

Newark Morning Ledger Co. d/b/a Star Ledger and Newark Newspaper Pressmen's Union No. 8 a/w International Printing Pressmen and Assistants' Union of North America, AFL-CIO

Evening News Publishing Co. d/b/a Evening News and Newark Newspaper Pressmen's Union No. 8, a/w International Printing Pressmen and Assistants' Union of North America, AFL-CIO. Cases 22-CA-4167 and 22-CA-4168

April 26, 1971

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On December 10, 1970, Trial Examiner Josephine H. Klein issued her Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondents filed exceptions to the Trial Examiner's Decision and a supporting brief.

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 proceeding 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 brief, and the entire record in this proceeding, 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 Employers, Newark Morning Ledger Co. d/b/a Star Ledger and Evening News Publishing Co. d/b/a Evening News, Newark, New Jersey, their 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

JOSEPHINE H. KLEIN, Trial Examiner: This case was tried at Newark, New Jersey, on October 15, 1970,¹ on a consolidated complaint issued on September 3, pursuant to charges filed on July 23 by Newark Newspaper Pressmen's Union No. 8, a/w International Printing Pressmen and Assistants' Union of North America, AFL-CIO (the "Union" or "Local 8") against Newark Morning Ledger Co. d/b/a Star Ledger and Evening News Publishing Co. d/b/a Evening News, alleging a refusal to bargain in contravention of Section 8(a)(5) and (1) of the Act.²

Upon the entire record,³ observation of the demeanor of the witnesses, and consideration of the briefs filed on behalf of the General Counsel and the Respondents, the Trial Examiner makes the following:

FINDINGS OF FACT

I PRELIMINARY FINDINGS

The complaint alleges, the answers admit, and the Examiner finds that:

A Each Respondent is a New Jersey corporation engaged in the publishing, sale, and distribution of newspapers in Newark, New Jersey. During the past 12 months, a representative period, each Respondent subscribed to interstate news services, published syndicated features, and advertised nationally sold products. During the same period, each Respondent received gross revenues from its publishing operations in excess of \$200,000 and purchased goods valued in excess of \$50,000, which goods were shipped directly to its Newark, New Jersey, plant from points outside New Jersey. Each Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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

II THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

After many years of bargaining with Respondents on an association basis, through the Newark Newspaper Publishers Association ("Association"), the Union sought to bargain with the Respondents individually. The issue here presented is whether Respondents violated Section 8(a)(5) of the Act by refusing to bargain with the Union on an individual basis.

B. *The Facts*

The facts are essentially undisputed, most of them having been stipulated. At least since 1932, the Association, a non-profit corporation, has represented the Respondents in bargaining with the Union as the exclusive representative of the pressmen (including apprentices and flyboys) employed by Respondents. A majority of the pressmen employed by each Respondent are members of the Union.

Section 1 of the most recent collective-bargaining agreement read.

This agreement made and entered into this 17th day of July, 1967, for a period from January 16, 1967 to July 15, 1970, . . . between Newark Newspaper Publishers

¹ Except as otherwise indicated, all dates are in 1970

² National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*)

³ As corrected in minor respects by order dated December 1, 1970

Association composed of the following newspapers: [Respondents], parties of the first part and Newark Newspaper Pressmen's Union No. 8 and the International Printing Pressmen and Assistants' Union of North America, hereinafter referred to as parties of the second part, by its committees duly authorized to act in its behalf. Notice of renewal of contract must be submitted by either party of this contract sixty (60) days prior to the expiration of this Agreement. If an agreement has not been reached by the date upon which the contract expires, this contract shall continue in full force and effect until notice of termination is given in writing by either party hereto.

The final section states that:

This Agreement expires on July 15, 1970.

The agreement is signed by two representatives of the Association and by the president and the secretary of Local No. 8. After these signatures appears the following:

This agreement has been made with the consent and approval of the International Printing Pressmen and Assistants' Union of North America, which undertakes to guarantee the fulfillment of the conditions hereinbefore set forth, except that International assumes no liability hereunder for any work stoppages or breaches of this contract unless said International . . . actually authorizes, ratifies and actively participates in said work stoppages or breaches of this contract.

