

In the Matter of WESTERN UNION TELEGRAPH COMPANY and MES-
SENGERS LOCAL NO. 40 OF THE COMMERCIAL TELEGRAPHERS UNION

Cases Nos. C-215 and R-235.—Decided August 25, 1937

Communications Industry—Settlement: agreement to comply with Act—
Order: entered on stipulation; petition for investigation and certification dis-
missed.

Mr. E. J. Eagen and Mr. Daniel Baker for the Board.

Mr. Otto B. Rupp, of Seattle, Wash., and *Mr. Francis R. Stark*, of
New York City, for the respondent.

Mr. Clarence W. Pierce, of Seattle, Wash., for the Union.

Ryan, Askren, and Ryan, by *Mr. William D. Askren*, of Seattle,
Wash., for the Association.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

Upon charges duly filed by Messengers Local No. 40 of the Commercial Telegraphers Union, herein called the Union, the National Labor Relations Board, herein called the Board, by Charles W. Hope, Regional Director for the Nineteenth Region (Seattle, Washington), issued and duly served its complaint dated July 26, 1937, against the Western Union Telegraph Company, the respondent herein, alleging that the respondent, in the operation of its Seattle office at Seattle, Washington, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), (3), and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices, the complaint in substance alleged that although prior to June 9, 1937, a majority of the messengers and various other employees engaged in telegraphic communications at the Seattle office had designated the Union as their representative for the purpose of collective bargaining and that by virtue of Section 9 (a) of the Act, the Union has been the exclusive representative of all the employees in this unit for such purpose, the respondent has at all times since June 9, 1937, refused to bargain collectively with the Union as such representative; that in 1918 the respondent sponsored, fostered, and encouraged the formation of

the Association of Western Union Employees, herein called the Association, among its employees, and at all times thereafter, and particularly since July 5, 1935, has dominated and interfered with the administration of the Association and has contributed financial and other support thereto; that it has given preference to members of the Association and discriminated against members of the Union in regard to hire and tenure of employment, promotions, and other terms and conditions of employment; that as a result of these practices, a strike was called by the Union on June 9, 1937, which continued to June 18, 1937. On August 3, 1937, the respondent filed its answer denying the allegations of unfair labor practices, denying that the messenger employees constitute a unit appropriate for the purposes of collective bargaining, and alleging the existence of a contract with the Association which it recognizes as the exclusive bargaining agency for all its land line employees in its various offices throughout the United States.

On June 9, 1937, the Union petitioned the Board for an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On June 23, 1937, the Board directed the Regional Director to conduct an investigation and provide for an appropriate hearing upon due notice, pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended.

By order of the Board dated July 20, 1937, both cases were consolidated for the purpose of hearing, pursuant to Article III, Section 10 (c) (2) of National Labor Relations Board Rules and Regulations—Series 1, as amended. Pursuant to notice, a hearing on the complaint and petition was held at Seattle, Washington, on August 9, 10, 11, 12, 13, and 14, 1937, before Patrick H. McNally, the Trial Examiner duly designated by the Board. The Board, the Union, the respondent, and the Association, which was permitted to intervene in so far as its interest appeared, were represented by counsel.

On August 13, 1937, during the hearing, the following stipulations were agreed upon by all parties to the proceedings:

IT IS HEREBY STIPULATED by and between the Western Union Telegraph Company, a corporation, by its counsel, Otto B. Rupp, Messengers Local No. 40, Commercial Telegraphers Union, by its counsel, Clarence W. Pierce, the Association of Western Union Employees, by its counsel, William D. Askren, and E. J. Eagen, Regional Attorney for the Nineteenth Region, National Labor Relations Board, that the Order attached hereto be submitted to the National Labor Relations Board as a basis for action by the said Board and an Order by said Board directed to the Western Union Telegraph Company.

