

**Regency Electronics, Inc and International Union of
Electrical, Radio and Machine Workers, AFL-CIO**
Case 25-CA-5134

November 30, 1970

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

Upon a charge filed on August 24, 1972, by International Union of Electrical, Radio and Machine Workers, AFL-CIO, herein called the Union, and duly served on Regency Electronics, 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 29, 1972, 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 August 1, 1972, following a Board election in Case 25-RC-4811 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 February 24, 1972, and more particularly on August 18, 1972, 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 September 7, 1972, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 13, 1972, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and renewal thereof on October 30, 1972. Subsequently, on September 21, 1972, 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

¹ Official notice is taken of the record in the representation proceeding Case 25-RC-4811 as the term record is defined in Secs 102.68 and 102.69(f) of the Board's Rules and Regulations Series 8 as amended. See *LTV Electrosystems Inc* 166 NLRB 938 enfd 388 F 2d 683 (C A 4 1968)

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 in its response to the Notice To Show Cause, Respondent contends that the Union is not the exclusive representative of its employees because there were no valid grounds for setting aside the first of two elections in the underlying representation proceeding and that the second election was invalid because the voting eligibility list used for the second election improperly permitted employees hired after the first election to vote in the second election. We do not agree.

The record in Case 25-RC-4811 indicates that in an election conducted pursuant to a Stipulation for Certification Upon Consent Election there were approximately 242 eligible voters of whom 104 cast ballots for, and 117 cast ballots against, the Union and 12 ballots were challenged. The Union filed objections to conduct affecting the results of the election in which it alleged that (1) on the day before the election Respondent distributed duplications of the Board's sample ballot with the addition of a red heart around and an x mark within the "No" box, and (2) that Respondent called an active union supporter into the office and coerced and intimidated her to the degree that she became nervous and excited.

After investigation the Regional Director issued a Report on Objections and Recommendations to the Board in which he recommended that the Union's first objection be sustained, the second overruled, and a new election be directed. Respondent filed exceptions to the Regional Director's report contending that the Regional Director had misapplied Board precedent and should have ordered a hearing on the objections. On February 25, 1972, the Board issued a Decision, Order and Direction of Second Election in which it adopted the Regional Director's findings and recommendations, set aside the election, and directed a second election. Thereafter, on March 3, 1972, Respondent filed a Petition for Reconsideration of the Board's Decision, Order and Direction of Second Election in which it invited the Board's attention to a recent decision and reiterated the contentions advanced in its exceptions to the Regional Director's report. Finding the cited case inapposite, the Board, on March 13, 1972, issued an

Golden Age Beverage Co 167 NLRB 151 *Intertype Co v Penello* 269 F Supp 573 (D C Va 1967) *Follett Corp* 164 NLRB 378 enfd 397 F 2d 91 (C A 7 1968) Sec 9(d) of the NLRA

Order Denying Petition in which it denied Respondent's petition for reconsideration as lacking in merit

A second election in which there were approximately 257 eligible voters was conducted on March 24, 1972. The tally of ballots showed that there were 133 votes for, 112 against, the Union and that there were no challenges. Respondent filed timely objections to conduct affecting the results of the election, alleging, in substance, that (1) The second election was improperly ordered because there were no grounds for setting aside the first election, (2) Respondent was deprived of favorable evidence by the Regional Director's refusal to order a hearing, (3) the Board improperly ordered the use of a new eligibility list for the second election, and (4) the Union coerced employees by threats of economic harm unless they signed union authorization cards and by promising to waive initiation fees and dues for those who signed cards. The Acting Regional Director conducted an investigation and issued a Report on Objections and Recommendation to the Board overruling all of Respondent's objections.

On May 12, 1972, Respondent filed exceptions to the report of the Acting Regional Director with a supporting brief and, on May 15, 1972, petitioned the Board for oral argument. On August 1, 1972, the Board issued a Supplemental Decision and Certification of Representative in which, *inter alia*, it adopted the Acting Regional Director's findings and recommendations, denied the Respondent's request for oral argument, and certified the Union as exclusive representative of the employees in the appropriate unit. In its answer to the complaint and in its response to the Notice To Show Cause, Respondent relies on the same contentions which it raised in the underlying representation case.

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.

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

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

Respondent is an Indiana corporation with its principal office and place of business in Indianapolis, Indiana, where it is engaged in the manufacture, sale, and distribution of electronic equipment and related products. During the past year Respondent purchased goods and materials valued in excess of \$50,000 which were transported directly to its Indianapolis facility from States other than the State of Indiana. During the same period Respondent manufactured, sold, and distributed products valued in excess of \$50,000 which were shipped from said facility directly to States other than the State of Indiana.

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

International Union of Electrical, Radio and Machine Workers, 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 Respondent at its facility, including all line assembly employees, all packaging employees, all component preparation employees, all coil assemblers, all repair employees, all crystal repair employees, all inspectors, all technicians/trouble shooters, all testers, all shipping employees, all stock and receiving employees, all machine shop employees and all group leaders, but excluding all office clerical employees, all engineers and

² 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).

engineer aides, all guards, professional employees and supervisors as defined in the Act

2 The certification

On March 24, 1972, 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 August 1, 1972, 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 February 24, 1972, 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 February 24, 1972, 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 February 24, 1972, 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 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, *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd 328 F 2d 600 (C A 5), cert denied 379 U S 817, *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd 350 F 2d 57 (C A 10).

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

CONCLUSIONS OF LAW

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

2 International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3 All production and maintenance employees of the Respondent at its facility, including all line assembly employees, all packaging employees, all component preparation employees, all coil assemblers, all repair employees, all crystal repair employees, all inspectors, all technicians/trouble shooters, all testers, all shipping employees, all stock and receiving employees, all machine shop employees and all group leaders, but excluding all office clerical employees, all engineers and engineer aides, 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 Since August 1, 1972, 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 February 24, 1972, 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, Regency Electronics, 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 International Union of Electrical, Radio and Machine Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit

All production and maintenance employees of the Respondent at its facility, including all line assembly employees, all packaging employees, all component preparation employees, all coil assemblers, all repair employees, all crystal repair employees, all inspectors, all technicians/trouble shooters, all testers, all shipping employees, all stock and receiving employees, all machine shop employees and all group leaders, but excluding all office clerical employees, all engineers and engineer aides, all guards, professional employees 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 Indianapolis, Indiana, copies of the attached notice marked "Appendix"³ 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

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 refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union of Electrical, Radio and Machine Workers, 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 Respondent at its facility, including all line assembly employees, all packaging employees, all component preparation employees, all coil assemblers, all repair employees, all crystal repair employees, all inspectors, all technicians/trouble shooters, all testers, all shipping employees, all stock and receiving employees, all machine shop employees and all group leaders, but excluding all office clerical employees, all engineers and engineer aides, all guards, professional employees and supervisors as defined in the Act

REGENCY ELECTRONICS,
INC
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced
by anyone

This notice must remain posted for 60 consecutive

days from the date of posting and must not be
altered, defaced, or covered by any other material

Any questions concerning this notice or compli-
ance with its provisions may be directed to the
Board's Office, 614 ISTA Center, 150 West Market
Street, Indianapolis, Indiana 46204, Telephone 901-
534-3161