

Viewlex, Inc., formerly known as Globe Albums, Inc. and Local 875, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CA-3131

July 13, 1973

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

On April 25, 1973, Administrative Law Judge John M. Dyer issued the attached Decision in this proceeding. Thereafter, the General Counsel, the Respondent, and the Charging Party filed exceptions to the Administrative Law Judge'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 authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 Administrative Law Judge and hereby orders that Respondent, Viewlex, Inc., formerly known as Glob Albums, Inc., Hauppauge, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Administrative Law Judge's recommended Order.

DECISION

JOHN M. DYER, Administrative Law Judge: On November 14, 1972,¹ Local 875, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, filed the charge in this case against Globe Albums, Inc., now known as Viewlex, Inc., herein called the Company or Respondent, alleging that on or about November 13, the Company refused to negotiate with the Union and unilaterally changed the terms and conditions of its employees' employment which terms were set forth in a collective-bargaining agreement between the Company and the Union.

The Regional Director of Region 29 issued a complaint on December 29, alleging that Respondent had violated Section 8(a)(1) and (5) of the Act by changing existing contract terms concerning grievance procedures, union visita-

tion and bulletin board privileges, and other terms and conditions without notice to the Union and without affording the Union an opportunity to negotiate and bargain.

Respondent's answer, dated January 10, 1973, admitted the requisite jurisdictional and commerce allegations, the status of the Union, and the supervisory positions of Sam Rothberg and Leo Margolies and admitted that the Union was the exclusive representative of a P and M (production and maintenance) unit at Respondent's establishment and that the parties had a 3-year contract commencing January 9, 1970, which expired on January 9, 1973. Respondent denied that it had made unilateral changes in the contract as alleged in the complaint or that it had in any way violated the Act.

At the hearing held on February 22, 1973, in Brooklyn, New York, the parties were allowed full opportunity to appear, to examine and cross-examine witnesses, and to argue orally. Briefs have been received from the Respondent and the General Counsel and have been considered.

The actions taken by Respondent are in essence admitted, but the Respondent denies that such actions violated the Act claiming that its actions were justified in the name of neutrality because a second union was competing to represent the unit employees.

I have concluded that Respondent's actions under Board law were violative of Section 8(a)(5) and (1) of the Act and have so found.

On the basis of the pleadings and the evidence received I make the following:

FINDINGS OF FACT

I RESPONDENT AND THE UNION INVOLVED

Respondent is a New York corporation engaged in the manufacture, sale, and distribution of phonograph album covers and related products with its plant and office in Hauppauge, New York, from which, during the past year, it sold and shipped products valued in excess of \$50,000 directly to points outside the State of New York.

Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent admits and I find that the Union herein is a labor organization within the meaning of Section 2(5) of the Act.

II THE UNFAIR LABOR PRACTICES

A. Background and Admitted Facts

Respondent is a printer and fabricator of record albums and was doing business as Globe Albums, Inc., as a part of Viewlex, Inc., during the relevant period. In November 1972 the name was changed to Viewlex, Inc.

The Union and Respondent entered into a contract in January 1970 for the P and M unit at Respondent's plant. This 16-page contract, among other things, provided for union security in its article 3, stating that all employees, as a condition of their employment were to become union members by the 31st day following the effective date of the

¹ Unless specifically stated otherwise all dates herein occurred in 1972

contract or the date of their employment. The contract has a grievance procedure and article 12, section 2a, is as follows:

Section 2.

(a) Any Shop Steward shall be permitted to leave his or her work to investigate and adjust the grievance of any employee within his or her jurisdiction, after notification to his Supervisor. Employees shall have the Shop Steward or a representative of the Union present during the discussion of any grievance with representatives of the Company.

Article 14 of the contract provides that:

Art. 14. The Employer will provide the Union with a Bulletin Board in an appropriate location in the plant to be used by the Union for posting of all Union notices and literature.

Contract Article 17 provides that:

VISITATION:

Art. 17. Union representatives shall be given the right to enter the plant premises at all reasonable times for the purpose of investigating grievances and to secure the enforcement of the contract and for such other purposes as may be necessary; provided however, that prior to entering the plant property they shall first advise the front office of their presence and intention to enter the plant property.

On October 24, Local 119 of the New York Papercutters and Bookbinders Union filed a petition in Case 29-RC-2099 seeking the P and M unit at Respondent's plant.

On November 8, counsel for the Charging Party wrote a letter to Respondent requesting that Respondent furnish it with the following information:

- a. the addresses of all unit employees
- b. the name of people who you consider outside the unit and the reason for their exclusion. If you claim these employees are guards or supervisors please indicate on the aforementioned list their title.

As you know the collective bargaining agreement between you and Local 875 makes this information relevant in order that we might properly service the unit employees covered by the agreement.

