

Pacific Amusement Company d/b/a Denver Twin Theatres and Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada. Case 27-CA-5686

September 18, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO
AND MURPHY

Upon a charge filed on December 20, 1977, by Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Pictures Machine Operators of the United States and Canada, herein called the Union, and duly served on Pacific Amusement Company d/b/a Denver Twin Theatres, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint and notice of hearing on February 24, 1978, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Thereafter, on May 3, 1978, Respondent filed an answer to the complaint which it later withdrew.¹

On July 14, 1978, counsel for the General Counsel filed directly with the Board a motion to transfer proceeding to the Board and for Summary Judgment based upon Respondent's withdrawal of its answer and Sections 102.20 and 102.21 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended. An order transferring proceeding to the Board and Notice To Show Cause was issued on July 21, 1978. Respondent has filed no response to the Notice To Show Cause and, accordingly, the allegations of the Motion for Summary Judgment stand uncontroverted.

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:

¹ Respondent's mailgram of June 23, 1978, states: "Dear Sir, I hereby withdraw the previously submitted answer and do not oppose Motion for Summary Judgment."

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

According to the uncontroverted allegations of the Motion for Summary Judgment, Respondent has withdrawn its answer to the complaint and does not oppose the Motion for Summary Judgment. Respondent did not file a response to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rules set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we 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 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 California and maintains an office and place of business in Denver, Colorado. Respondent is now, and at all times material herein has been, engaged in its place of business in Denver, Colorado, in the operation of a movie theater. During the past year, Respondent had gross revenues in excess of \$500,000 and purchased goods valued in excess of \$10,000 directly from points outside the State of Colorado.

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

Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

On or about November 30, 1977, Respondent discharged Richard T. Snow, Jr., and Carl B. Casey, employees at its Denver, Colorado, theater, and at all times since has failed and refused, and continues to fail and refuse, to reinstate these employees. Respondent discharged employees Snow and Casey because of said employees' membership in and activities on behalf of the Union. By discharging employees Snow and Casey, Respondent did discriminate, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees for the purpose of discouraging membership in the Union. Accordingly, we find that Respondent has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

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

All moving picture machine operators employed by Respondent at its Denver, Colorado Denver Twin Theatres, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

Since April 1, 1975, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the above-described unit and, by virtue of Section 9(a) of the Act, the Union has been, and is now, the exclusive representative of all of the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about November 30, 1977, and continuing to date, the Union has requested, and is requesting, Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of all the employees in the above-described unit. Respondent, however, has refused, and continues to refuse, to bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit in that since on or about November 30, 1977, Respondent has refused to meet and bargain with the

Union concerning rates of pay, wages, hours, and other terms and conditions of employment; repudiated its collective-bargaining contract with the Union; and unilaterally changed terms and conditions of unit employees.

Accordingly, we find that, by the aforementioned conduct, Respondent has, since on or about November 30, 1977, 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 unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Respondent will be required to offer Richard T. Snow, Jr., and Carl B. Casey immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing, if necessary, anyone who may have been assigned or hired to perform the work which Snow and Casey had been performing prior to their termination on November 30, 1977. Additionally, Respondent will be required to make Snow and Casey whole for any loss of earnings they may have suffered by reason of their unlawful termination, with backpay to be computed on a quarterly basis, making deductions for interim earnings, and with interest to be paid on the amount owing, and to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).²

In addition, having found that Respondent has engaged in unfair labor practices within the meaning of

² See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), enforcement denied on different grounds 322 F.2d 913 (C.A. 9, 1963).

Section 8(a)(5) and (1) of the Act, we shall further order that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Respondent will be directed to honor and give effect from November 30, 1977, to the terms and conditions of the collective-bargaining agreement with the Union and make whole all of the persons employed in the appropriate unit for any loss caused by Respondent's repudiation of its collective-bargaining agreement with the Union, with interest computed in the manner described above; to revoke and rescind all unilateral changes in the terms and conditions of employment of its employees in the appropriate unit made without proper notice and consultation with the Union and make whole all of the persons in the appropriate unit for any loss caused by Respondent's institution of unilateral changes, with interest to be computed in the manner described above; and to bargain collectively, upon request, with the Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

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

CONCLUSIONS OF LAW

1. Pacific Amusement Company d/b/a Denver Twin Theatres is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, is a labor organization within the meaning of Section 2(5) of the Act.