Anthony J. DeAndrade, President

Testimony of James R. Schofield, Local No. 8 president, William Torrence, International representative, and David Winkworth, Association secretary, establishes that the identification of the "parties" to the agreement and the subscription on behalf of the International is in accordance with the contract form adopted about 10 years ago, when the parties discontinued use of the International Arbitration Agreement, which had provided for arbitration of the termination and renewal of agreements.

Under date of May 8, Local 8's financial secretary, following established practice, wrote to the Association as follows:

This letter is to notify you that . . . Local No. 8 desires to open the contract with your company for changes in Wage Scales and Working Conditions.

We would appreciate an early meeting to discuss these changes prior to the termination date of the contract. Please contact Joseph Horny, Financial Secretary . . . when a meeting would be convenient to you.

Under date of May 13, before Horny's letter was acknowledged by the Association, Robert J. Mozer, Esq., attorney for Local 8, sent notices to the New Jersey and United States Mediation Services and to the Association in accordance with Section 8(d)(3) of the Act. These notices were mailed by Mozer's secretary.

On May 14, Mozer, on behalf of Local 8, sent to the Association a letter reading, in pertinent part:

The Union elects to discontinue bargaining with the Publishers Association for its members employed at those two establishments and will bargain individually with each of the publishers hereafter.

A copy of this letter is being sent to each of these newspapers to that they might be fully aware of the Union's decision.

Mozer testified that he personally deposited this letter, and copies addressed to Harry P. Rogers, of the *News*, and Dale Douglas, of the *Ledger*, in the mail slot in Mozer's office building in New York City on the morning of May 14.

David Winkworth, secretary of the Association, testified that, to the best of his recollection, he received Mozer's two communications on Monday, May 18. He also testified that

he was out of the country on Friday, May 15, and he normally does not visit his office on Saturdays or Sundays. It was stipulated that Rogers and Douglas received copies of Mozer's May 14th letter, but, since neither of them testified, there is no specific evidence as to when they received that letter.

After receipt of Mozer's letter, Dinkworth conferred with Respondents' representatives. It was agreed among them that Dinkworth should acknowledge receipt of Horny's letter of May 8 and ignore Mozer's later letter. Accordingly, on May 25 Dinkworth wrote as follows to Horny:

This will acknowledge your letter of May 8, 1970 in which you have initiated negotiations for a new contract between your Union and [the] Association. As secretary of the Association I am authorized to arrange meetings with your committee to negotiate a new contract. Please contact me to set a date and place.

Mozer testified, without contradiction, that in June and/or July, before filing the charges, he had conversations with representatives of Respondents in which he requested bargaining on an individual basis. After the charges were filed, he had similar discussions with Tobias J. Bermant, Esq., who consistently stated that Respondents wanted to continue bargaining on an Association basis.

Sometime in July Schofield telephoned Dinkworth to request a bargaining meeting. Dinkworth said that he was not authorized to arrange any meeting other than on an Association basis. Dinkworth testified that he advised Schofield to talk to the individual representatives of the Respondents if he was not willing to meet for Association bargaining, but Schofield did not recall any such suggestion by Dinkworth.⁴

Although the record does not contain detailed evidence in this regard, it does appear that on September 23 there was an arbitration proceeding between the parties. According to Mozer, in that proceeding a question was presented as to whether the collective-bargaining agreement executed in 1967 had actually been terminated. At that time Mozer gave Respondents a handwritten statement of the Union's position that the agreement had been terminated as of July 15, its stated expiration date. At the present hearing, Respondents objected to any further evidence concerning other proceedings among the parties. Respondents then maintained that the agreement had not been effectively terminated, but they apparently have abandoned this position in their posthearing brief.

On September 29 the parties held a negotiating session on an individual basis, "without prejudice" to Respondents' right to litigate their claimed right to insist on Association bargaining.

