

Westinghouse Learning Corporation (Indiana) and Retail, Wholesale and Department Store Union, AFL-CIO, Local No. 512. Case 25-CA-3799

November 13, 1970

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS BROWN AND JENKINS

Upon a charge duly filed on May 25, 1970, and served on Respondent Westinghouse Learning Corporation (Indiana), on or about May 26, 1970, by Retail Wholesale and Department Store Union, AFL-CIO, Local No. 512, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint on July 10, 1970, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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 and the Charging Party.

With respect to the unfair labor practices, the complaint alleges that, on or about April 30, 1970, following a Board election, the Regional Director for Region 25 certified the Union in Case 25-RC-4187, as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about May 20, 1970, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On July 17, 1970, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and requesting that the complaint be dismissed in its entirety.

On August 21, 1970, counsel for the General Counsel filed directly with the Board a Motion to Strike Portions of Respondent's Answer and a Motion for Summary Judgment, moving that Respondent's denial of subparagraphs 5(a) and 5(c) in the Answer be stricken, and alleging that since the issue of the correctness of the Regional Director's unit determination has already been affirmed by the Board in the prior related representation proceeding, it cannot be relitigated in this unfair labor practice

proceeding, and the Board should, therefore, grant his Motion for Summary Judgment. Subsequently, on August 28, 1970, the Board issued an Order transferring the proceeding to the Board and on the same date the Board issued a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice to Show Cause.

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 proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Respondent's single contention herein is that the Regional Director was in error in finding in his Decision and Direction of Election, issued December 24, 1969, that dormitory supervisors employed at Respondent's Job Corps Center were not supervisors within the meaning of the Act. This unit determination was upheld by the Board's denial on February 24, 1970, of the Respondent's Request for Review in the related representation proceeding.

It is established Board policy, in the absence of newly discovered or previously unavailable evidence or special circumstances, and there is no allegation that any such matters exist herein, not to permit relitigation in an unfair labor practice case of issues which were or could have been litigated in a prior related representation proceeding.²

We find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, therefore, grant the Motion for Summary Judgment.³

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware, has maintained its principal office and place of business at Edinburg, Indiana, where it is engaged in the business of operating and managing the Atterbury Job Corps Center. It annually purchases, transfers, and delivers to its facility goods and

91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

² See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941). NLRB Rules and Regulations, Secs. 102.67(f) and 102.69(c).

³ The General Counsel's motion to strike the Respondent's denial, in its Answer, of subparagraphs 5(a) and 5(c) of the complaint is denied. *Capitan Drilling Company, Inc.*, 167 NLRB 144, 145.

¹ Official notice is taken of the record in the representation proceeding, Case 25-RC-4187, as the term "record" is defined in Sections 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems Inc.*, 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151; *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1967); *Follet Corp.*, 164 NLRB 378, enfd. 397 F.2d

materials valued in excess of \$50,000 which were transported to said facility directly from States other than the State of Indiana.

We find, on the basis of the foregoing, that Respondent 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, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Retail, Wholesale and Department Store Union, AFL-CIO, Local No. 512, is a labor organization within the meaning of Section 2(5) of the Act.

III. UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

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

All dormitory supervisors and resident aides employed by the Employer at the Atterbury Job Corps Center, Edinburg, Indiana, but excluding all professional employees, guards and dormitory managers and other supervisors as defined in the Act, and excluding all other employees.

2. The certification

Pursuant to a petition filed on September 4, 1969, the Regional Director's Decision and Direction of Election on December 24, 1969, Respondent's subsequent "Request for Review" of the Decision with the Board, and the Board's denial of said request on February 24, 1970, an election was conducted on February 25 and 26, 1970, among the employees of the Employer in the above-described unit, under the supervision of the Regional Director for Region 25, and a majority of said employees therein designated the Union as their representative for the purpose of collective bargaining with the Respondent. On April 30, 1970, the Regional Director issued a Supplemental Decision and Certification of Representative certifying 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 Respondent's Refusal*

Commencing on or about May 8, 1970, and at all times thereafter, the Union has requested the Respon-

dent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about May 20, 1970, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining 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 Respondent in the appropriate unit described above in the Board's certification, and that the Union at all times since April 30, 1970, 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 Respondent has, since May 20, 1970, refused to bargain collectively in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of 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 that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) 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.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, enfd. 350 F.2d 57 (C.A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Westinghouse Learning Corporation (Indiana) is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Retail, Wholesale and Department Store Union, AFL-CIO, Local No. 512, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for collective bargaining purposes within the meaning of Section 9(b) of the Act: All dormitory supervisors and resident aides employed by the Employer at the Atterbury Job Corps Center, Edinburg, Indiana, but excluding all professional employees, guards and dormitory managers and other supervisors as defined in the Act, and excluding all other employees.

4. Since April 30, 1970, the above-named labor organization has been and now is the certified and 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 May 20, 1970, 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 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 Respondent, Westinghouse Learning Corporation (Indiana), its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment, with Retail, Wholesale and Department Store Union, AFL-CIO, Local No. 512, as the exclusive bargaining representative of its employees

in the following appropriate unit: All dormitory supervisors and resident aides employed by the Employer at the Atterbury Job Corps Center, Edinburg, Indiana, but excluding all professional employees, guards and dormitory managers and other supervisors as defined in the Act, and excluding all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed them in 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 Edinburg, Indiana, facility, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 25, 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 25, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

⁴ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Retail, Wholesale and Department Store Union, AFL-CIO, Local No. 512, as the exclusive representative of the employees in the bargaining unit described. The bargaining unit is:

All dormitory supervisors and resident aides employed by the Employer at the Atterbury Job Corps Center, Edinburg, Indiana, but excluding all professional employees, guards and dormitory managers and

other supervisors as defined in the Act, and excluding all other employees.

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 above, 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.

WESTINGHOUSE
LEARNING CORP-
ORATION (INDIANA)

(Employer)

Dated _____ By _____ (Representative) _____ (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317-633-8921.