3. All moving picture machine operators employed by Respondent at its Denver, Colorado, Denver Twin Theatres, but excluding office clerical employees, and all guards, professional employees 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. At all times since April 1, 1975, and continuing to date, the Union has been the exclusive representative of the employees in said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. Respondent has violated Section 8(a)(1) and (3) of the Act by discharging employees Richard T. Snow, Jr., and Carl B. Casey, because of said employees membership in and activities on behalf of the Union.

6. Respondent has violated Section 8(a)(1) and (5) of the Act by repudiating its collective-bargaining agreement with the Union; by refusing to bargain collectively with the Union as the exclusive representative of its employees in the unit described above; and by unilaterally, without prior notice to or consultation with the Union, effecting changes in the terms and conditions of employment of employees in the appropriate unit.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pacific Amusement Company d/b/a Denver Twin Theatres, Denver, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against its employees with regard to their hire or tenure of employment on any term or condition of employment for engaging in activities on behalf of a labor organization or for engaging in activity protected by Section 7 of the Act.

(b) Refusing to honor and give effect to the terms and conditions of the collective-bargaining agreement with the Union.

(c) Unilaterally, and without prior notice to and consultation with the Union, effecting changes in the terms and conditions of employment of the employees in the appropriate unit.

(d) Refusing to bargain collectively with the Union as the exclusive bargaining representative of all the employees in the appropriate unit described below with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment. The bargaining unit is:

All moving picture machine operators employed by Respondent at its Denver, Colorado Denver Twin Theatres, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

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

(a) Offer Richard T. Snow, Jr., and Carl B. Casey immediate and full reinstatement to their former positions of employment, dismissing, if necessary, anyone who may have been hired or assigned to perform the work which Snow and Casey had been performing prior to their termination on November 30, 1977, or, if their former positions do not exist, to a substantially equivalent position, without prejudice to their

seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of the discrimination in the manner set forth above in the section entitled "The Remedy."

(b) Honor and give retroactive effect from November 30, 1977, to the terms and conditions of the collective-bargaining agreement with the Union and reimburse all of the persons employed in the appropriate unit for all loss caused by Respondent's repudiation of its collective-bargaining agreement with the Union, with interest computed in the manner set forth above in the section entitled "The Remedy."

(c) Revoke and rescind all unilateral changes made with respect to the terms of the collective-bargaining agreement with the Union and reimburse all of the persons employed in the appropriate unit for any loss caused by Respondent's effectuation of unilateral changes in the terms and conditions of employment, with interest computed in the manner set forth above in the section entitled "The Remedy."

(d) Upon request, bargain collectively with the Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(e) Post at its Denver, Colorado, place of business an exact copy of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 27, 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.

(f) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ 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 discharge or otherwise discriminate against you with regard to hire or tenure of

employment or any term or condition of employment for engaging in activities on behalf of Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, or any labor organization.

WE WILL NOT refuse to honor and give effect to the terms and conditions of the collective-bargaining agreement between Pacific Amusement Company d/b/a Denver Twin Theatres and the Union.

WE WILL NOT unilaterally, and without prior notice to and consultation with the Union, effect changes in the terms and conditions of employment for the employees in the appropriate unit.

WE WILL NOT refuse to bargain collectively with Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, as the exclusive collective-bargaining representative of all the employees in the appropriate unit with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment. The bargaining unit is:

All moving picture machine operators employed by the Employer at its Denver, Colorado Denver Twin Theatres, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the right to self-organization, to form, join, or assist the above-named Union, or any other labor organization, to bargain collectively through representatives of our own choosing, to engage in concerted activities for the purpose of mutual aid or protection, or to refrain from any or all such activities.

WE WILL offer Richard T. Snow, Jr., and Carl B. Casey immediate and full reinstatement to their former positions, dismissing, if necessary, anyone who may have been hired or assigned to perform the work that they had been performing prior to the time they were terminated or, if their former positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of our discrimination.

WE WILL honor and give retroactive effect to November 30, 1977, to the terms and conditions of the collective-bargaining agreement between

Pacific Amusement company d/b/a Denver Twin Theatres and the Union and we will reimburse all of the persons employed in the appropriate unit for any loss caused by our repudiation of the collective-bargaining agreement.

WE WILL revoke and rescind all unilateral changes made with respect to the terms and conditions of employment for the employees in the appropriate unit and we will reimburse all of the persons employed in the appropriate unit for any loss caused by our imposition of unilateral changes.

WE WILL, upon request, bargain collectively with Moving Picture Machine Operators Local 230, a/w International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

PACIFIC AMUSEMENT COMPANY D/B/A DENVER TWIN THEATRES