C. Discussion and Conclusions

Respondents argue that, because of the long-established pattern of Association bargaining, only an Associationwide unit is appropriate, even though the two companies are separate employers.⁵ This contention must be rejected on the authority of *The Washington Post Co.*, 165 NLRB 819, involving withdrawal from association bargaining by Pressmen's Local No. 6, affiliated with same International as is here involved. Trial Examiner Ohlbaum's Decision, adopted

⁴ Schofield dated this conversation as around July 15 and denied that the present charges were mentioned. Dinkworth, however, testified that he had referred to the pendency of the charges, which were filed on March 23. It may be that they spoke more than once during this general period. The precise timing of their discussion is not critical.

⁵ Further, though this fact is not controlling, so far as their arrangement with the Association is concerned, Respondents are free to conduct individual bargaining with the Union.

by the Board, in *The Washington Post* fully explicates the rationale for concluding that the pressmen employed by an individual newspaper constitute an appropriate bargaining unit even where for many years bargaining has been conducted for a multiemployer unit.

Similarly, *The Washington Post* decision requires rejection of the contention that the Respondent publishers may not be compelled to bargain on an individual basis in the absence of a demand by the International or at least proof that the Local has secured the International's approval of withdrawal from associationwide bargaining.

Sometime in April, Schofield, the Local's business agent, informed Torrence, the International's representative, of the proposed conversion of the Newark bargaining to an individual basis. Torrence replied that, while he deemed association bargaining generally preferable, Schofield, knowing the local situation best, should use his own judgment. Thereafter, at its regular membership on May 12, the Local voted in favor of individual bargaining. There is no suggestion that the International ever, formally or informally, officially or unofficially, sought to forestall or overrule the Local's decision.

Respondents refer to provisions in the International Union's constitution which require prior approval and authorization by the International's board of directors before a local may embark on negotiations for any contract "which may, in any manner, affect the interests of the International Union." Respondents now contend that Local 8's failure to seek and obtain such authorization by the International renders ineffective the attempt to negotiate individual contracts.

It should be noted first that neither Dinkworth nor any representative of the Respondents ever informed the Union of this objection to individual bargaining. Further, there is no evidence that the proposal to bargain with the Respondents individually would "affect the interests of the International Union" within the meaning of the constitutional provisions.⁶ Torrence testified, on the basis of his 8 years' experience as International representative, that the constitutional provisions referred to had never been invoked or enforced. Torrence also credibly testified that he has never participated in negotiations with the Newark newspapers and that International representatives generally participate in contract negotiations only in the case of first contracts or on specific request by a local for assistance.⁷

The evidence establishes that the provisions on which Respondents rely have been in the International constitution for at least 10 years. Thus, they were in existence in 1964 and 1966, the time involved in *The Washington Post*, where, "tak[ing]" into consideration the provisions of the International constitution and bylaws in terms of the actual "loose" practices of the International and its local unions thereunder," the Board held that the absence of specific approval by the International did not invalidate the local union's withdrawal from association bargaining.

One difference between *The Washington Post* and the present case may be noted. Here the International is formally named as a party to the contract, whereas it does not appear

to have been so named in the *Washington* situation. However, in the present case the International has not signed the contract as a party but only as a limited "guarantor," precisely as it had in *The Washington Post*. The verbal difference between the two contracts thus is one of form only, in both cases the local was the primary contracting party and the International merely approved the contract as executed and "guaranteed" its performance.

In any event, although the evidence indicates that the International has been named as a party in all the agreements with Respondents for the past 10 years, notice of termination or modification has always been given by the Local alone and has been accepted as proper by Respondents. Indeed, in the present case, Respondents apparently rely on the Local's notice of May 8 as the effective "commencement of negotiations" for a new contract. Respondents advance no reason for concluding that joinder of the International is essential to a request for individual negotiations although not necessary to an effective demand for multiemployer bargaining.⁸

Respondents here question the adequacy of the Union's notice of withdrawal from Association bargaining. Certainly Mozer's letter of May 14 unequivocally advised that the Union "elects to discontinue bargaining with the Publishers Association . . . and will bargain individually with each of the publishers hereafter." And this letter was sent to and received by each of the Respondents as well as the Association. Nobody could have been in any doubt as to the Union's desires.

