and *United States Rubber Company*, 155 NLRB 1298.

process of law. In that connection it alleges that evidence in a subsequent hearing (Case 11-CA-3214), involving the same parties, discloses that Respondent's setup men and assistant setup men "interrelate" their work both in the presently certified maintenance area and in the production area. We cannot tell whether this allegation is urged upon us as new evidence of a change in the duties and interests of these categories of employees. But, it is obvious from an examination of the Regional Director's decision that a factor of interrelated duties was considered by him and found insufficient to warrant the exclusion of the setup men from the maintenance unit sought by the Union, a decision which we subsequently affirmed. Thus, the alleged new evidence, if it is that, raises no factual issue not heretofore considered by the Board. The Respondent further alleges that a full hearing will disclose that the petition and resulting certification in Case 11-RC-2472 was based upon and controlled by the extent of the organization of employees contrary to the provisions of Section 9(c)(5) of the Act. Specifically, it claims that although the Union in the earlier representation case had disclaimed an interest in the production employees, it has since filed a petition for a unit of production employees in Case 11-RC-2539. But this is not evidence that the Regional Director gave controlling weight to extent of organization within Section 9(c)(5) of the Act. On the contrary, it is clear from the Regional Director's decision that he did not rely on extent of organization in determining the appropriate unit.⁴ As we find that there are no matters requiring a hearing before a Trial Examiner, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the record before it, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized and existing by virtue of the laws of the State of South Carolina engaged in the manufacture of capacitors and other electrical equipment at its place of business in Myrtle Beach, South Carolina. During the past year, which period is representative of all material times herein, Respondent finished products valued in excess of \$50,000. During the same period, Respondent sent these goods in excess of \$50,000 to points outside the State of South Carolina.

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

Local Union No. 382, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(6) and (7) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees at the Respondent's Myrtle Beach, South Carolina, plant constitute a unit appropriate for collective bargaining within the meaning of the Act:

All maintenance employees including setup men and janitors employed at the Employer's Myrtle Beach, South Carolina, plant, excluding production employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On February 24, 1967, a majority of the employees of Respondent in said unit, in a secret election conducted under the supervision of the Regional Director for Region 11, designated the Union as their representative for the purpose of collective bargaining with Respondent, and on March 29, 1967, the Board certified the Union as the collective-bargaining representative of the employees in said unit, and the Union continues to be such representative.

B. *The Request to Bargain and the Respondent's Refusal*

On April 4, 1967, the Union requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Since April 10, 1967, and continuing to date, Respondent did refuse, and continues to refuse, to bargain collectively with the Union as exclusive collective-bargaining representative of all employees in said unit.

Accordingly, we find that the Union was duly certified by the Board as the collective-bargaining representative of the employees of the Respondent in the appropriate unit described above in the Board's certification and that the Union at all times since February 24, 1967, has been and now is the exclusive bargaining representative of all the employees in the aforesaid unit, within the meaning of Section 9(a) of the Act. We further find that

⁴ *N.L.R.B. v. Overnite Transportation Co.*, 327 F.2d 36 (C.A. 4), enfg. in part and reversing in part 141 NLRB 384; see also *Kwikset*

Looks, Inc., 116 NLRB 1648, *Montgomery Ward Co.*, 88 NLRB 22, fn. 1

Respondent has, since April 10, 1967, refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in the appropriate unit, and that, by such refusal, 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.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

CONCLUSIONS OF LAW

1. Aerovox Corporation of Myrtle Beach, South Carolina, is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union No. 382, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All maintenance employees including setup men and janitors employed at the Employer's Myrtle Beach, South Carolina, plant, excluding production employees, 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. Since February 24, 1967, the above-named labor organization has been the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 10, 1967, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has

engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. 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 hereby orders that the Respondent, Aerovox Corporation of Myrtle Beach, South Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, hours, and other terms and conditions of employment with Local Union No. 382, International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All maintenance employees including setup men and janitors employed at the Employer's Myrtle Beach, South Carolina, plant, excluding production employees, 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 rights guaranteed to them by Section 7 of the Act.

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

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Myrtle Beach, South Carolina, place of business, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent 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

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."

insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 11, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

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 you that:

WE WILL NOT refuse to bargain collectively with Local Union No. 382, International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, hours, and other terms and conditions of

employment and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All maintenance employees including setup men and janitors employed at the Employer's Myrtle Beach, South Carolina, plant, excluding production employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

AEROVOX CORPORATION
OF MYRTLE BEACH,
SOUTH CAROLINA
(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, 1624 Wachovia Building, 301 N. Main St., Winston-Salem, North Carolina 27101, Telephone 723-2911.