

In the Matter of THE WESTERN UNION TELEGRAPH COMPANY and
GENERAL DRIVERS, LOCAL NO. 116, A. F. OF L.

Case No. C-504.—Decided June 18, 1938

Communications Industry—Settlement: agreement to comply with Act—*Order:* entered on stipulation.

Mr. Thurlow Smoot, for the Board.

Mr. Ralph H. Kimball and *Mr. Francis R. Stark*, of New York City, for the respondent.

Mr. Jack Worth and *Mr. J. A. Callahan*, of Fargo, N. D., for Local 116.

Mr. James F. Dulligan, of New York City, for the Association.

Mr. Lester Asher, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by General Drivers, Local No. 116, A. F. of L., herein called Local 116, the National Labor Relations Board, herein called the Board, by Robert J. Wiener, Acting Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its complaint dated March 11, 1938, against The Western Union Telegraph Company, herein called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent, Local 116, and The Association of Western Union Employes, herein called the Association.

The complaint alleged that the respondent in the operation of its office at Fargo, North Dakota, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On March 19, 1938, the respondent filed its answer to the complaint, admitting the allegations as to the nature and scope of its business but denying the allegations of unfair labor practices.

On March 24, 1938, the Association filed with the Acting Regional Director a notice of its intention to enter a motion for leave to intervene.

Pursuant to notice, a hearing was held in Fargo, North Dakota, on March 28, 1938, before Charles E. Persons, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel, and Local 116 by certain of its officers. Counsel for the Association was present at the hearing but did not enter his appearance of record. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties. No motion for leave to intervene was made by counsel for the Association.

On March 28, 1938, during the course of the hearing, the respondent, Local 116, and the Board entered into a stipulation which was read into the record and which effected a settlement of the case. Thereupon the hearing was closed.

On April 4, 1938, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered this proceeding to be transferred to and continued before it.

The above-mentioned stipulation provides as follows:

It is herewith stipulated by and between the parties hereto that the respondent is a New York corporation which is authorized to transact business in the State of North Dakota and has an office and place of business in the City of Fargo, North Dakota.

It is further stipulated that the respondent is now and has continuously been engaged in the receipt and transmission by telegraph and cable of national and international communications; that the respondent, in the course and conduct of its business and in particular at its Fargo office receives and transmits telegraphic and cable messages from and to states and territories of the United States and foreign countries. The business of the respondent is that of continuous transmission of intelligence among the states of the United States, its territories, and foreign countries, by means of a highly developed and integrated communications system.

The respondent employs and has at all times herein mentioned employed at its Fargo office numerous persons who are engaged in the handling, receiving and transmitting of intelligence. The respondent also employs at its Fargo office numerous messengers who pick up outgoing messages from customers and take them to the respondent's office in Fargo for transmission to points within and without the State of North Dakota. The messengers also deliver incoming messages to customers.

It is further stipulated that General Drivers, Local 116, affiliated with the American Federation of Labor, is a labor

organization within the meaning of the National Labor Relations Act.

The company agrees that it is engaged in interstate commerce within the meaning of the National Labor Relations Act.

It is hereby stipulated by and between the respondent, by its counsel, Ralph H. Kimball, Local 116 by J. A. Callahan, Secretary, and Jack Worth, President, and Thurlow Smoot, Regional Attorney for the Eighteenth Region, National Labor Relations Board, that a majority of the messengers employed by the respondent in Fargo, North Dakota, at the dates set forth in the complaint had designated Local 116 of General Drivers Union as their representative for the purpose of collective bargaining with the respondent and that the respondent will consider said messengers to constitute an appropriate unit unless and until another appropriate unit shall have been decided under the National Labor Relations Act by the National Labor Relations Board and that the following order may 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 agreed that a decree based upon said order may be entered in the appropriate Circuit Court of Appeals.

ORDER

The Western Union Telegraph Company shall cease and desist:

(a) From discouraging membership in General Drivers, Local 116, affiliated with the American Federation of Labor, or encouraging membership in the Association of Western Union Employees by discriminating against its Fargo messengers in regard to hire or tenure of employment or terms or conditions of employment;

(b) From in any manner interfering with, restraining or coercing its Fargo 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;

(c) From refusing to bargain collectively with General Drivers, Local 116 as the sole exclusive representative of all its messengers employed at Fargo, North Dakota, 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 office in Fargo, North Dakota, 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 consecutive days from the date of posting;

(b) On request, to bargain collectively with the General Drivers, Local 116 as the sole exclusive representative of all its messengers employed at Fargo, North Dakota, 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 Acting Regional Director for the Eighteenth Region of the National Labor Relations Board in writing within ten days from the date of this order what steps The Western Union Telegraph Company has taken to comply herewith.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, The Western Union Telegraph Company, is a New York corporation engaged in the receipt and transmission by telegraph and cable of national and international communications. The business of the respondent is that of continuous transmission of intelligence among the States of the United States, its territories, and foreign countries, by means of a highly developed and integrated communications system.

The respondent is authorized to transact business in the State of North Dakota and has an office and place of business in Fargo, North Dakota. In the course and conduct of its business and in particular at its Fargo office, the respondent receives and transmits telegraphic and cable messages from and to States and territories of the United States and foreign countries. At its Fargo office it employs numerous persons who are engaged in handling, receiving, and transmitting intelligence. It also employs at its Fargo office numerous messengers who pick up outgoing messages from customers and take them to the respondent's office for transmission to points within and without North Dakota. The messengers also deliver incoming messages to customers.

We find that the respondent's operations at its Fargo, North Dakota, office constitute commerce and communication among the several States and with territories and foreign countries.

II. THE APPROPRIATE UNIT

We find that the messengers employed by the respondent at its Fargo, North Dakota, office constitute a unit appropriate for the purposes of collective bargaining and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

III. REPRESENTATION BY LOCAL 116 OF THE MAJORITY IN THE APPROPRIATE UNIT

We find that Local 116 has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining.

ORDER

Upon the basis of the above findings of fact and stipulation, and upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that The Western Union Telegraph Company, its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From discouraging membership in General Drivers, Local 116, affiliated with the American Federation of Labor, or encouraging membership in the Association of Western Union Employes by discriminating against its Fargo messengers in regard to hire or tenure of employment or terms or conditions of employment;

(b) From in any manner interfering with, restraining, or coercing its Fargo 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;

(c) From refusing to bargain collectively with General Drivers, Local 116, as the sole exclusive representative of all its messengers employed at Fargo, North Dakota, 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 office in Fargo, North Dakota, stating (1) that respondent will cease and desist in the manner aforesaid; and (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 General Drivers, Local 116, as the sole exclusive representative of all its messengers employed at Fargo, North Dakota, 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 Acting Regional Director for the Eighteenth 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.