Respondents argue that the notice of withdrawal was untimely because not given "before the commencement of the collective bargaining process" (emphasis in the original). To support this view, Respondents date the commencement of bargaining on May 8, the date of the Union's original termination notice under the contract. But, although that letter requested bargaining, Respondents, through their agent, chose not to reply to the Union's request before they received the withdrawal notice. An unacknowledged, unilateral request for negotiation certainly cannot be deemed to constitute the commencement of negotiations. Since Respondents had not replied to Horny's letter of May 8, obviously there was no "agreed-upon date to begin multiemployer negotiations" when the withdrawal notice was given. Thus the notice was timely. *Retail Associates, Inc.*, 120 NLRB 388, 395.⁹

Respondents further maintain that the Union has never made a sufficient demand for individual bargaining and therefore Respondents cannot be found guilty of an unlawful "refusal" to bargain.

There is no question that the Union's letter of May 8 constituted a request for bargaining and was so recognized by Respondent. Mozer's letter of May 14 did not *in haec verba* repeat a demand for bargaining but could be reasonably understood only as continuing the demand in effect while modifying the basis of the bargaining the Union was demanding.

Respondents were certainly in no doubt as to the Union's demand. After receipt of Mozer's letter, Winkworth and representatives of both Respondents met and discussed the matter. Winkworth's testimony in this connection was:

⁸ The same considerations would apply in determining whether the prior contract has been terminated or is still in effect. The Examiner, however, deems that question immaterial under the present complaint. And, as previously observed, Respondents have apparently abandoned their contention that the prior contract is still in effect.

⁹ It is therefore unnecessary to consider the General Counsel's further, alternative contention that Mozer's letter of May 14 must be presumed to have reached the addressees at least 60 days before expiration of the then current contract.

⁶ Cf. *General Transformer Co.*, 173 NLRB 360, 372.

even aside from the fact that Respondent did not place cognitive reliance upon International's constitutional or related intraunion provisions in connection with the issues now raised, the provisions themselves do not furnish persuasive support for the position here urged upon the basis thereof.

⁷ Winkworth's conclusory statement that "With almost no exceptions the International has been a party to the negotiations of a new contract" is insufficient to rebut Torrence's testimony or require a conclusion that specific express approval by the International was requisite for a valid withdrawal from multiemployer bargaining by the Local.

... We are constantly in discussion about the strategy they were planning to use in our negotiations, and calling each other to arrange dates. When Mr. Mozer's letter arrived we did discuss it. They told me that as far as they were concerned we already received this notice, which led us to believe that the negotiations had been open on association bargaining and that that was the position we were going to take.

Q. Did you ask for authority to bargain on behalf of either of them?

A. Yes, and I was told that the only meetings I was authorized to arrange would be on an association bargaining basis.

Indeed, Winkworth acknowledged the continuing demand on May 25, when he wrote Horny as follows:

As secretary of the Association I am authorized to arrange meetings with [the Union] committee to negotiate a new contract.

When Schofield thereafter telephoned Winkworth to arrange a negotiating session, Winkworth's transmission of Respondents' instructions clearly amounted to a rejection of Union's demand of May 8 as modified by Mozer's letter. Since Respondents had decided to stand by the position that the Union's letter of May 8 constituted the commencement of negotiations and that therefore the May 14 notice of withdrawal was untimely, further request of the Respondents individually would have been futile.¹⁰ Winkworth's statement effectively communicated Respondents' refusal to bargain on an individual basis. Respondent's refusal to bargain on an individual basis was clear at least on May 25. Respondents have since then adhered to their position.¹¹

In their brief, Respondents argue, in effect, that the Union should not be permitted to withdraw from Association bargaining because individual bargaining will not effectuate the statutory policy of assuring stability in labor relations. Precisely this contention was fully considered and rejected by the Board in *The Evening News Association*, 154 NLRB 1494, 1499-1501, enfd., 372 F.2d 569 (C.A. 6), which decision is here controlling.

