

State Farm Mutual Automobile Insurance Company and American Communications Association, Communications Trade Division, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CA-1110

February 15, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

Upon a charge filed by the American Communications Association, Communications Trade Division, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint dated September 29, 1967, against State Farm Mutual Automobile Insurance Company, 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 upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges, in substance, that on September 15, 1967, the Union was duly certified by the Regional Director for Region 29 as the exclusive bargaining representative of the Respondent's employees in the appropriate unit and that, on or about September 26, 1967, and thereafter, the Respondent refused to recognize or bargain with the Union as such exclusive bargaining representative, although the Union requested the Respondent to do so.

On October 25, 1967, the Respondent filed an answer, denying the commission of the unfair labor practice alleged.

On November 24, 1967, the General Counsel filed with the Board a Motion for Summary Judgment, asserting that there were no issues of fact or law which had not already been litigated before and determined by the Board. Thereafter, on November 28, 1967, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Pursuant thereto, Respondent filed a Statement in Opposition to the Motion, and a Cross Motion.

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.

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 in Case 2-RC-14145 the Board in its Decision and Direction of Election¹ found a unit composed of all the Respondent's six claims offices in lower New York State to be inappropriate, defining an appropriate unit as those employees under the supervision of a divisional superintendent. The Board stated that the unit of employees supervised by a divisional superintendent was the smallest relatively autonomous component of the Respondent's business structure. Thereafter, the Union filed a petition in Case 29-RC-751, seeking to represent an appropriate unit of all field claim specialists and field claim representatives assigned to Respondent's Smithtown, Syosset, and Jericho, Long Island, New York, offices, bringing all the offices under a divisional superintendent. After a hearing, the Regional Director, relying on the Board's rationale in the aforementioned case, issued a Decision and Direction of Election on August 4, 1967, in which he found appropriate for bargaining a unit of all field claim specialists and field claim representatives employed by the Respondent assigned to the Smithtown, Syosset, and Jericho, Long Island, New York, offices, excluding superintendents and all other managerial and supervisory personnel, clerical employees, and guards as defined in the Act.

On August 17, 1967, the Respondent filed with the Board a Request for Review of the Regional Director's Decision and Direction of Election. The Request was denied by the Board on September 1, 1967.

On September 7, 1967, an election was held in which a majority of the employees of the Respondent in the appropriate unit selected the Union as their representative for the purposes of collective bargaining. The Union was certified on September 15, 1967. On or about September 19, 1967, the Union requested that the Respondent bargain collectively with it. This request was refused and, on September 29, 1967, the Regional Director for Region 29 issued the complaint upon which these proceedings are predicated.

In its Statement in Opposition to the Motion, the Respondent argues in substance, that: (1) the unit designated as appropriate by the Regional Director is unstable and fluctuating because the number of divisional superintendents has increased and employees are transferred from one division to another

¹ State Farm Mutual Automobile Insurance Company, 158 NLRB 925

and "the Divisional Claim Superintendent does not have sufficient authority upon which to base a unit determination"; (2) industrial chaos will occur by virtue of having different unions in the same metropolitan area representing different groups of interchangeable employees doing the same job; (3) the facts and circumstances of this case are such that the Board's rule that issues determined in a prior representation case may not be relitigated should be relaxed to give the Board the opportunity to properly consider all the circumstances surrounding this matter; and (4) in any event Summary Judgment is improper since such procedure is not sanctioned by the National Labor Relations Act, as amended, nor by the Administrative Procedure Act. The Respondent in its Cross-Motion urges the Board to transfer the case to a Trial Examiner for a full hearing.

It is well settled that in the absence of newly discovered or previously unavailable evidence, a respondent in an 8(a)(5) proceeding is not entitled to litigate issues which were or could have been raised in the prior representation proceeding.² The circumstances of this case do not warrant a departure from this rule. It is also well settled that the National Labor Relations Board may properly employ the Summary Judgment procedure.³ All other contentions now made were raised in the Request for Review and were considered and rejected by the Board.

As all material allegations of the complaint have either previously been found by the Board to be supported or have been admitted in this proceeding by the Respondent and there are no matters requiring a hearing before a Trial Examiner, the General Counsel's Motion for Summary Judgment is granted and the Respondent's Cross Motion denied. On the basis of the record before it, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

State Farm Mutual Automobile Insurance Company is engaged in the sale of automobile insurance. The Respondent in the course and conduct of its business operations for the preceding 12 months received income, consisting of insurance premiums in excess of \$50,000, which were collected within New York State and remitted to points outside the State. The Respondent admits, and we find, that it is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

American Communications Association, Communications Trade Division, affiliated with Interna-

tional Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All field claim specialists and field claim representatives employed by the Respondent assigned to the Smithtown, Syosset, and Jericho, Long Island, New York, offices, excluding superintendents and other managerial and supervisory personnel, clerical employees, and guards as defined in the Act.

2. The certification

On September 7, 1967, a majority of the employees of the Respondent, voting in a secret-ballot election conducted among the employees in said unit, under the supervision of the Regional Director for Region 29, designated the Union as their representative for the purposes of collective bargaining with the Respondent. On September 15, 1967, the Union was certified as the exclusive collective-bargaining representative of the employees in the said unit and the Union continues to be such representative.

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

Commencing on September 19, 1967, and continuing to date, the Union has requested and is requesting the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. On or about September 26, 1967, and continuing to date, the 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 Respondent has, since on or about September 26, 1967, refused to bargain collectively with the Union as the exclusive bargaining representative of the 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.

² *Pittsburgh Plate Glass Company v. N.L.R.B.*, 313 U.S. 146..

³ *Union Brothers, Inc.*, 162 NLRB 1505.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of the Respondent set forth in section I and II, 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 that 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. State Farm Mutual Automobile Insurance Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. American Communications Association, Communications Trade Division, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All field claim specialists and field claim representatives employed by the Respondent assigned to the Smithtown, Syosset, and Jericho, Long Island, New York, offices, excluding superintendents and other managerial and supervisory personnel, clerical employees, and guards as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 7, 1967, the above-named labor organization has been the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 26, 1967, and at all times thereafter to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees in the 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 the aforesaid refusal to bargain, the 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 affect 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, State Farm Mutual Automobile Insurance Company, Long Island, New York, 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 American Communications Association, Communications Trade Division, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All field claim specialists and field claim representatives employed by the Respondent assigned to the Smithtown, Syosset, and Jericho, Long Island, New York, offices, excluding superintendents, and other managerial and supervisory personnel, clerical employees, and guards 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 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 Smithtown, Syosset, and Jericho, Long Island, New York, offices copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by the 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 the

⁴ 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"

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

(c) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps the Respondent has 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 American Communications Association, Communications Trade Division, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 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 field claim specialists and field claim representatives employed by us, assigned to the Smithtown, Syosset, and Jericho, Long Island, New York, offices, excluding superintendents and other managerial and supervisory personnel, clerical employees, and guards as defined in the Act.

All of our employees are free to become, remain, or refrain from becoming or remaining, members of any labor organization, except as that right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended.

STATE FARM MUTUAL
AUTOMOBILE
INSURANCE COMPANY
(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 the employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 596-3535.