

**Association of Motion Picture and Television Producers, Inc. and Studio Transportation Drivers Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Case 31-CA-1791

July 6, 1973

## DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

On February 12, 1973, Administrative Law Judge Herman Corenman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions 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 authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Administrative Law Judge made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The board has considered the attached Decision, the exceptions, the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Administrative Law Judge only to the extent consistent herewith.

The complaint herein alleges that Respondent violated Section 8(a)(5) and (1) of the Act by (a) unilaterally, without bargaining with the Union, reducing the amount of work available to employees in the bargaining unit represented by the Union and (b) unilaterally modifying a provision of its collective-bargaining agreement with the Union without prior notification to the Union and without offering to meet and confer with it for the purposes of negotiating said modifications as required by Section 8(d) of the Act.

Respondent contends, *inter alia*, that it did not modify any provision of its collective-bargaining agreement with the Union; that, after reaching agreement through good-faith bargaining, certain changes in its collective contracts with other labor organizations were made; and that the Union had notice of these changes prior to their effective date and neither prior thereto nor since has it ever requested that Respondent bargain with it concerning the impact of these changes upon the work of the employees represented by the Union.

The facts are fully set forth in the attached Decision. Respondent, an incorporated employer association which admits to membership firms engaged in the production and distribution of motion picture and television films, bargains for its members as a mul-

tiemployer group with approximately 40 labor organizations. During 1969 and 1970, the Hollywood area was experiencing a severe recession as the result of films being produced abroad and at locations outside the Hollywood area. In 1970, Respondent met with leaders of several labor organizations and negotiated modifications in various provisions of the collective contracts between it and these labor organizations.<sup>1</sup> The purpose of these changes was to achieve economies in production and thereby stimulate greater production of films in the Hollywood area. In exchange for the concessions made by these labor organizations, Respondent's employer-members agreed to hire Hollywood labor for movie production anywhere in the United States, with the exception of certain areas.

One of the more important changes agreed upon, and the one that prompted the Union to file the instant charge, was the expansion of the so-called studio zone<sup>2</sup> from a radius of 6 to 30 miles.<sup>3</sup> It appears that the purpose of the studio zone provision is to set forth a defined area within which the employer may, at his option, require his employees to report at the production or construction site, instead of at the studio. It further appears that a uniform definition of the studio zone has been contained in all of the collective-bargaining agreements for many years between Respondent and the various labor organizations with which it negotiates. If employees covered by one of these agreements are directed to work at a site outside the studio zone they report to the studio and are transported to the site in vehicles operated by employees represented by the Union.

On February 10, 1970, representatives of the Union attended a meeting of labor organization and employer representatives as well as other dignitaries. At this meeting, a representative of Respondent described the various collective-bargaining agreement changes that had been negotiated and were to become effective on March 1 of that year. After he had finished speaking, the Union's secretary-treasurer rose and stated that the Union did not know anything about those changes and the expansion of the studio zone would seriously affect its membership's employment. Subsequently during this meeting, Respondent's spokesman casually remarked to the Union's secre-

<sup>1</sup> These labor organizations are the International Alliance of Theatrical & Stage Employees and Moving Picture Machine Operators, the Screen Actors Guild, and the Screen Extras Guild

<sup>2</sup> The studio zone definition read as follows

The studio zone shall be the area within a circle six (6) miles in radius from 5th and Rossmore Streets, Los Angeles, California. The Columbia Ranch and Disney Studios in Burbank, California, and Studio Center in North Hollywood, California, shall be considered as within the studio zone

<sup>3</sup> The point from which this radius is measured was also changed by Respondent and these labor organizations

tary-treasurer that he would talk to him later.

The changes that were announced at the foregoing meeting became effective almost 3 weeks later on March 1, 1970. The Union did not take any action with respect to the studio zone change until March 16, 1970, when it filed a grievance against a member of Respondent who had had employees report for work to a site outside the 6-mile zone. The instant charge was filed on April 14, 1970, and shortly thereafter Respondent notified the Union of its position that the grievance was not subject to arbitration under their collective-bargaining agreement.<sup>4</sup> The Union did not thereafter pursue its grievance or take any other action regarding the agreement between Respondent and the aforementioned labor organizations to expand the studio zone.

