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265 NLRB No. 129

D--9480
San Francisco, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

A.G.S. GRAPHICS, A DIVISION OF
GEORGE LITHOGRAPH CO.

and

Case 20--CA--17347

GRAPHIC ARTS INTERNATIONAL
UNION, LOCAL #280, GRAPHIC ARTS
INTERNATIONAL UNION, AFL--CIO

DECISION AND ORDER

Upon a charge filed on August 24, 1982, by Graphic Arts International Union, Local #280, Graphic Arts International Union, AFL--CIO, herein called the Union, and duly served on A.G.S. Graphics, a Division of George Lithograph Co., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 20, issued a complaint on August 31, 1982, 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 and 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 July 20, 1982, following a Board

election in Case 20--RC--15021, 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 August 20, 1982, 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, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 24, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on September 30, 1982, 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 the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations

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[1] Official notice is taken of the record in the representation proceeding, Case 20--RC--15021, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Board has delegated its authority in this proceeding to a three-member panel.[2]

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 response to the Notice To Show Cause, Respondent admits its refusal to bargain with the Union but alleges that the certification of the Union is invalid because the Union made unlawful and improper offers to waive its initiation fees for those of Respondent's employees who signed an authorization card or joined the Union before the election conducted on May 2, 1980. Counsel for the General Counsel contends, in essence, that Respondent is attempting to relitigate issues raised and decided by the Board in the underlying representation case. We agree.

Our review of the record herein, including the record in Case 20--RC--15021, indicates that on February 25, 1980, the Union filed a petition in which it sought to represent certain of Respondent's employees. On March 27, 1980, the Acting Regional Director for Region 20 approved a Stipulation for Certification

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[2] In its response to the Notice To Show Cause Respondent requests that the General Counsel's Motion for Summary Judgment and Respondent's response thereto be considered by the Board en banc because the underlying representation case was improperly decided by a panel of the Board. It is the policy of the Board for the same panel which decides a case to pass on the request for reconsideration of the panel decision and for the full Board to consider such a request only if the panel refers it to the full Board. See, e.g., Florida Steel Corporation, 224 NLRB 1033 (1976), and Enterprise Industrial Piping Company, 118 NLRB 1 (1957). As Respondent presents no matters not previously considered, we shall deny its request.

Upon Consent Election signed by the parties which provided for an election in the following bargaining unit:

> All production and maintenance employees employed by the Employer at its 217 Second Street, San Francisco, California facility; excluding all office employees, all office clerical employees, guards and watchmen, and supervisors as defined in the Act.

Thereafter, an election was held on May 2, 1980. The tally of ballots showed that, of approximately 68 eligible voters, 31 cast votes for and 25 cast votes against the Union. There were three challenged ballots which were not sufficient to affect the results of the election. Respondent filed timely objections to the conduct of the election, alleging, inter alia, that during the election campaign the Union promised to reduce and/or to waive its initiation fees to induce employee support in violation of the prohibitions set forth in N.L.R.B. v. Savair Manufacturing Co., 414 U.S. 270 (1973). The Regional Director recommended that a hearing be held to resolve those of Respondent's objections involving the Savair Manufacturing Co. issue and that the remaining objections be overruled. Respondent filed limited exceptions to the Regional Director's report and on August 27, 1980, the Board issued its Decision and Order Directing Hearing (not reported in volumes of Board Decisions) in which it adopted the Regional Director's findings and recommendations and ordered that a hearing be held with respect to the above-described objections. On December 12, 1980, the Hearing Officer issued his Report on Objections in which he recommended that the objections be overruled in their entirety. Respondent filed exceptions to the Hearing Officer's Report on Objections. On July 22, 1981, the

Board issued its Order Remanding Proceeding to Hearing Officer directing the Hearing Officer to issue a supplemental report to resolve certain credibility issues and make certain specific fact findings. The Hearing Officer issued the supplemental report on August 19, 1981, in which based on findings of fact and resolutions of credibility he adhered to the conclusions reached in his previous report. Respondent filed exceptions to the Hearing Officer's Supplemental Report on Objections. On July 20, 1982, the Board (Member Zimmerman dissenting) at 262 NLRB No. 137 issued its Decision and Certification of Representative in which it affirmed the recommendations of the Hearing Officer that the objections be overruled and certified the Union as the collective-bargaining representative of Respondent's employees in the unit described above.

