

**Westinghouse Broadcasting Company, Incorporated/
KYW-TV and Directors Guild of America, Incorporated.** Case 4-CA-6581

March 19, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS

Upon a charge filed on September 25, 1973, by Directors Guild of America, Incorporated, herein called the Union, and duly served on Westinghouse Broadcasting Company, Incorporated/KYW-TV, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 4, issued a complaint on October 16, 1973, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 30, 1973, following a Board election in Case 4-RC-10351, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about September 7, 1973, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On October 31, 1973, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On December 3, 1973, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, and memorandum in support thereof. Subsequently, on December 7, 1973, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Thereafter, on January 7, 1974, Respondent filed a response, entitled "Opposition to Motion for Summary Judgment." The Union

subsequently filed a statement in support of the Motion for Summary Judgment.

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.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Motion for Summary Judgment, Respondent attacks determinations made in the underlying representation case. Our review of the record indicates that on April 30, 1973, the Union filed a petition for a unit of producer-directors at the Respondent's Philadelphia, Pennsylvania, television station. On July 23, 1973, the Regional Director issued his Decision and Direction of Election, in which he found, contrary to Respondent, that the Union was a labor organization within the meaning of the Act, that the producer-directors were neither supervisors nor managerial employees, and that a unit of producer-directors was appropriate for the purposes of collective bargaining. Respondent then filed a request for review of the Regional Director's Decision. On August 21, 1973, the Board denied the request for review on the grounds that it raised no substantial issues warranting review.² On the next day, an election was conducted, in which all of the four eligible voters cast ballots for the Union. On August 30, 1973, the Union was certified.

Respondent now urges that special circumstances compel reconsideration of the representation case and that the Board should revoke the certification and dismiss the complaint. However, as Respondent has set forth no special circumstances which would require us to reconsider our decision, we find Respondent's contentions lacking in merit. It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor

¹ Official notice is taken of the record in the representation proceeding, Case 4-RC-10351, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151, enfd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1967), *Follett Corp.*, 164

NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

² The Board's Order denying the request for review permitted one individual to vote subject to challenge.

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941), Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

does it set forth that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.⁴

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana, and is engaged in the operation of broadcasting stations throughout the United States including television station KYW-TV, located in Philadelphia, Pennsylvania.

During the past year, Respondent, in the course and conduct of its business operations, sold and provided services valued in excess of \$500,000. During the same period Respondent's sales of services to customers outside the Commonwealth of Pennsylvania exceeded \$50,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Directors Guild of America, Incorporated, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

⁴ In its answer to the complaint, Respondent also denied that the Union requested Respondent to bargain with it, and that Respondent refused to do so. However, attached to the General Counsel's Motion for Summary Judgment are a letter dated August 28, 1973, from the Union to Respondent's general manager, an affidavit by the Union's executive secretary, and a letter dated September 25, 1973, from Respondent's business manager to the Union. The August 28 letter requests bargaining. The affidavit states that on September 7, 1973, and on various later dates, the executive secretary requested Respondent's labor relations lawyer to

All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards, and supervisors as defined in the Act.

2. The certification

On August 22, 1973, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 4, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on August 30, 1973, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about September 7, 1973, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 7, 1973, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since September 7, 1973, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and

bargain, and that the latter consistently answered that Respondent had not yet decided whether to bargain or to test the Board's action in the courts. The September 25 letter indicates a management decision not to bargain. Nor does Respondent's response advert to the request and refusal.

As the contents of the affidavit and letters have thus not been controverted, they stand admitted. Therefore, Respondent's denials of the allegations of the complaint are stricken as sham and the allegations are deemed to have been admitted and found to be true.

tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Westinghouse Broadcasting Company, Incorporated/KYW-TV, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Directors Guild of America, Incorporated, is a labor organization within the meaning of Section 2(5) of the Act.

3. All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other 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. Since August 30, 1973, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 7, 1973, and at all times thereafter, to bargain collectively

with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Westinghouse Broadcasting Company, Incorporated/KYW-TV, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Directors Guild of America, Incorporated, as the exclusive bargaining representative of its employees in the following appropriate unit:

All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its television station KYW in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region

⁵ In the event that this 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."

4, 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 4, in writing, within 20 days from the date of this Order, 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

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Directors Guild of America, Incorporated, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit

described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All staff producer-directors employed by Westinghouse Broadcasting Company, Inc., at its television station KYW in Philadelphia, Pennsylvania; but excluding all other employees, guards, and supervisors as defined in the Act.

WESTINGHOUSE
BROADCASTING
COMPANY,
INCORPORATED/KYW-TV
(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, William J. Green, Jr., Federal Building, 600 Arch Street, Suite 4400, Philadelphia, Pennsylvania 19106, Telephone 215-597-7601.