It is undisputed that Respondent never consulted with the Union concerning any of the modifications it negotiated with the other labor organizations. It is equally clear that Respondent's collective-bargaining agreement with the Union was not changed and there is no evidence that Respondent ever required any employee represented by the Union to report for work to a site located outside the 6-mile studio zone definition contained in their contract. Accordingly, we find that Respondent did not violate Section 8(a)(5) and (1) by unilaterally modifying its collective-bargaining agreement with the Union.

On its face it seems clear that the expansion of the studio zone herein as it applied to other employees would have an impact on the work available to the bargaining unit employees represented by the Union.<sup>5</sup> It follows that Respondent was obligated to notify and bargain with the Union concerning the impact of this change.<sup>6</sup> The Union was notified of the change at the February 10, 1970, meeting. However, it is uncontroverted that the Union has never requested that Respondent bargain with it concerning any aspect of the studio zone change. Contrary to the Administrative Law Judge we find that the casual remark of Respondent's spokesman to the Union's secretary-treasurer at the aforementioned meeting that he would talk to him later is in no way sufficient to relieve a party who seeks bargaining of the obligation to request such discussion. By its failure, after having received notice, to request that Respondent bargain with it over the impact of the studio zone expansion, we find that the Union waived its rights in that matter.<sup>7</sup> Accordingly, we find that Respondent did not violate Section 8(a)(5) and (1) of the Act, and we shall dismiss the complaint in its entirety.

## ORDER

Pursuant to Section 10(c) of the National Labor

Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

<sup>4</sup> Respondent has not raised a defense in the instant proceeding based on *Collyer Insulated Wire*, 192 NLRB 837 See *MacDonald Engineering Co.*, 202 NLRB No 113.

<sup>5</sup> It is unnecessary for us to, and we do not, pass upon the Administrative Law Judge's finding that the evidence submitted by General Counsel proved that this change reduced the work opportunities of the employees represented by the Union, or the Respondent's contentions that in fact it had no substantial effect.

<sup>6</sup> Cf. *Combined Paper Mills, Inc.*, 174 NLRB 483

<sup>7</sup> Cf. *U S Lingerie Corporation*, 170 NLRB 750, and *Holiday Inn Central*, 181 NLRB 997.

## DECISION

### STATEMENT OF THE CASE

HERMAN CORENMAN, Administrative Law Judge: This case was tried at Los Angeles, California, on October 31 and November 1, 1972. The charge was filed by Studio Transportation Drivers Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Teamsters Local 399 or the Union, on April 14, 1971. The complaint which issued on June 29, 1972, alleges in substance that Association of Motion Pictures and Television Producers, Inc., herein called the Respondent, violated Section 8(a)(1) and (5) by unilaterally reducing the amount of work available to employees represented by the Union, in breach of the collective-bargaining agreement between the Respondent and the Union.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION—THE BUSINESS OF THE RESPONDENT

The Respondent is an incorporated employer association with its principal place of business at Hollywood, California, which admits to membership firms engaged in the production and distribution of motion picture and television films, and which exists in part for the purpose of negotiating, executing, and administering multiemployer collective-bargaining agreements on behalf of its employer-members with the collective-bargaining representatives of their employees. The employer-members of Respondent signatory to collective-bargaining agreements with the Union constitute an appropriate multiemployer unit for purposes of collective bargaining and annually, in the course and conduct of their business operations, collectively sell and ship from their studios in California motion picture films and other products valued in excess of \$50,000 directly to points outside the State of California.

Respondent and its employer-members are now, and have been at all times material herein, employers engaged in commerce and in a business affecting commerce within

the meaning of Section 2(6) and (7) of the Act.