By letter dated July 29, 1982, the Union requested that Respondent bargain with it collectively as the exclusive collective-bargaining representative of Respondent's employees in the appropriate unit. By letter dated August 20, 1982, Respondent refused to recognize and bargain with the Union.

As noted, Respondent seeks to justify its refusal to recognize and bargain with the Union on the grounds that during the election campaign the Union offered to waive its initiation fees for employees in the appropriate unit and that this conduct violated the principles of Savair Manufacturing. Thus, it contends that the election was illegal and the Board erred in certifying the Union as the collective-bargaining representative of the employees in the appropriate unit.

The issues which Respondent seeks to raise at this time were raised in Respondent's exceptions to the Hearing Officer's report and were considered and found to be without merit by the Board in its Decision and Certification of Representative. It thus appears that Respondent is attempting to raise issues which were litigated 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.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and 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 Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.[4]

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[3] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[4] Member Zimmerman dissented in the underlying proceeding. However, he considers the Board bound to grant summary judgment since Respondent may not now relitigate issues previously determined. See Bravos Oldsmobile, Inc., 254 NLRB 1056, 1059 (1981).

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

Findings of Fact

I. The Business of Respondent

At all times material herein, Respondent, a California corporation, maintained an office and place of business in San Francisco, California, where it engaged in the lithographic and printing industry.[5] During the calendar year 1981, Respondent in the course and conduct of its business operations at the San Francisco facility purchased and received goods and materials valued in excess of $50,000 directly from points outside the State of California.

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

Graphic Arts International Union, Local #280, Graphic Arts International Union, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

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[5] Respondent asserts in its answer to the complaint and response to the Notice To Show Cause that it no longer operates a place of business in San Francisco, California, and that this operation has moved to Brisbane, California. Respondent does not argue that this change of locations affects the issues in this case.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by the Employer at its 217 Second Street, San Francisco, California facility;[6] excluding all office employees, all office clerical employees, guards and watchmen, and supervisors as defined in the Act.

2. The certification

On May 2, 1980, 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 20, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 20, 1982, 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 July 29, 1982, and at all times thereafter, the Union has requested 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 August 20, 1982, and continuing at all

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[6] As noted earlier, Respondent asserts that its facility is now located in Brisbane, California.

times thereafter to date, 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 Respondent has, since August 20, 1982, 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 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

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

Conclusions of Law

1. A.G.S. Graphics, a Division of George Lithograph Co., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Graphic Arts International Union, Local #280, Graphic Arts International Union, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer at its 217 Second Street, San Francisco, California facility; excluding all office employees, all office clerical employees, guards and watchmen, 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 July 20, 1982, 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 August 20, 1982, 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 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 the Respondent, A.G.S. Graphics, a Division of George Lithograph Co., Brisbane, California, 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 Graphic Arts International Union, Local #280, Graphic Arts International Union, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees employed by the Employer at its 217 Second Street, San Francisco, California facility; excluding all office employees, all office clerical employees, guards and watchmen, 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 Brisbane, California, facility copies of the attached notice marked ''Appendix.''[7] Copies of said notice,

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[7] 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.''

on forms provided by the Regional Director for Region 20, 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 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. December 14, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL) 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 Graphic Arts International Union, Local #280, Graphic Arts International Union, 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 employed by the Employer at its 217 Second Street, San Francisco, California facility; excluding all office employees, all office clerical employees, guards and watchmen, and supervisors as defined in the Act.

A.G.S. GRAPHICS, A DIVISION OF
GEORGE LITHOGRAPH CO.

(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 compliance with its provisions may be directed to the Board's Office, Federal Building, Room 13018, P.O. Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415--556--0335.