Warner Press, Inc. *and* Indianapolis Printing Pressmen, Assistants and Offset Workers Union No. 17, a/w International Printing and Graphic Communications Union, AFL–CIO. Case 25–CA–6442

November 21, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

Upon a charge filed on August 6, 1974, by Indianapolis Printing Pressmen, Assistants and Offset Workers Union No. 17, a/w International Printing and Graphic Communications Union, AFL–CIO, herein called the Union, and duly served on Warner Press, 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 August 27, 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 June 24, 1974, following a Board election in Case 25-RC-5576, 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 August 2, 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 August 26, 1974, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 29, 1974, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, and to strike portions of Respondent's answer to the complaint. Subsequently, on September 9, 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 reply entitled "Response to General Counsel's 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 Notice To Show Cause, Respondent assigns error to the Regional Director's rulings on certain of its objections to the election, and asserts that there are material issues of fact which preclude granting the Motion for Summary Judgment as a matter of law.

Review of the entire record, including that of the representation proceeding, indicates that following an election conducted pursuant to a Stipulation for Certification Upon Consent Election, Respondent filed timely objections to the election. Respondent asserted that the election should be set aside on the bases that (1) the Union offered to waive initiation fees in violation of *N.L.R.B.* v. *Savair Manufacturing Co.*, 414 U.S. 270 (1973); (2) the Union misrepresented its ability to waive initiation fees and dues because its bylaws and constitution required such fees and dues; (3) the Union coerced, threatened, and intimidated certain employees to obtain their support; and (4) the Union, by misrepresentations and other acts of coercion, interfered with the employees' free choice. Following investigation, the Regional Director issued a report on the objections, finding, in substance, that the Union's offer to waive fees was unconditional, thus not proscribed by *Savair, supra.* He further found that the Union had not misrepresented its constitution and bylaws with regard to fees and dues, but had merely guaranteed that they would be waived, as had traditionally been done and honored; that there was no evidence of any threats and intimidation; and, finally, that the alleged misrepresentations by the Union were within the bounds of a hotly contested election such as this, where the parties vigorously set forth their positions. On the basis of these findings, the Regional Director recommended that Respondent's objections be overruled and the Union certified. Respondent filed exceptions to this report, essentially reasserting its objections and arguing that the Regional Director erred in his determinations thereon.

On June 24, 1974, the Board issued a Decision and Certification of Representative, finding that Respondent's exceptions raised no substantial or material issues of fact or law which would warrant reversal of the

[1] Official notice is taken of the record in the representation proceeding, Case 25–RC–5576, 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, 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

Regional Director's findings or recommendations and, accordingly, adopted them and certified the Union.

In its response to the Notice To Show Cause, Respondent argues that the Union's misrepresentation of its constitution and bylaws with regard to waiving fees and dues was material to the election results, and that the Union's offer to waive initiation fees was contrary to *Savair*. We have previously considered these issues in the Respondent's exceptions to the Regional Director's report on objections, and see no reason to consider them again.

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. We shall, accordingly, grant the Motion for Summary Judgment.[3]

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

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

Respondent, an Indiana corporation with its principal office and place of business at Anderson, Indiana, is engaged in the manufacture, sale, and distribution of printed matter and related products. During the past year, a representative period, Respondent, in the course and conduct of its business operations, purchased, transferred, and delivered to its facility, goods and materials valued in excess of $50,000 which were transported to said facility directly from States other than the State of Indiana. During the same period, Respondent, in the course and conduct of its business, sold and distributed products valued in excess of $500,000.

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

Indianapolis Printing Pressmen, Assistants and Offset Workers Union No. 17, a/w International Printing and Graphic Communications Union, AFL–CIO, 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:

> All production and maintenance employees of the Employer at its Anderson, Indiana, facility, including regular part-time employees, janitors, and plant clerical employees, but excluding all office clerical employees, sales employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On February 8, 1974, 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 June 24, 1974, 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 June 27, 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 August 2, 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 August 2, 1974, and at all times thereafter, refused to

[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] In view of the result reached herein, we need not rule on the General Counsel's motion to strike portions of Respondent's answer to the complaint

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

2. Indianapolis Printing Pressmen, Assistants and Offset Workers Union No. 17, a/w International Printing and Graphic Communications Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of the Employer at its Anderson, Indiana, facility, including regular part-time employees, janitors, and plant clerical employees, but excluding all office clerical employees, sales employees, professional 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 June 24, 1974, 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 August 2, 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, Warner Press, Inc., Anderson, 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 Indianapolis Printing Pressmen, Assistants and Offset Workers Union No. 17, a/w International Printing and Graphic Communications Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees of the Employer at its Anderson, Indiana, facility, including regular part-time employees, janitors, and plant clerical employees, but excluding all office clerical employees, sales employees, professional 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 Anderson, 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 Indianapolis Printing Pressmen, Assistants and Offset Workers Union No. 17, a/w International Printing and Graphic Communications Union, AFL–CIO, 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 production and maintenance employees of the Employer at its Anderson, Indiana, facility, including regular part-time employees, janitors, and plant clerical employees, but excluding all office clerical employees, sales employees, professional employees, guards and supervisors as defined in the Act.

WARNER PRESS, INC.