

NBC Universal, Inc. and National Association of Broadcast Employees & Technicians. Case 02–CA–115732

April 7, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND SCHIFFER

This is a refusal-to-bargain case in which the Respondent is contesting the Board's unit determination in the underlying representation proceeding. The Board in that proceeding granted the Union's unit clarification petition, finding that the Respondent's New York, Chicago, and Los Angeles content producers were properly included in the unit.

Pursuant to a charge and an amended charge filed on October 28 and 30, 2013, respectively, by the National Association of Broadcast Employees & Technicians (the Union), the General Counsel issued the complaint in this proceeding on December 4, 2013. The complaint alleges that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's requests to bargain and to provide information following the Union's filing of the unit clarification petition in Case 02–UC–000619.¹ (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On January 17, 2014, the General Counsel filed a Petition for Summary Judgment and Issuance of Decision and Order and a Memorandum in Support. On January 23, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Petition for Summary Judgment

The Respondent admits its refusal to bargain and to provide information, but contends that this refusal is not

¹ The underlying unit clarification proceeding encompassed several petitions for clarification in Cases 02–UC–000619, 02–UC–000625, 05–UC–000403, 05–UC–000407, 13–UC–000417, and 31–UC–000323. The General Counsel refers to Case 02–UC–000625 presumably because that petition was filed by the Charging Party in this proceeding. However, as all of the cases were consolidated and ruled upon in one proceeding, we shall follow Board procedure and refer to the unit-clarification proceeding by the lowest case number in the consolidated matters.

unlawful on the ground that the Board erred in granting the Union's unit-clarification petition and clarifying the unit to include the position of content producer at the Respondent's New York, Chicago, and Los Angeles stations.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.² We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Petition for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic corporation, with an office and place of business at 30 Rockefeller Plaza, Room 75/635N, New York, New York 10112 (the Respondent's facility), has been engaged in the creation and distribution of network and local news at owned and operated stations throughout the country, including in New York, Chicago, and Los Angeles.

During the 2013 calendar year, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$100,000, and sold media space to advertisers that advertise national products, and its business is national in scope.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, National Association of Broadcast Employees & Technicians, is a labor organization within the meaning of Section 2(5) of the Act.

² The Respondent contends that several documents that postdate the unit-clarification hearing, including grievances filed in 2011 and a collective-bargaining agreement executed in January 2012, constitute new evidence that the Union's Local 11 continued to rely on the Content Producer Agreement after the hearing. Contrary to the Respondent's argument, we find that these documents do not constitute newly discovered and previously unavailable evidence. Rather, the documents are similar to those introduced at the hearing, with the exception of the dates, and they are offered in support of the same arguments that the Respondent raised at the hearing, which have been rejected. Therefore, we find that the submission of these documents does not compel a different result in this proceeding.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit*

The employees described in the scope of unit clauses of the individual articles of the most recent master agreement between the Respondent and the Union, described below, constitute a unit appropriate for the purposes of collective bargaining (the unit) within the meaning of Section 9(b) of the Act.

Since about 2006 and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2006, to March 31, 2009.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On October 26, 2011, the Acting Regional Director issued a decision in a unit-clarification case, Case 02–UC–000619, finding that the Respondent’s newly created position of content producer at the Respondent’s New York, Chicago, and Los Angeles owned and operated local stations was properly included in the unit.

On December 15, 2011, the Respondent filed a request for review of the Acting Regional Director’s decision.

On September 25, 2013, the Board issued an Order denying the Respondent’s request for review of the Acting Regional Director’s decision.

B. *Refusal to Bargain*

At all material times, Angel Ortiz held the position of the Respondent’s vice president of labor relations and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

By letter dated October 10, 2013, the Union requested that the Respondent bargain collectively about the terms and conditions of employment of the content producers employed in New York, Chicago, and Los Angeles.

Since about October 22, 2013, the Respondent has failed and refused to bargain collectively with the Union as the exclusive bargaining representative of the content producers.

In the October 10, 2013 letter described above, the Union requested that the Respondent furnish it with the following information:

(i) A report listing all of the employees who were hired as content producers as of, or subsequent to, the date the Content Centers went on-line in each of the three cities, whether or not any individual is still employed in such a position;

(ii) A report of all wages earned from the date any such individual began employment as a content producer, through the present date;

(iii) A report of any additional payments, other than wages, made since any such individual began employment as a content producer, through the present date;

(iv) A report of the total number of hours worked since any such individual began employment as a content producer, through the present date;

(v) Copies of any and all job or performance evaluations;

(vi) Copies or records of any discipline issued since any such individual began employment as a content producer, through the present date;

(vii) A list of any content producers who have received any Voluntary Separation offers from the Company since any such individual began employment as a content producer, through the present date;

(viii) A list of all content producers that have appeared on-camera in performance of their assignment as a content producer.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about October 22, 2013, the Respondent, by Angel Ortiz, in writing, has failed and refused to furnish the Union with the information requested by it as described above.

CONCLUSION OF LAW

By failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the content producers, and by failing and refusing to furnish the Union with the requested information described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.³

³ In its answer to the complaint, the Respondent denied several of the complaint’s allegations, including the allegation that it refused to bargain with the Union as the exclusive bargaining representative of the content producers, and the allegation that the requested information is necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit. Nonetheless, in its response to the Board’s Notice to Show Cause, the Respondent states that it “does not deny that it has refused to bargain over the terms and conditions of employment of the content producers, nor has it provided the requested information.” We find that the Respondent’s denials do not raise an issue warranting a hearing in this proceeding.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union and to provide the Union with requested information, we shall order the Respondent to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to provide the Union with the information it requested on October 10, 2013.

ORDER

The National Labor Relations Board orders that the Respondent, NBC Universal, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the National Association of Broadcast Employees & Technicians, the Union, as the exclusive collective-bargaining representative of the content producers in the bargaining unit.

(b) Failing and refusing to provide the Union with the information it requested on October 10, 2013, which is necessary for and relevant to the performance of the Union's duties as the exclusive collective-bargaining representative of the unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the content producers on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Provide to the Union in a timely manner the information the Union requested on October 10, 2013.

(c) Within 14 days after service by the Region, post at its facilities in New York, New York, Chicago, Illinois, and Los Angeles, California, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms

Further, it is clear from the Respondent's submissions that it is in fact refusing to bargain with the Union in order to obtain Board reconsideration or court review of the Board's determination that the content producers are properly included in the unit. Moreover, the requested information relates to the wages, hours, and terms and conditions of employment of the content producers; accordingly, as these employees are part of the bargaining unit, the requested information is presumptively relevant.

⁴ If 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 Na-

provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 10, 2013.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the National Association of Broadcast Employees & Technicians (the Union) as the exclusive collective-bargaining representative of the content producers in the bargaining unit.

WE WILL NOT fail and refuse to provide the Union with the information it requested on October 10, 2013, which

tional 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."

is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the content producers and put in writing and sign any agreement reached on terms and conditions of employment.

WE WILL provide to the Union in a timely manner the information it requested on October 10, 2013.

NBC UNIVERSAL, INC.