## II THE LABOR ORGANIZATION INVOLVED

Studio Transportation Drivers Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Union herein, is a labor organization within the meaning of Section 2(5) of the Act.

## III THE ALLEGED UNFAIR LABOR PRACTICES

### A. Background

The Respondent, among other things, bargains for its employer-members as a multiemployer group with approximately 40 labor organizations, including approximately 20 locals which are affiliated with the International Alliance of Theatrical & Stage Employees and Moving Picture Machine Operators (IATSE), and also with the so-called basic craft unions which include the building service workers, culinary workers, plasterers, laborers, electricians, and Teamsters Local 399, the Charging Party herein. Additionally the Respondent represents its employer-members in the negotiation and administration of collective-bargaining agreements with the various Hollywood talent guilds, including the Screen Actors Guild (SAG) and the Screen Extras Guild (SEG), the Writers Guild of America, the Directors Guild, the Producers Guild, and the American Federation of Musicians. Covered by the collective-bargaining agreements are approximately 20,000 people in the craft unions, about 2,500 in the Screen Extras Guild, about 15,000 in the Screen Actors Guild, about 2,000 in the Writers Guild.

Because of a severe recession in the Hollywood area in 1969 and 1970, resulting from movies being produced abroad and in locations outside the Hollywood area, Mr. Charles Boren, executive vice president of the Respondent, entered into discussions with IATSE and the Guild Union representatives to achieve economies in production and to stimulate greater production of Hollywood-based motion pictures.

In 1970 the Respondent met with leaders of IATSE, the SEG, and the SAG to negotiate concessions from these labor organizations in exchange for agreement by the Respondent's employer-members to hire Hollywood labor for movie production anywhere in the United States, excluding San Francisco, Chicago, Cleveland, New York City, and Washington, D.C., which had their own local unions. No meetings were held with the so-called basic crafts, above referred to, including Teamsters Local 399 and no concessions were sought from them.

One of the significant contract changes negotiated between the Respondent and IATSE, SEG, and SAG was the change in definition of the Studio Zone described in previous collective-bargaining agreements. The definition of Studio Zone which had remained the same for many years in all collective-bargaining agreements and which had been the product of joint negotiations between the Respondent and all the labor organizations, including Teamsters Local 399 read as follows:

Studio Zone Defined—The studio zone shall be the

area within a circle six (6) miles in radius from 5th and Rossmore streets, Los Angeles, California. The Columbia Ranch and Disney Studios in Burbank, California, and Studio Center in North Hollywood, California, shall be considered as within the studio zone.

In connection with the Studio Zone as above defined, the collective-bargaining agreements between the Respondent and all of the unions, including Teamsters Local 399, provided in substance that the producer could at his option require his employees to report at the production or construction site, instead of at the studio, if such location was in the 6-mile radius.

For the purpose of computing pay, worktime began when the employee reported at the construction or production site in the 6-mile Studio Zone and ended when the employee left the construction or production site. But where the employee was required to work at nearby locations outside the 6-mile Studio Zone, in that case the employee would report at the studio and would be transported by the producer in a vehicle operated by a member of Teamsters Local 399 to the construction or production site and his time spent in being transported from the studio to the nearby location site and back again to the studio was considered as time worked in computing the employee's pay.

In the latter part of January, the Respondent on the one hand and IATSE, SAG, and SEG on the other hand, as part of the concessions granted by said Unions to the Respondent, agreed to amend the definition of the Studio Zone by extending the "six mile zone" to a "30-mile zone," to include all territory within a radius of 30 miles from the intersection of Beverly Boulevard and La Cienega Boulevard in Los Angeles. The basic crafts, including Teamsters Local 399, did not participate in the concession agreement and their contracts were not modified. Hence the "6 mile" Studio Zone in their agreements remained unchanged.

