Stewart Chevrolet, Inc. *and* Local Lodge 698, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 7-CA-18408

June 22, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On the basis of a charge filed by Local Lodge 698, International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as the Union, on October 21, 1980, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 7, issued a complaint against Stewart Chevrolet, Inc., hereinafter referred to as Respondent, on December 19, 1980. The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union since on or about October 16, 1980. Respondent filed an answer to the complaint on December 29, 1980, in which it admitted certain of the allegations, but denied the commission of any unfair labor practices.

A hearing was held before Administrative Law Judge Lowell Goerlich on October 7, 1981, at which representatives of the General Counsel, Respondent, and the Charging Party were present. No witnesses testified; several exhibits were introduced into evidence. At the close of the hearing, the parties entered into a stipulation to transfer this proceeding to the Board, agreeing that certain documents would constitute the entire record herein,[1] waiving all immediate proceedings before an administrative law judge, and agreeing to submit this case directly to the Board for it to make findings of fact and conclusions of law and issue its Decision and Order. The parties at the close of the hearing also agreed that the time for filing briefs to the Board would be November 9, 1981. Administrative Law Judge Goerlich by written order of November 2, 1981, transferred the case to the Board for Decision and Order, and ordered the original of the record to be forwarded to the Board.

On November 3, 1981, the parties, by telegram from counsel for the General Counsel, informed the Board that all parties requested an extension of time to file briefs with the Board until November 23, 1981, due to errors in the transcript. By letter from counsel for the General Counsel dated November 6, 1981, the parties submitted to the Board a Stipulation To Correct Transcript. This stipulation was received by the Board on November 10, 1981. The Executive Secretary of the Board, by telegram of November 19, 1981, informed the parties that the date for receipt of briefs to the Board was extended to November 23, 1981, and approved the Stipulation To Correct Transcript. Respondent filed a brief, received by the Board November 20, 1981.

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.

The Board has considered the entire record herein as stipulated to by the parties, as well as the brief, and has decided to accept the stipulation, as corrected by the Stipulation To Correct Transcript, and makes the following findings of fact and conclusions of law:

I. THE BUSINESS OF THE EMPLOYER

Stewart Chevrolet, Inc., is a Michigan corporation engaged in the retail and wholesale sales and service of new and used cars and trucks and related products. Respondent's only office and place of business is its facility in Woodhaven, Michigan. Based on a projection of its operations since on or about October 16, 1980, at which time Respondent commenced its operations, Respondent will annually derive gross revenues from its business operations in excess of $500,000. The parties stipulated, and we find, that Respondent is, and at all times material herein has been, an employer engaged in commerce or an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE

A. *Facts*

Stewart Chevrolet, Inc., operates a new- and used-car General Motors dealership at 23755 Allen Road, Woodhaven, Michigan. Murphy Chevrolet, Inc., operated the dealership until mid-October 1980. In August 1978, Murphy Chevrolet signed a collective-bargaining agreement—to expire June 21, 1981—with the Union. The bargaining unit covered was comprised of all mechanics, partsmen, parts truck drivers, porters, collision department employees, and lube men, excluding car and truck

[1] The parties agreed that the charge, the complaint, the answer to the complaint, the transcript (as corrected by the Stipulation To Correct Transcript), and the exhibits received into evidence at the hearing constitute the entire record in this case.

salesmen, service salesmen, office clerical employees, professional employees, guards and supervisors.

On September 2, 1980,[2] Murphy Chevrolet, Inc., signed an agreement to sell the operating assets of its dealership to Gordon Stewart and Sherwood Oklejas. Stewart and Oklejas subsequently formed a corporation and named it Stewart Chevrolet, Inc. The sale agreement was made subject to approval by General Motors. By letter dated September 2, Fred Murphy—president of Murphy Chevrolet—informed the president of the Union of the proposed sale, stating that his present intention was to cease operation on or about October 4. Murphy Chevrolet, the letter continued, was available to discuss any questions the Union had and to discuss the effect of the closing on bargaining unit members. The Union sent a letter, dated September 23, to counsel for Stewart and Oklejas stating that the Union intended to secure from the new owners the same contract terms as the existing collective-bargaining agreement. By letter dated September 25, counsel for Stewart and Oklejas acknowledged receipt of the September 23 letter and stated that his clients would be interviewing employees for positions with their new Chevrolet dealership.[3] Murphy Chevrolet ceased operations on approximately October 10. The service, body shop, and parts employees on October 10 filed a grievance with Murphy Chevrolet demanding that the new owners of the dealership recognize the Union and bargain with it for a new collective agreement. Murphy Chevrolet received the grievance that same day.

On approximately October 13, Stewart Chevrolet began accepting applications and interviewing for mechanics, body shop workers, and other employment positions at the new dealership. A total of 284 persons, including all but 1 former bargaining unit employee of Murphy Chevrolet, applied for employment at Stewart Chevrolet. Following General Motors' approval of the proposed sale, the transfer of assets from Murphy Chevrolet to Stewart Chevrolet occurred, on approximately October 15. Stewart Chevrolet commenced operation of the dealership on October 16.

