Aerovox Corporation of Myrtle Beach, South Carolina *and* **Local Union No. 382, International Brotherhood of Electrical Workers, AFL–CIO.** Case 11–CA–3523

May 22, 1968

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On March 15, 1968, Trial Examiner Charles W. Schneider issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision.

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.

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 the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, Aerovox Corporation of Myrtle Beach, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

The Representation Proceeding[1]

CHARLES W. SCHNEIDER, Trial Examiner: Pursuant to a Direction of Election by the Regional Director of Region 11 of the Board, an election by secret ballot was held on July 27, 1967, under the supervision of the Regional Director, among the employees of Aerovox Corporation of Myrtle Beach, South Carolina (the Respondent), in an appropriate unit described hereinafter. Local Union No. 382, International Brotherhood of Electrical Workers, AFL–CIO (the Union), received a majority of the valid votes cast in the election. The Respondent filed timely objections to the election alleging, in sum, that by the distribution of a certain leaflet on the day before the election the Union had wrongfully misled the employees with false information destroying the conditions necessary for a free election. Specifically the leaflet indicated that at another plant of the Respondent in Burbank, California, the Union had a contract with the Respondent and that the plant was operating full time, whereas in fact the Burbank plant had ceased operations on July 1.

On November 16, 1967, the Regional Director issued his Second Supplemental Decision and Certification of Representative in which he stated that he had conducted an investigation of the objections, and had afforded the parties full opportunity to submit and present evidence bearing on the objections. The Regional Director found that the representation in the handbill to the effect that the Burbank plant was operating full time had been previously raised during the campaign, that the Respondent had had ample opportunity prior to the election to state its position with respect thereto, and in fact had done so, and that under the circumstances the handbill did not constitute a misrepresentation warranting setting aside the election. Consequently, the Regional Director certified the Union as the collective-bargaining representative in the appropriate unit.

Thereafter, under date of December 6, 1967, the Respondent filed with the Board in Washington, D.C., exceptions and request for review of the Second Supplemental Decision and Certification of Representative, in which the Respondent requested that the election be set aside on the basis of its objections or in the alternative that a hearing be held thereon. On January 3, 1968, the Board issued a telegraphic order in which it denied the Respondent's request for review, stating that the request "raises no substantial issues warranting review." The Board's Order further recited that:

> In so doing, we do not rely upon Regional Director's findings that employer had reasonable opportunity to reply to Union's last minute representations to Burbank plant, as it is suffi-

[1] Administrative or official notice is taken of the record in the representation proceeding, Case 11–RC–2539, as the term "record" is defined in Section 102 68 and 102 69(f) of the Board's Rules (Rules and Regulations and Statements of Procedure, National Labor Relations Board, as revised January 1, 1965) See *LTV Electrosystems, Inc.*, 166 NLRB 938, *Golden Age Beverage Co.*, 167 NLRB 151, *Intertype Co. v. Penello*, 269 F Supp 573 (D C Va 1967), *Follett Corporation*, 164 NLRB 378, Section 9(d) of the National Labor Relations Act

cient that employer had previously informed employees that said plant had ceased operations.

The Unfair Labor Practice Proceeding

The Respondent thereafter declining to bargain with the Union, on January 22, 1968, the Union filed unfair labor practice charges to that effect. On January 26, 1968, the Regional Director issued a complaint and notice of hearing alleging that the Respondent had committed unfair labor practices in violation of Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union on or about January 15, 1968.

On February 5, 1968, the Respondent filed its answer to the complaint in which it admitted most of the allegations of the complaint but denied that the Union was the representative of the employees, on the ground that the certification and the election were not valid for the reasons stated in the Respondent's objections to the election, and that the Respondent was denied a hearing. Consequently, the answer denied the commission of unfair labor practices.

Under date of February 7, 1968, counsel for the General Counsel filed a Motion for Summary Judgment supported by a memorandum brief. The ground asserted for the motion was that there was no factual matter in dispute requiring hearing and that the General Counsel was entitled to judgment as a matter of law.

Upon this motion I issued an order to show cause directing the parties to show cause in writing on or before February 23, 1968 (subsequently extended to March 4, 1968), as to whether or not the motion for summary judgment should be granted. On March 5, 1968, the Respondent filed Respondent's return to the order to show cause. No other responses have been received. In sum, the Respondent's return reiterates the Respondent's previous contentions as to the merit of its objections to the election and the invalidity of the certification further asserts denial of due process by reason of the Regional Director's erroneous action, and requests a hearing upon the complaint on the ground that such is required by Section 10(b) of the Act.

Ruling on the Motion for Summary Judgment

It is established Board policy, in the absence of newly discovered or previously unavailable evidence or special circumstances, not to permit litigation before a Trail Examiner in an unfair labor practice case of issues which were or could have been litigated in a prior related representation proceeding.[2] This policy is applicable even though no formal hearing on objections has been provided by the Board. Such a hearing is not a matter of right unless substantial or material issues are raised by the objections.[3] The authorities cited by the Respondent do not refute this proposition. They merely hold that where there *are* substantial and material issues a hearing is required.