The effect of extending the Studio Zone from 6 to 30 miles was to eliminate working time previously paid for by the producers to personnel represented by IATSE, SAG, and SEG for the time spent in being transported from the studio to the nearby location (within the 30-mile zone) and back to the studio. It follows that the drivers represented by Teamsters Local 399 were deprived of work which they would have received under the "6 mile Studio Zone" in those instances where the nearby location was at a point between the limits of the 6-mile zone and the 30-mile zone.

Ben Loveless and Ralph Clare, respectively the secretary-treasurer, and president of Teamsters Local 399, testified without contradiction that they first learned of the change from the 6-mile studio zone to the 30-mile studio zone in a meeting in Mayor Yorty's office on February 10, 1970, to which they had been invited together with other union representatives and employer representatives as well as other dignitaries. At this meeting, Mayor Yorty announced that he was glad to render his offices to the announcement that certain concessions had been made by the unions in Hollywood that would help bring some of runaway productions back into Hollywood. At this point, Mr. Clare rose and stated that he was not aware of any discussions or concessions. The mayor then invited the Respondent's executive representative to describe the concessions. Mr. Boren, in describing the concessions, made the statement that the

guilds and unions involved had agreed to extend the 6-mile zone to a 30-mile zone. After Mr. Boren spoke, Teamsters Local 399's treasurer, Ben Loveless, rose and stated that Teamsters Local 399 knew nothing about any concessions. Loveless stated that a change of the 6-mile zone to 30-miles would seriously affect employment for Teamsters Local 399's membership. Mr. Loveless further testified without contradiction that, prior to the meeting in Mayor Yorty's office, no representative of the Respondent had notified Teamsters Local 399 that there would be a change in the Studio Zone or had requested the Union to bargain with respect to a change in the zone.

Mr. Loveless took no formal action on the contract change until he learned that one of the producer-members of the Respondent Association, namely the Columbia Studio, had their employees report to a location outside of the 6-mile zone. At that time, he notified Mr. Howard Fabrick, the Respondent's director of industrial relations, who stated he was willing to bypass step one of the grievance procedure and proceed immediately to step two. Accordingly, under date of March 16, 1970, Mr. Loveless directed a letter to the Respondent requesting a hearing on the grievance as follows:

On this date, crew members from Columbia Studio were required to furnish their own transportation to the Burbank Airport. In driving themselves they were doing so in violation of Paragraphs 21 and 23 of the current Studio Transportation Drivers Contract.

Howard Fabrick and I have agreed to waive the waiting time stipulated in the grievance procedure and request a hearing before the Committee. It was also agreed between us that the most convenient time for the hearing would be during the week beginning March 30th.

We will appreciate hearing from you as soon as possible.

After some conversation between the legal counsel of Teamsters Local 399 and Respondent's representatives and after unfair labor practices charge had already been filed on April 14, 1970, with the Board by Teamsters Local 399, the Respondent's counsel addressed a letter under date of April 30, 1970, to Teamsters Local 399's counsel as follows:

In accordance with our telephone conversation, this is in reply to your letter of April 21, 1970 in which you requested arbitration in the alleged violation of the six mile zone in the Collective Bargaining Agreement of Studio Transportation Drivers, Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

On April 15, 1970 we received a copy of a charge filed before the National Labor Relations Board on behalf of Studio Transportation Drivers Local 399, signed by yourself in which it is charged that the Association of Motion Picture and Television Film Producers of

America, "within six months prior to the filing of this charge, the above-charging party in that the Employer unilaterally eliminated jobs without affording the charging party an opportunity to bargain about the change in operations which resulted in the elimination of jobs."

There has been no change in the last six months in the Collective Bargaining Agreement of Local 399.

Under these circumstances there is no dispute to be arbitrated under such agreement.

I shall be happy to further discuss the matter with you, if you desire.