Sani Rothberg testified that his superior, Leo Margolies, received this letter and decided on the course of action Respondent would take and had the following letter prepared which Rothberg signed and sent to the Union on November 13. The letter stated:

I am responding to your request of November 8, 1972, for information about our production and other employees.

Inasmuch as I do not believe you are entitled to that information I cannot furnish it at this time. In addition, I believe that furnishing it at this time—when another union is claiming to represent our employees—would be improper.

For your information, the enclosed notice was presented to Viewlex Supervisors and Local 875 Shop Stewards on November 13, 1972.

The notice which was enclosed with the letter was also distributed to Respondent's supervisors and the union stewards. The notice is as follows:

During this period when we are involved in an at-

tempt by two unions to represent our employees, we do not want to appear to favor either of the unions.

Therefore, until further notice,

(1) Notice and literature to be posted on the Local 875 bulletin board must first be approved by management.

(2) Any Local 875 Steward who wishes to investigate a grievance must first get the permission of his supervisor.

(3) Outside union representatives may not be allowed in the plant without first obtaining the permission of management.

(4) Employees and Supervisors are not to solicit in favor of either union, or against either or both unions, in work areas, during their working time.

I am sure you will fully cooperate with these new rules during this unusual period.

Rothberg testified that sometime around November 30, Union Representative Emanuele appeared at the Company and attempted to go into the plant. Rothberg stopped Emanuele and reminded him of the letter which Rothberg had sent to the Union stating that it was necessary for union representatives to obtain permission before entering the plant. Emanuele then asked for permission and Rothberg gave it reminding him that in the future he would have to check with company management and get permission before entering the premises. On his way out of the plant Emanuele told Rothberg he wanted to post something on the union bulletin board. Rothberg first testified he told Emanuele that he would like to see what Emanuele wanted to post on the bulletin board but that Emanuele did not show it to him and left. After being shown a sworn statement which he had given concerning this incident, Rothberg said that the wording of the statement was correct. This second version recited that Emanuele stopped by Rothberg's office and asked for permission to post a notice about a union meeting and that Rothberg told Emanuele that he could not post such a notice and Emanuele then left without posting the notice.

Rothberg admitted that each of the procedures set out in the notice to the shop stewards and supervisors was different from what the procedures had been theretofore under the contract.

B. Analysis and Conclusions

Respondent defends its action in making the changes on the basis that it wanted no problems between the two unions and did not wish to appear to be favoring the incumbent union. Respondent also stated that it received no protests or complaints from the Union concerning the notice and that no union representative had attempted to enter the plant since November 30 nor had the Union since that date asked permission to post union literature. Respondent also claims that it has never refused permission to a shop steward to check into a grievance.

The fact that the Union filed a charge in this case on the day after receiving the Company's letter and notice would seem to be a sufficient indication that the Union was complaining about Respondent's unilateral action. There is no question under these facts but that the action taken by

Respondent was unilateral without any consultation with the Union and in regard to the shop steward's rights, article 12; the bulletin board rights, article 14; and the Union's visitation rights, article 17; clearly contravened the then current contract provisions.

The Union's stated reason that it needed the requested addresses of all unit employees and the names of personnel Respondent considered outside the unit in order to service and police the contract appears to be a sufficient reason for the request particularly in the light of the contract's union-security provision.

While Respondent may have felt that it was acting in good faith in denying this information to the Union and in changing the terms of the contract because of a rival petition seeking this unit, Respondent violated Section 8(a)(5) and (1) of the Act by its actions. The Board in *St. Louis Cordage Mills*, 170 NLRB 167, held that a respondent violated Section 8(a)(5) of the Act by unilaterally modifying a contract despite the fact that a rival union had filed a representation petition and the incumbent union's contract was no bar to that petition. The Board stated that an employer is obligated to continue to recognize and bargain with an incumbent union over the administration of an existing contract, and where the company refused to make payments to a welfare fund as required by the contract, the Board held that such refusal withheld the full measure of recognition which was due the union. The Board concluded that by that action respondent had withdrawn recognition from a currently certified bargaining agent before it was legally entitled to do so.

In one of its recent decisions, *Deill Construction Company*, 196 NLRB 817, the Board following the same reasoning held that a respondent violated Section 8(a)(5) and (1) of the Act by hiring and paying employees at a rate below that specified in the contract. This again was a unilateral action in violation of specific contract terms, the same general type of action Respondent has engaged in in this case.

Both Respondent and the General Counsel cite *Shea Chemical Corporation*, 121 NLRB 1027, for different propositions but only the following language of that case appears appropriate here.

This is not to say that the employer must give an undue advantage to the rival union by refusing to permit the incumbent union to continue administering its contract or processing grievances through its stewards.

