

Wright Motors, Inc. and Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 25-CA-6576

January 23, 1975

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND
PENELLO

Upon a charge filed on October 2, 1974, by Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Wright Motors, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint on October 10, 1974, 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 October 19, 1973, following a Board election in Case 25-RC-5320, 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 July 17, 1974, 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 17, 1974, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On November 1, 1974, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and to strike portions of the Respondent's answer to the complaint. Subsequently, on November 19, 1974, 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. Respondent thereafter filed a response to Notice To Show Cause.

¹ Official notice is taken of the record in the representation proceeding, Case 25-RC-5320, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (C.A. 4,

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 Notice To Show Cause, Respondent opposes the instant motion on two grounds. First it argues that the certification issued the Union in the underlying representation proceeding is invalid because challenges to two ballots therein were erroneously sustained, or that a hearing is required thereon. Second, Respondent argues that this proceeding is barred by Section 10(b) of the Act because its alleged refusal to bargain occurred more than 6 months prior to the filing of the charge and moves for Summary Judgment and dismissal of the complaint on this basis. The General Counsel, in support of his motion, argues that the issue concerning the challenged ballots was litigated in the representation proceeding and thus may not be relitigated herein, and that this action is not barred by Section 10(b) because the Union's request to bargain was within 6 months of the filing of the charge. On essentially the same grounds, the General Counsel also moves to strike those portions of Respondent's answer which put the above-mentioned matters in issue.

With regard to Respondent's contention that the challenges to two ballots should have been overruled, we have reviewed the record in the representation proceeding, Case 25-RC-5320, to the extent necessary to determine if this issue was litigated therein, as submitted by the General Counsel. It appears that the election conducted on June 5, 1973, pursuant to a Stipulation for Certification Upon Consent Election resulted in a 14 to 12 vote in favor of the Union, with 3 challenged ballots. After an investigation, the Regional Director issued a report, *inter alia*, on the challenges, recommending that the challenges of two ballots be sustained as the ballots were cast by employees who were close relatives of owners and managers of the Respondent, and the remaining challenged ballot be left unresolved as it was no longer determinative of the election results. Respondent filed exceptions to this report, with affidavits attached, together with various motions, basically assigning error to the Regional Director's findings and recommendations. On October 19, 1973, the Board issued a Decision and Certification of Repre-

1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1957); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

sentative, in which it noted that Respondent's exceptions raised no material issues warranting reversal or modification of the Regional Director's findings and recommendations and adopted the same, and certified the Union. Thereafter, Respondent filed further exceptions and a motion to reconsider the Board's ruling, asserting that the representation proceeding should be consolidated with pending unfair labor practice proceedings for hearing, and noting that the Board had erred in its designation of one of the employees whose ballot had been challenged. On November 6, 1973, the Board denied Respondent's motion as it did not contain anything not previously considered by the Board, and corrected the inadvertent error in its previous decision.

It thus appears that the General Counsel's position is sound, as the issues concerning the challenged ballots, including the hearing thereon, were raised and considered in the underlying representation proceeding.

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.²

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 does it allege 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.

With regard to Respondent's contention that this proceeding is barred by Section 10(b), we note that the complaint alleges that the Union requested bargaining with Respondent on January 30, April 2, and July 8, 1974, and that Respondent refused to bargain on February 1, April 2, and July 17, 1974, respectively. In its answer to the complaint, Respondent denies the April 2, 1974, request and refusal, but does not dispute the July request and refusal which are also supported by uncontroverted letters of the Union's request and Respondent's refusal bearing the July dates attached to the complaint as exhibits. Inasmuch as the charge was filed on October 2, 1974, some 3 months after the Union's request and Respondent's refusal to bargain, and as the duty to bargain upon request is a continuing one,³ we find no merit in Respondent's

contention. Accordingly, Respondent's Motion for Summary Judgment and for dismissal of the complaint are hereby denied.

In view of the foregoing determinations, we shall grant the General Counsel's Motion for Summary Judgment and motion to strike those portions of Respondent's answer raising the issues resolved herein.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is an Indiana corporation with its principal office and place of business located in Evansville, Indiana, where it is engaged in the sale, service, and distribution of new and used cars, accessories, parts, and related products. During the past 12 months, a representative period, Respondent, in the course and conduct of its business operations, sold and distributed products, the gross value of which exceeded \$500,000. During the same period, Respondent shipped and transported products valued in excess of \$50,000 from its place of business in interstate commerce directly to States other than the State of Indiana. During the same period, Respondent received goods valued in excess of \$50,000 transported to its place of business in interstate commerce directly from States other than the State of Indiana.

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

Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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:

² 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).

³ *Louisiana Bunkers, Inc.*, 163 NLRB 656, 659 (1967).

All mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana establishment: but excluding all office clerical employees, dispatchers, all professional employees, all guards, and supervisors as defined in the Act.

2. The certification

On June 5, 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 25 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 October 19, 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 July 8, 1974, 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 July 17, 1974, 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 July 17, 1974, 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 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 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

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

CONCLUSIONS OF LAW

1. Wright Motors, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 215, 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 mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana establishment: but excluding all office clerical employees, dispatchers, all professional employees, all 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 October 19, 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 July 17, 1974, 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, Wright Motors, Inc., Evansville, Indiana, 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 Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana establishment: but excluding all office clerical employees, dispatchers, all professional employees, all 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 Evansville, Indiana, facility copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 25, 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 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ 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."

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 Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana establishment: but excluding all office clerical employees, dispatchers, all professional employees, all guards, and supervisors as defined in the Act.

WRIGHT MOTORS, INC.