#### B. *The Impact of the Change on the Studio Zone*

Mr. Ben Loveless testified that as a consequence of the change in the Studio Zone from 6 miles to 30 miles, effective March 1, 1970, Teamsters drivers are being deprived of substantial amounts of work, and he estimated, upon the basis of documentary evidence in the record (G.C. Exhs. 6a, b, c) that between June 1, 1970, through July 31, 1972, Teamsters drivers were deprived of approximately 2,214 driver jobs. Mr. Loveless also testified without contradiction that union records showed that the number of drivers on the membership's roll have declined as follows: as of January 1970 there were 1,154 drivers, as of January 1971, there were 1,070 drivers; and as of January 1972 there were 1,033 driver-members remaining on the Teamsters Local 399's rolls.

The employer did not produce any records to refute or contradict the evidence supplied by the General Counsel. The Respondent did contend, however, and the evidence shows that the concessions made by IATSE and the Guild Unions have resulted in the production of motion pictures which otherwise were shelved or would have been produced overseas or in faraway locations. On the basis of the evidence submitted, I find that the change in the Studio Zone from 6 miles to 30 miles has caused a reduction in work for drivers represented by Teamsters Local 399.

#### C. *The Contract Breach*

It is important to point out that literally construed there has been no change in the contract language of Teamsters Local 399's agreement with the Respondent. But as a consequence of the amendment of the Studio Zone in Respondent's contracts with IATSE, SAG, and SEG, Local 399 is being deprived of opportunities to transport passengers from the studios to nearby locations between the limits of the 6- and 30-mile and return trips to the studio. Instead, members represented by IATSE, SEG, and SAG are at the option of the producers required to find their own means of conveyance to nearby locations within the 30-mile zone and back to their homes.

I am satisfied, and I find, that by its action vis-a-vis other labor organizations, namely, change of the Studio Zone by agreement with IATSE, SEG, and SAG, the Respondent

has unilaterally changed the wages, hours, and conditions of work of Teamster drivers without consultation or bargaining with Teamsters Local 399. It is established without dispute, and I find, that the change in the Studio Zone went into effect March 1, 1970, and that the officials of Teamsters Local 399 first learned of the change at Mayor Yorty's office, they concede that they did not request that the Respondent bargain over the change on the Studio Zone or the impact which the change would have over the wages, hours, and conditions of employment of the Teamsters drivers.

The General Counsel asserts an 8(a)(5) violation by the Respondent on two grounds; (1) in unilaterally, without notice to or bargaining with Teamsters Local 399, reducing the amount of work available to unit employees by extending the Studio Zone from 6 miles to 30 miles, and (2) by modifying section III, paragraph 21, of the collective-bargaining agreement by extending the Studio Travel Zone from 6 miles to 30 miles in contravention of Section 8(d) of the Act. In effect the General Counsel contends that the Respondent's unilateral action also constituted a breach of section III, paragraph 21, of the collective-bargaining agreement.

In this connection it is noted that the Studio Zone has been discussed in joint bargaining sessions between the Respondent and the several labor organizations, and it uniformly appeared in all the collective-bargaining agreements between the IATSE locals, the SEG, SAG, and the basic crafts, which included Teamsters Local 399. During the joint negotiation for the 1965 agreement, the Respondent's proposal to extend the Studio Zone from 6 miles to 12 miles was rejected by the various unions and was withdrawn. Again in the 1969 joint negotiations a proposal by the Respondent to extend the Studio Zone to 12 miles was again rejected by all the Unions and the proposal then withdrawn by the Respondent.

#### D. Collyer Principle

Both the General Counsel and the Respondent take the position that the *Collyer*<sup>1</sup> principle does not apply to the instant case, and that the Board should decide this case on its merits. By Teamsters Local 399's silence in the matter and because it filed the charge here, it is presumed that Teamsters Local 399 assents to the General Counsel's position, this, notwithstanding the fact that Local 399 resorted to the grievance procedure provided by the contract and, in fact, requested arbitration of this dispute which the Respondent rejected in its letter of April 30, 1970, to Teamsters Local 399's legal counsel with the comment ". . .there is no dispute to be arbitrated under such agreement." Thereafter Teamsters Local 399 made no attempt to resort to a court to enforce the arbitration of the dispute; instead pursuing a remedy through the Board's processes.

