

WTMJ, Inc. and Directors Guild of America, Inc.
Case 30-CA-3612

September 10, 1976

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND JENKINS

Upon a charge filed on April 22, 1976, by Directors Guild of America, Inc., herein called the Union, and duly served on WTMJ, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 30, issued a complaint and notice of hearing on May 4, 1976, 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 April 5, 1976, following a Board election in Case 30-RC-2609, 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 April 19, 1976, 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 May 12, 1976, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On May 28, 1976, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 11, 1976, 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.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

¹ Official notice is taken of the record in the representation proceeding, Case 30-RC-2609, 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), enf'd 388 F 2d 683 (CA 4, 1968), *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd 415 F 2d 26 (CA 5, 1969), *Intertype Co. v. Penello*, 269 F Supp 573 (DC Va., 1967), *Follett Corp.*, 164 NLRB 378 (1967), enf'd 397 F 2d 91 (CA 7, 1968), Sec 9(d) of the NLRA, as amended

tional 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, its response to the Motion for Summary Judgment, its Motion for Reconsideration and for Stay of the Direction of Election, and in its response to the Order to Show Cause Respondent denies the validity of the election and certification on the basis of the Board's disposition of its objections to the election in which it disputed the appropriateness of the unit found to be appropriate by the Board. Counsel for the General Counsel contends that Respondent, in its several pleadings, raises no issues which were not determined by the Board in the underlying representation proceeding. We agree with the General Counsel.

Review of the record, including that in representation Case 30-RC-2609, indicates that, after hearing, the Regional Director, on August 27, 1975, issued an order transferring the case to the National Labor Relations Board in Washington, D.C. On February 26, 1976, the Board issued a Decision, Order, and Direction of Election.² Respondent, on March 10, 1976, filed a Motion for Reconsideration and for a Stay of the Direction of Election in which it contended, in substance, as it had before the Board, that the unit found by the Board to be appropriate was, in fact, inappropriate. The Board, in an order of April 14, 1976, denied Respondent's motion as containing nothing not previously considered by the Board.

On March 26, 1976, the Regional Director conducted an election in Case 30-RC-2609 in the unit found appropriate by the Board. At the conclusion of the election the parties were furnished with a tally of ballots for the Union, none was cast against the Union and 1 ballot was challenged. On April 5, 1976, the Regional Director certified the Union as exclusive collective-bargaining representative of the unit found appropriate. The Board, on April 14, 1976, issued an Order Denying Motion for Reconsideration and for Stay of the Direction of Election.

By letter of April 7, 1976, the Union requested Respondent to meet and bargain with it and in a letter of April 19, Respondent declined to meet and bargain with the Union, citing its intent to seek judicial review. In its answer to the complaint and in its other pleadings noted above, Respondent substantially reiterates its denial of the appropriateness of the unit. We thus find that Respondent has raised no new issues properly litigable in this proceeding.

² 222 NLRB 1111

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 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 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Wisconsin corporation, is engaged in radio and television broadcasting at its Milwaukee, Wisconsin, location. During the past calendar year Respondent received gross revenue in excess of \$100,000.

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, Inc., 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 Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All producer/directors and all others doing the work of directors employed by the WTMJ,

Inc., television station in Milwaukee, Wisconsin,⁴ but excluding all other employees, guards, and supervisors as defined in the Act.

2. The certification

On March 26, 1976, 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 30, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on April 5, 1976, 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 April 7, 1976, and at all times thereafter, the Union has requested 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 April 19, 1976, and continuing at all times thereafter to date, 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 Respondent has, since April 19, 1976, 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 mean-

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

⁴ Senior floor managers were excluded but the trainee was included in the unit 222 NLRB 1111, fn. 5

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

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

3. All producer/directors and all others doing the work of directors employed by the WTMJ Inc., television station in Milwaukee, Wisconsin, 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 April 5, 1976, 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 April 19, 1976, 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, WTMJ, Inc., 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, Inc., as the exclusive bargaining representative of its employees in the following appropriate unit:

All producer/directors and all others doing the work of directors employed by the WTMJ, Inc., television station in Milwaukee, Wisconsin, 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 facility in Milwaukee, Wisconsin, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 30, 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

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"

insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 30, 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, Inc., 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 producer/directors and all others doing the work of directors, employed by the WTMJ, Inc., television station in Milwaukee, Wisconsin, but excluding all other employees, guards, and supervisors as defined in the Act.

WTMJ, INC.