On October 16, Stewart Chevrolet had hired nine bargaining unit employees.[4] Of those nine, four had been employees of Murphy Chevrolet.[5] In the following days, Stewart Chevrolet hired more employees, some of whom had previously worked for Murphy Chevrolet and some of whom had not. Thus, by October 17, it had 10 bargaining unit employees, 5 of whom were former Murphy Chevrolet employees (old) and 5 of whom were not (new); by October 20, it had 13 employees, 6 old and 7 new; by October 22, it had 15 employees, 6 old and 9 new; by October 24, it had 16 employees, 7 old and 9 new; by October 28, it had 17 employees, 7 old and 10 new; by November 4, it had 18 employees, 7 old and 11 new; by November 10 it had 19 employees, 7 old and 12 new; by November 12, it had 20 employees, 7 old and 13 new; by November 20, it had 21 employees, 7 old and 14 new; by November 28, it had 22 employees, 7 old and 15 new; and by December 4, it had 23 bargaining unit employees, 7 old and 16 new. Just prior to ceasing operations in October, Murphy Chevrolet had a total employment of 26 persons (bargaining unit employees, salesmen, office clericals, and management); 14 of that total number were bargaining unit employees. When it commenced operations on October 16, Stewart Chevrolet had a total employment of 26 persons (bargaining unit employees, salesmen, office clericals, and management), 9 of whom were in the bargaining unit.

B. *Contentions of the Parties*

Counsel for the General Counsel contends that Respondent is a "successor employer" to Murphy Chevrolet, that as such it succeeded to Murphy Chevrolet's bargaining obligation, and that, by failing and refusing to bargain since on or about October 16, Respondent violated Section 8(a)(5) and (1) of the Act. Respondent contends that at no time did former employees of Murphy Chevrolet comprise a majority of Stewart Chevrolet employees, and therefore it is not a "successor employer" and did not violate Section 8(a)(5) and (1) of the Act.

[2] Hereinafter all dates refer to 1980, unless otherwise specified.

[3] Both the transcript and the court reporter's stamp on the document indicate that the Union's September 23 letter to counsel for Stewart Chevrolet (G.C. Exh. 3) was offered and received into evidence. The transcript does not indicate that counsel for Stewart Chevrolet's September 25 reply letter (G.C. Exh. 4) was offered or received into evidence, although the document itself is marked as "Received."

[4] Those nine were: R. Martin, Reece, Jondall, Vlodyka, Hamel, Blum, Smith, Godell, and Woolcott. Woolcott was hired as a porter in the new-car department of Stewart Chevrolet.

[5] Those four were: R. Martin, Reece, Jondall, and Vloydka. Woolcott worked for Murphy Chevrolet for somewhere between 30 and 45 days prior to Murphy's termination of business. The stipulated record fails to demonstrate that Woolcott's work for Murphy was in the capacity of an employee of Murphy Chevrolet. Thus, Woolcott's name does not appear on Murphy Chevrolet's list of employees as of September 24 (16 days prior to Murphy's cessation of operations), on Murphy Chevrolet's payroll for the period of 30 to 45 days prior to Murphy Chevrolet's termination of business, or on Murphy Chevrolet's list of former Murphy Chevrolet employees who applied for work at Stewart Chevrolet. Stewart Chevrolet's list of its employees identifies Woolcott's former employer as Darin and Armstrong, not Murphy Chevrolet. Murphy Chevrolet's list entitled "Entire Murphy Chevrolet, Inc. Staff Thru 10/10/80" does not include Woolcott's name. Both parties stipulated to the authenticity of each of these lists. Under these circustances, we find that Woolcott was not an employee who was a member of the bargaining unit when Murphy Chevrolet operated the dealership.

C. *Discussion and Conclusion*

It is not disputed that since its commencement of operations as a General Motors dealership on October 16, 1980, Stewart Chevrolet has engaged in substantially the same business operations, at the same location, selling substantially the same product and services to substantially the same customers as Murphy Chevrolet had engaged in prior to the sale. In such circumstances the new employer has, upon request, an obligation to bargain if a majority of the unit employees hired were unit employees of the predecessor employer. *United Maintenance & Manufacturing Co., Inc.*, 214 NLRB 529, 533 (1974). The Union here requested recognition and bargaining by its letter of September 23. Stewart Chevrolet refused to recognize or bargain with the Union, and commenced operations on October 16. The key inquiry is thus what percentage of Stewart Chevrolet's employees on and after October 16 were former employees of Murphy Chevrolet.[6] The stipulated record shows that on October 16 four of the nine bargaining unit employees hired by Stewart Chevrolet had been unit employees of Murphy Chevrolet. The record further demonstrates that at no time did former bargaining unit employees of Murphy Chevrolet constitute a majority of the bargaining unit employees of Stewart Chevrolet. We therefore find that on no relevant date were a majority of the employes hired by Stewart Chevrolet former employees of Murphy Chevrolet, and Stewart Chevrolet is not a successor employer.[7] Stewart Chevrolet thus had no obligation to recognize or bargain with the Union, and did not violate Section 8(a)(5) or (1) of the Act by failing to do so. Accordingly, we shall dismiss the complaint in its entirety.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

[6] *The Daneker Clock Company, Inc.*, 211 NLRB 719 (1974), enfd. 516 F.2d 315 (4th Cir. 1975); *Southwestern Broadcasters, Inc.*, 255 NLRB 330 (1981).

[7] Member Fanning concurs in the result here, but he does not believe that in every case there must be an absolute majority of the predecessor's employees before a duty to bargain can be found. See *United Maintenance & Manufacturing Co., Inc.*, 214 NLRB 529, 536, fn. 21 (1974), and cases cited therein.