The chief reason advanced by both the General Counsel and the Respondent against the application of the *Collyer* rule is the fact that unlike the Respondent in the *Collyer* case, the Respondent in this case is unwilling to submit the matter to arbitration.

As the General Counsel points out in his brief, "important to the *Collyer* decision was the Board's finding, that "Respondent has credibly asserted its willingness to resort to arbitration." In this connection it should be noted that the other criteria which the Board held were significant in the *Collyer* case to warrant dismissal of the complaint, are also present in the instant case.

In any event, until the Board applies the *Collyer* rule to situations like the instant case, where all the parties seek disposition through the Board's processes rather than deference to arbitration, I do not deem it appropriate to dispose of this case as was done in *Collyer*.

#### E. Analysis and Conclusionary Finding

It is established without dispute and I find that the Respondent's motive in expanding the Studio Zone from 6 to 30 miles, which was accomplished by bargaining with IATSE, the SAG and the SEG, was purely economic, and involved concessions made by the aforesaid labor organization as the *quid pro quo* for the promise of the Respondent on behalf of its members, to produce more motion pictures with Hollywood workers. It was expected that this concession would save the producers many thousands of dollars which otherwise would have been paid to movie crews and talent for nonproductive time consumed in their transportation from the studio to nearby locations and back to the studio, and as a consequence production of motion pictures would be stimulated because of economies in their production.

The Respondent contends, that it did not request Teamster Local 399 to bargain, as it had no desire to change the 6 mile Studio Zone contained in Teamster Local 399's agreement, or in the agreements of the other basic crafts.

The Respondent also points out that concessions granted by IATSE and the Guild Unions benefited the drivers represented by Teamsters 399, as it resulted in the production of motion pictures in the Hollywood area which otherwise would have been shelved or produced in overseas and far away locations.

It is clear, however, that as an incident to the expansion of the Studio Zone from 6 miles to 30 miles, Teamster drivers lost driving opportunities which they would otherwise have received where the nearby location happened to be in the area between the circumference of the 6-mile zone and the 30-mile zone.

I have concluded that inasmuch as the definition of the Studio Zone was uniform in all agreements between the Respondent and the various unions, Teamsters Local 399 included, and from time to time had been the subject of joint bargaining between the Respondent and the Unions,<sup>2</sup> that a change in the Studio Zone clause was a contract matter which should have required joint bargaining by all the affected unions, especially Teamsters Local 399, in view of the obvious impact that an expansion of the studio zone would have on work opportunities of Teamsters drivers.

I have concluded that it would be impractical and inappropriate to require the Respondent to bargain anew over

<sup>2</sup> For example in 1965, and again in 1969, the Unions jointly rejected Respondent's proposals to extend the Studio Zone to 12 miles.

<sup>1</sup> *Collyer Insulated Wire*, 192 NLRB 837

its decision to change the Studio Zone in the agreements with IATSE, SAG, and SEG, or to return to the 6-mile zone, as the decision has already been made, and would interfere with contractual arrangements in effect since March 1, 1970, with numerous labor organizations representing thousands of employees.

However, I see no reason why the Respondent should not be required to bargain with Teamsters Local 399 over the effects of the Studio Zone expansion on the drivers whom it represents. At the February 10, 1970, meeting in Mayor Yorty's office, the Respondent was put on notice by both Clare and Loveless that Teamsters Local 399 objected to the Studio Zone change.