Respondent's brief makes flat statements that the Union has suffered no harm without citing any evidence. Respondent's reliance on *Telautograph Corporation*, 199 NLRB No. 117, is misfounded because here again the Board stated ". . . the incumbent union may still continue to administer its contract and process grievances. . . ."

The question of bargaining collectively is not really present in this case in that there is no request for contract negotiations here, but rather this is the reverse, that Respondent is acting unilaterally without any legally sufficient reason for so doing.

Accordingly, I conclude and find that Respondent, by denying the Union the information it requested in its November 8 letter and by the unilateral actions taken and by Respondent's unilateral changes in the contract as demonstrated by its November 13 notice to its supervisors and the

union shop steward and by its subsequent enforcement of such unilateral contract changes, violated Section 8(a)(5) and (1) of the Act and I so find and conclude.

III THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, and therein found to constitute unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, occurring in connection with Respondent's business operations set forth 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.

IV THE REMEDY

Having found that Respondent violated Section 8(a)(5) and (1) of the Act, it will be required to cease and desist therefrom, or from any like or related conduct, and to take certain affirmative action designed and found necessary to effectuate the policies of the Act.

Having found that Respondent violated Section 8(a)(5) of the Act by refusing to bargain with the Union in good faith as the representative of its employees in an appropriate unit by unilaterally and without notice to or consultation with the Union and in violation of its contract provisions; refusing to permit its stewards to tend to union business without specific permission; refusing to allow visitation privileges of union officials without specific permission; and refusing the Union its bulletin board privileges without specific permission, I shall recommend that Respondent rescind its notice to stewards and supervisors of November 13 and that it abide by such contract terms until and unless the Union is no longer the exclusive bargaining representative of the employees in the aforesaid unit or said contract terms are changed by mutual agreement.

Having further found that Respondent without adequate reason refused to give the Union its requested information regarding names and addresses of unit members and the names of those employees considered by the Company not to be in the P and M unit and the reasons therefore, I will recommend that Respondent be ordered to furnish the Union with such information.

CONCLUSIONS OF LAW

1. Viewlex, Inc., formerly known as Globe Albums, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 875, 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 production and maintenance employees and truck-drivers of Respondent, employed at its Hauppauge plant, exclusive of office clerical employees, guards, professional employees and all supervisors as defined in Section 2(11) of 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 relevant times since January 1970, the Union has been, and is now, the exclusive representative of the employees in the said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. Respondent refused to bargain in good faith with the Union, which is the exclusive representative of its employees in the appropriate unit stated above by unilaterally abrogating certain union steward privileges, union plant visitation privileges, and union bulletin board privileges and by refusing to furnish the Union information it needed to service and police the contract in which the above privileges were set forth, all without notification to or consultation with the Union and it thereby has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

RECOMMENDED ORDER ²

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case considered as a whole, it is recommended that Viewlex, Inc., formerly known as Globe Albums, Inc., of Hauppauge, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with Local 875, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by unilaterally abrogating contract privileges concerning stewards' rights, union plant visitation rights and bulletin board privileges and refusing to furnish the Union with requested information needed to service and police the said contract, until and unless the aforesaid labor organization is no longer the exclusive bargaining representative of the employees in the appropriate unit.

(b) In any like or related manner interfering with the efforts of the said labor organization to bargain collectively on behalf of the employees in the unit herein found appropriate.

2. Take the following affirmative action designed and found necessary to effectuate the policies of the Act:

(a) Bargain collectively with the aforesaid labor organization upon request by rescinding its November 13 notice to shop stewards and supervisors and by furnishing the Union the information requested in its November 8 letter.

(b) Post at its Hauppauge, New York, plant copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative,

shall be posted by 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.

APPENDIX

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

After a trial in which the Company, the Union, and the General Counsel of the National Labor Relations Board participated and offered evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice and we intend to carry out the order of the Board and abide by the following:

WE WILL NOT refuse to bargain collectively in good faith with Local 875, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by refusing to honor the contract clauses 12, 14, and 17 which provide for union shop stewards' visiting rights, union plant visitation rights, and union bulletin board privileges, until and unless the Union is no longer the exclusive bargaining representative of our employees in the appropriate unit.

WE WILL comply with the Union's request for information to enable it to service and police the contract until and unless the Union is no longer the exclusive bargaining representative of our employees in the appropriate unit.

WE WILL NOT in any like or related manner interfere with the efforts of the Union to bargain collectively on behalf of the employees covered by our collective-bargaining agreement. The appropriate unit is:

All production and maintenance employees and truckdrivers of Respondent, employed at its Hauppauge plant, exclusive of office clerical employees, guards, professional employees and all supervisors as defined in Section 2(11) of the Act.

VIEWLEX, INC., FORMERLY
KNOWN AS
GLOBE ALBUMS INC.
(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

² 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.

³ 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 read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212-596-3535.