IT IS FURTHER STIPULATED that an Order may be made and entered by Trial Examiner Patrick H. McNally, recessing the hearing in the above-entitled matter pending action by said Board and pending issuance of an Order by said Board based on the foregoing stipulation, without prejudicing the right of the National Labor Relations Board to resume said hearing, in the event that the Order hereinafter set forth in this stipulation is not approved by the National Labor Relations Board.

ORDER

The Western Union Telegraph Company shall cease and desist:

a. From discouraging membership in Messengers Local No. 40 of the Commercial Telegraphers Union or encouraging membership in the Association of Western Union Employees Messengers Sub-Local No. 31, by discriminating against its Seattle messengers in regard to hire or tenure of employment or terms or conditions of employment;

b. From dominating or interfering with the administration of the said Sub-Local No. 31, and from contributing financial or other support to the said Sub-Local;

c. From in any manner interfering with, restraining or coercing its Seattle messengers in the exercise of their right to organize, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining for their mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

d. From granting privileges and preferences to members of the said Sub-Local, which privileges and preferences are denied to members of Local No. 40 in order to discourage membership in said Local No. 40;

e. From refusing to bargain collectively with the messengers of Local No. 40 of the Commercial Telegraphers Union as the exclusive representative of all its messengers employed at Seattle, Washington, except those in a supervisory capacity, in respect to rates of pay, wages, hours of employment or other conditions of employment, unless and until another appropriate unit shall have been decided under the National Labor Relations Act.

The Western Union Telegraph Company shall take the following affirmative action:

a. Immediately post notices on the Company bulletin board at its main office at 113 Cherry Street and on all other bulletin boards in its branch offices at Seattle, Washington, stating:

(1) That the respondent will cease and desist in the manner aforesaid;

(2) That such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

b. On request to bargain collectively with the Messengers Local No. 40 as the exclusive representative of all its messengers employed at Seattle, Washington, in respect to rates of pay, wages, hours of employment and other conditions of employment, unless and until another appropriate unit shall have been decided under the National Labor Relations Act.

c. Notify the Regional Director for the Nineteenth Region of the National Labor Relations Board in writing within ten (10) days from the date of this order what steps the Western Union Telegraph Company has taken to comply herewith.

ORDER

On the basis of the above stipulations, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Western Union Telegraph Company, its officers, agents, successors and assigns shall:

1. Cease and desist:

a. From discouraging membership in Messengers Local No. 40 of the Commercial Telegraphers Union or encouraging membership in the Association of Western Union Employees Messengers Sub-Local No. 31, by discriminating against its Seattle messengers in regard to hire or tenure of employment or terms or conditions of employment;

b. From dominating or interfering with the administration of the said Sub-Local No. 31, and from contributing financial or other support to the said Sub-Local;

c. From in any manner interfering with, restraining or coercing its Seattle messengers in the exercise of their right to organize, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining for their mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

d. From granting privileges and preferences to members of the said Sub-Local, which privileges and preferences are denied to members of Local No. 40 in order to discourage membership in said Local No. 40;

e. From refusing to bargain collectively with the messengers of Local No. 40 of the Commercial Telegraphers Union as the exclusive representative of all its messengers employed at Seattle, Washington, except those in a supervisory capacity, in respect to rates of pay,

wages, hours of employment or other conditions of employment, unless and until another appropriate unit shall have been decided under the National Labor Relations Act.

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

a. Immediately post notices on the Company bulletin board at its main offices at 113 Cherry Street and on all other bulletin boards in its branch offices at Seattle, Washington, stating:

(1) That the respondent will cease and desist in the manner aforesaid;

(2) That such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

b. On request bargain collectively with the Messengers Local No. 40 as the exclusive representative of all its messengers employed at Seattle, Washington, in respect to rates of pay, wages, hours of employment and other conditions of employment, unless and until another appropriate unit shall have been decided under the National Labor Relations Act.

c. Notify the Regional Director for the Nineteenth Region of the National Labor Relations Board in writing within ten (10) days from the date of this order what steps the Western Union Telegraph Company has taken to comply herewith.

The petition for an investigation and certification of representatives is hereby dismissed.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Order.