In view of the foregoing considerations, and the stipulated fact that the majority of the pressmen (including apprentices and flymen) employed by each of the Respondents belong to and desire representation by the Union, it is concluded that each Respondent has unlawfully refused to bargain with the Union as the authorized collective-bargaining representative of its employees in an appropriate unit. Cf. *The Washington Post Co.*, *supra* at 827.

CONCLUSIONS OF LAW

1. Each Respondent is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. All pressmen, including apprentice pressmen and flymen, employed by each Respondent, excluding all other employees and supervisors as defined in the Act, constitute separate appropriate units for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

¹⁰ It is thus unnecessary to resolve the conflict between Winkworth's testimony that he advised Schofield to speak directly to the Respondents if he insisted on individual bargaining and Schofield's denial that Winkworth made any such suggestion.

¹¹ The individual basis bargaining commenced in September does not alter this conclusion, since, by agreement of the parties, such bargaining has been "without prejudice" to Respondents' insistence on its legal right to demand Association bargaining.

4. At all times material herein the Union has been the exclusive bargaining representative of the employees in each of the aforesaid appropriate units within the meaning of Section 9(a) of the Act.

5. By failing and refusing to bargain collectively with the Union as exclusive representative of the employees in the aforesaid separate appropriate units since on or about May 25, 1970, each Respondent has engaged in and is engaging in an unfair labor practice in violation of Section 8(a)(5) of the Act.

6. By engaging in such refusal to bargain, each Respondent has interfered with, restrained, and coerced its employees in the exercise of their statutory rights, in violation 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.

THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, the Examiner will recommend that they be required to cease and desist therefrom, as well as from like or related conduct, and that they take certain affirmative action to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, the Trial Examiner hereby issues the following recommended:

ORDER¹²

Respondents, Newark Morning Ledger Co. d/b/a Star Ledger and Evening News Publishing Co. d/b/a Evening News, shall each, and their respective officers, agents, successors, and assigns, shall each:

1. Cease and desist from:

(a) Refusing to bargain collectively with Newark Newspaper Pressmen's Union No. 8 a/w International Printing Pressmen and Assistants' Union of North America, AFL-CIO, as exclusive representative of all pressmen, including apprentices and flymen, employed in their respective pressrooms, excluding all other employees and supervisors as defined in the Act, concerning rates of pay, wages, hours, and other terms and conditions of employment.

(b) In any like or related manner interfering with the efforts of the above-named Union to bargain collectively for the employees in said units.

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

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the appropriate units described above, concerning rates of pay, wages, hours, and other terms and conditions of employment, and embody in signed agreements any understandings reached.

(b) Post at their respective plants in Newark, New Jersey, copies of the attached notice marked "Appendix."¹³

¹² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

¹³ In the event that the Board's Order is enforced by a Judgment of a United 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."

Copies of said notice, on forms furnished by the Regional Director for Region 22, after being duly signed by Respondents' respective representatives, shall be posted by each 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 each Respondent to assure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director, in writing, within 20 days from the date of this decision, what steps Respondent has taken to comply herewith.¹⁴

¹⁴ In the event that this recommended Order is adopted by the Board after exceptions have been filed, notify said Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith

APPENDIX

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

WE WILL, upon request, bargain collectively with Newark Newspaper Pressmen's Union No. 8 a/w International Printing Pressmen and Assistants' Union of North America, AFL-CIO, as the exclusive representative of all the pressmen, including apprentices and flymen, employed by us, with

respect to rates of pay, wages, hours, and other terms and conditions of employment, and embody in a written agreement any understanding reached.

WE WILL NOT refuse to bargain, upon request, with the Union as set forth above.

WE WILL NOT in any like or related manner interfere with the efforts of the above-named Union to bargain collectively for the pressmen, including apprentices and flymen, employed by us.

NEWARK MORNING
LEDGER CO. D/B/A
STAR LEDGER AND
EVENING NEWS
PUBLISHING CO.
D/B/A EVENING NEWS
(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, Federal Office Building, 16th Floor, 970 Broad Street, Newark, New Jersey 07102, Telephone 201-645-2100.