Although Mr. Ben Loveless conceded that following the February 10 conference in Mayor Yorty's office he did not request the Association to bargain over the change in the Studio Zone, I am nevertheless of the opinion that in view of Loveless' and Clare's strong objections to the change expressed in Mayor Yorty's office on February 10, and in view of the further fact that the Respondent's executive officer, Mr. Boren, mentioned to Loveless at the February 10 meeting that he would talk to him later about the zone change, that under the circumstances there was no need for Loveless to make a further request to bargain over the zone change or its impact on the Teamsters drivers.<sup>3</sup>

I would therefore find that by changing the Studio Zone from 6 to 30 miles, without notice to or consultation with Teamsters Local 399, the Respondent, unilaterally changed the wages, hours, and working conditions of the drivers represented by Teamsters Local 399 in violation of Section 8(a)(1) and (5) of the Act. The fact that the Respondent's action may have rested on valid economic motives rather than union animus will not justify unilateral action which has a substantial impact on the collective-bargaining unit. What was said by the Board in *Town & Country Manufacturing Company, Inc.*, 136, 1022, 1027, is applicable here:

Experience has shown, however, that candid discussion of mutual problems by labor and management frequently results in their resolution with attendant benefits to both sides. Business operations may profitably continue and jobs may be preserved. Such prior discussion with a duly designated bargaining representative is all that the Act contemplates. But it commands no less.

See also *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203 (1964); *Brotherhood of Locomotive Firemen and Enginemen*, 168 NLRB 677; *N.L.R.B. v. Katz*, 369 U.S. 736 (1962); *Assonet Trucking Co., Inc.*, 156 NLRB 350; *Ozark Trailers, Inc.*, 161 NLRB 651; *Channel Master Corp.*, 162 NLRB 632.

Even those cases which excuse the employer from bargaining with a union over a managerial decision, based solely on greatly changed economic conditions, to terminate its business and reinvest its capital in a different enterprise do not excuse the employer from the duty to bargain on the economic effects of his decision on the employees in the collective-bargaining unit.

<sup>3</sup> It should also be noted that under date of March 16, 1970, Teamsters Local 399 filed a written grievance with the Respondent concerning the Studio Zone's application to a teamster driver.

In *N.L.R.B. v. Transmarine Navigator Corporation*, 380 F.2d 933, 939 (C.A. 9, 1967). The court said:

This is not to hold that the employer is absolved of all duty to bargain with a union when he makes such a managerial decision [to terminate its business and reinvest its capital in a different enterprise]. Once such a decision is made the employer is still under an obligation to notify the union of its decision so that the union may be given the opportunity to bargain over the rights of the employees whose employment status will be altered by the managerial decision [citations omitted]. Such bargaining over the "effects" of the decision on the displaced employees may cover such subjects as severance pay, vacation pay, seniority, and pensions, among others, which are necessarily of particular importance and relevance to the employees.

Upon the foregoing findings of fact and the entire record, I make the following:

#### CONCLUSIONS OF LAW

1. The Respondent, Association of Motion Picture and Television Producers, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Studio Transportation Drivers Local 399, 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 employees of the employer-members of Respondent employed by said members in the State of California to render services in connection with the production of motion pictures under the supervision of said members' studios located in Los Angeles County, California, in the classifications of drivers gang boss; chauffeurs and/or truckdrivers; special equipment driver; camera car driver; stunt and/or blind driver; automotive service employees: dispatcher; ramrod; wrangler gang boss; wrangler (pickup); wrangler (braider) trainers: (domestic livestock) trainers (stable); Wild animal trainers; wild animal handlers; automotive gang boss; automotive mechanics; dog trainers; and dog handlers; excluding all other employees, including auto mechanic, office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above in paragraph 3 and by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By unilaterally reducing work opportunities for employees represented by Teamsters Local 399 without consultation or bargaining with Teamsters Local 399, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the purposes and policies of the Act.

In order to eliminate the risk of prejudice to any party, it is recommended that the Board retain jurisdiction over this dispute solely for the purpose of entertaining an appro-

priate and timely motion for further consideration upon a proper showing that either (a) the dispute has not with reasonable promptness after the issuance of this decision been resolved by amicable settlement or (b) the arbitration order herein recommended has not been fair and regular or has reached a result which is repugnant to the Act.<sup>4</sup>

[Recommended Order omitted from publication.]

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<sup>4</sup> Compare the remedy and order of dismissal in *Collyer Insulated Wire (supra)*