

Westinghouse Electric Corporation and Truck Drivers and Helpers Local Union No. 355, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 5-CA-4274

October 23, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA

On October 11, 1968, in Case 5-RC-6462, the Regional Director for Region 5 of the National Labor Relations Board certified Truck Drivers and Helpers Local Union No. 355, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, as the bargaining representative of the Respondent Employer's truckdrivers. The unit at that time consisted of two truckdrivers. Subsequently, the Union filed a charge in the instant case, alleging that the Respondent had violated Section 8(a)(5) of the Act by refusing to bargain with the Union pursuant to the aforesaid certification, and thereafter, on January 22, 1969, the Regional Director issued a complaint. On February 28, 1969, the Board issued an Order approving a stipulation of the parties and transferring the instant case to the Board for findings of fact and conclusions of law, and the issuance of a Decision and Order. The Respondent filed a memorandum in support of its position.

Thereafter, on June 23, 1969, the Respondent filed with the Board a motion to dismiss the complaint, or, alternatively, to reopen the record. In support of its motion, the Respondent avers that on or about June 4, 1969, one of the two truckdrivers in the unit voluntarily terminated his employment

with the Respondent, and that the Respondent has no need and hence no intention of hiring a replacement. Accordingly, on grounds that the Board will not find a refusal to bargain in a one-man unit, the Respondent contends that the 8(a)(5) proceeding should be dismissed.

On July 16, 1969, the Board issued and served upon the General Counsel and the Charging Party a Notice to Show Cause directing these parties to show cause, if any there be, in writing, before July 28, 1969, why the Respondent's motion for dismissal should not be granted. An Answer to Notice to Show Cause was filed by the Union, in which it opposed the granting of the Respondent's motion to dismiss on the grounds that Respondent had, in fact, refused to bargain, and that while it did not dispute the Respondent's allegations that one of the two truckdrivers had voluntarily terminated his employment, it did dispute that the Respondent does not need or intend to hire a replacement, contending that the loss of one driver was only temporary. No response was received from the General Counsel.¹

The Board, having duly considered the matter, has determined that it would not effectuate the policies of the Act to proceed further in this matter inasmuch as the Board will not require an employer to bargain in a unit consisting of only one employee.² We shall, therefore, grant the Respondent's motion to dismiss the complaint.

ORDER

It is hereby ordered that the Respondent's motion to dismiss this proceeding be, and it hereby is, granted, and that the complaint herein, issued by the Regional Director on January 22, 1969, be, and it hereby is, dismissed.

¹Pursuant 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

²*Virginia-Carolina Chemical Corporation*, 104 NLRB 69