No assertion is made of the existence of newly discovered or previously unavailable evidence or of special circumstances. In such a situation the Board's disposition of the representation matter is the law of the case at this stage of the proceeding, and is binding on the Trial Examiner. Under these circumstances there are no issues litigable before a Trial Examiner or requiring hearing under Section 10 of the Act. *Metropolitan Life Insurance Company*, 163 NLRB 579; *N.L.R.B.* v. *Aerovox Corporation of Myrtle Beach*, 389 F.2d 475 (C.A. 4, 1967). Summary judgment is therefore appropriate and the motion of counsel for the General Counsel for the entry of such judgment is now granted.

I hereby make the following further:

Findings and Conclusions

I. THE BUSINESS OF THE RESPONDENT

Respondent is now, and has been at all times material herein, a South Carolina corporation engaged in the manufacture of capacitors and other electrical equipment at its Myrtle Beach, South Carolina, plant.

Respondent, during the past 12 months, which period of time is representative of all times material herein, manufactured, sold, and shipped from its Myrtle Beach, South Carolina, plant finished products valued in excess of $50,000 to points directly outside the State of South Carolina.

Respondent is now, 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

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The following constitutes an appropriate bargaining unit within the meaning of Section 9(b) of the Act:

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[2] *Howard Johnson Company*, 164 NLRB 801, *Metropolitan Life Insurance Co.*, 163 NLRB 579 See *Pittsburgh Plate Glass Co* v *N L R B*, 313 U S 146, 162 (1941), Board Rules, Sections 102 67(f) and 102 69(c)

[3] *O K Van & Storage, Inc*, 127 NLRB 1537, enfd 297 F 2d 74 (C A 5, 1961) And see *N L R B* v *Air Control Products, Inc*, 335 F 2d 245, 249 (C A 5, 1964) "If there is nothing to hear, then a hearing is a senseless and useless formality"

All production employees, including employees in the quality control and shipping departments at the Respondent's Myrtle Beach, South Carolina, plant, excluding office clerical employees, professional employees, all employees in the certified maintenance unit, guards and supervisors as defined in the Act.

On July 27, 1967, the employees of Respondent in the appropriate unit voted in a secret-ballot collective-bargaining election conducted under the supervision of the Regional Director for Region 11 of the National Labor Relations Board. A majority of the valid ballots were cast for the Union.

On November 16, 1967, the Regional Director issued a Second Supplemental Decision and Certification of Representative in which the Union was certified as the exclusive collective-bargaining representative of the employees in the appropriate unit.

On January 3, 1968, the Board denied Respondent's request for review of the Regional Director's Second Supplemental Decision and Certification of Representative.

At all times since July 27, 1967, and continuing to date, the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the appropriate unit and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about January 5, 1968, the Union, by letter, requested that Respondent meet with it for the purpose of conducting collective-bargaining negotiations.

On or about January 15, 1968, Respondent, by letter, refused to meet with the Union for the purpose of conducting collective-bargaining negotiations.

By thus refusing to bargain collectively with the Union the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 2(6) and (7) of the Act.

Upon the foregoing findings and conclusions and the entire record in the case, I recommend that the Board issue the following:

ORDER

A. For the purpose of determining the duration of the certification the initial year of certification shall be deemed to begin on the date the Respondent commences to bargain in good faith with the Union as the recognized collective-bargaining representative of the employees in the appropriate unit.[4]

B. Aerovox Corporation of Myrtle Beach, South Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local Union No. 382, International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production employees, including employees in the quality control and shipping departments at the Respondent's Myrtle Beach, South Carolina, plant, excluding office clerical employees, professional employees, all employees in the certified maintenance unit, guards and supervisors as defined in the Act.

(b) Interfering with the efforts of said Union to negotiate for or represent employees in the appropriate unit as the exclusive collective-bargaining representative.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local Union No. 382, International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive representative of the employees in the appropriate unit, with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and embody in a signed agreement any understanding reached.

(b) Post at its Myrtle Beach, South Carolina, plant 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 an authorized 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 Respondent to 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 20 days from the receipt of this

[4] The purpose of this provision is to ensure that the employees in the appropriate unit will be accorded the statutorily prescribed services of their selected bargaining agent for the period provided by law. See *Mar-Jac Poultry Co., Inc.*, 136 NLRB 785, *Commerce Company, d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd 328 F 2d 600 (C A 5, 1964), *Burnett Construction Co.*, 149 NLRB 1419, 1421, enfd 350 F 2d 57 (C A 10, 1965).

[5] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

Decision, what steps have been taken to comply herewith.[6]

[6] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 11, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner 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 NOT refuse to bargain collectively with Local Union No. 382, International Brotherhood of Electrical Workers, AFL–CIO, as the exclusive bargaining representative of all our following employees:

All production employees, including employees in the quality control and shipping departments at our Myrtle Beach, South Carolina, plant, excluding office clerical employees, professional employees, all employees in the certified maintenance unit, guards and supervisors as defined in the Act.

WE WILL NOT interfere with the efforts of said Union to negotiate for or represent the employees in the appropriate unit as the exclusive collective-bargaining representative.

WE WILL bargain collectively with the Union as the exclusive representative of the employees, and, if an understanding is reached, we will sign a contract with the Union.

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 North Main Street, Winston-Salem, North Carolina 27101, Telephone 723–2911.