Accurate Web, Inc. *and* Local One, Amalgamated Lithographers of America affiliated with International Typographical Union, AFL-CIO. Case 29-CA-9937-2

March 11, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Upon a charge filed on September 2, 1982, by Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, herein called the Union, and duly served on Accurate Web, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint and notice of hearing on September 30, 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 the 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 June 15, 1982, following a Board election in Case 29-RC-5644, 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 12, 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; and also that, since on or about August 12 and September 24, 1982, Respondent has refused and continues to refuse to provide necessary and relevant bargaining information requested by the Union. On October 14, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On November 8, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on November 12, 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 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 its response to the Notice To Show Cause, Respondent alleges that the General Counsel's Motion for Summary Judgment should be denied inasmuch as the underlying representation election was invalid. Specifically, Respondent asserts that: the certified unit includes the supervisory position of night foreman and erroneously excludes production department employees as office clericals; a supervisor participated in the Union's in-house organizing committee; Respondent's objections to conduct affecting the results of the election should have been sustained; and the Board denied Respondent due process of law when the Regional Director failed to transmit the entire record to the Board for consideration of Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative. Additionally, in its response to the Notice To Show Cause, Respondent alleges that the Union has not requested bargaining but has only requested certain information relating to the unit.

Review of the record herein, including the record in Case 29-RC-5644, reveals that, upon a petition duly filed by the Union on February 5, 1982, a hearing was held before a hearing officer of the National Labor Relations Board. Thereafter, the Regional Director issued a Decision and Direction of Election wherein he found appropriate for the purposes of collective bargaining the petitioned-for unit of all full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by Respondent at its Deer Park, New York, facility, excluding office clerical employees, salespersons, guards and supervisors as defined in the Act. On April 13, 1982, Respondent filed a request for review of the Regional Director's Decision and Direction of Election in which Respondent alleges that its production department employees should be included in the unit, and that its night foreman

[1] Official notice is taken of the record in the representation proceeding, Case 29-RC-5644, 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.

was a supervisor who should be excluded from the unit. By telegraphic order of April 28, 1982, the Board denied Respondent's request for review. On April 29, 1982, a secret-ballot election was held in the aforementioned unit. The tally of ballots shows that there were 24 votes cast for the Union, 11 against, and 8 challenged ballots. On May 6, 1982, Respondent filed objections to the election alleging that a supervisor and the Union had restrained and coerced employees. On June 15, 1982, the Regional Director issued a Supplemental Decision and Certification of Representative in which he overruled Respondent's objections in their entirety and certified the Union. On or about July 2, 1982, Respondent filed a request for review of the Regional Director's Supplemental Decision and Certification of Representative and alleges that the Regional Director erred in finding that its night foreman is not a supervisor who coerced employees; Respondent was denied due process by the Regional Director's *ex parte* investigation; and the Regional Director erred in not finding that the Union's identification of employee supporters on its correspondence with Respondent constituted objectionable conduct. On August 9, 1982, the Board, by telegraphic order, denied Respondent's request for review.

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 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 concerning the alleged unlawful refusal to bargain, which is properly litigable in this unfair labor practice proceeding.[3]

With respect to Respondent's alleged violation of a duty to provide requested bargaining information, Respondent admits that it has refused to provide information requested by the Union by letter on August 12 and September 24, 1982, but defends its refusal on the grounds that the Union's certification was improper. For the above-stated reasons, we find such a defense to be without merit. The Union requested that Respondent furnish it with information concerning the names, classifications, and regular and overtime wage rates of unit employees; classification wage ranges; hours of work; benefits received by employees; and merit and incentive awards. Respondent specifically denies that the information requested is necessary and relevant to the Union's function as the employees' representative.

It is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished upon request.[4] Furthermore, Respondent has not attempted to rebut the relevance of the information requested by the Union. Accordingly, we find that no material issues of fact exist with regard to Respondent's refusal to furnish the information sought by the Union in its letters of August 12 and September 24, 1982. Therefore, we grant the General Counsel's Motion for Summary Judgment.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is now, and has been at all times material herein, a New York corporation engaged in the printing, sale, and distribution of commercial printed products and related products at its facility located in Deer Park, New York. Annually, in the course and conduct of its business operations, Respondent ships goods valued in excess of $50,000

[2] 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). We find no merit in Respondent's contention, raised for the first time in this proceeding, that it has been denied due process by the Regional Director's failure to transmit postelection investigatory affidavits to the Board for consideration in light of Respondent's request for review of the Regional Director's Supplemental Decision. Respondent's failure to raise this issue in a timely manner in the representation proceeding constitutes a waiver precluding it from raising this issue as a defense to its refusal to bargain. See *St. Anthony Hospital Systems*, 252 NLRB 50 (1980), enforcement denied on other grounds 655 F.2d 1028 (10th Cir. 1981); *Fall River Savings Bank*, 250 NLRB 935, 936, fn. 12 (1980), enfd. 649 F.2d 50, 57–61 (1st Cir. 1981).

Moreover, the Supplemental Decision was a final decision on the record. Under Sec. 102.67(d) of the Board's Rules and Regulations, "any request for review must be a self-contained document enabling the Board to rule on the basis of its contents without the necessity of recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the request." Where, as in Case 29-RC-5644, it appears from the Regional Director's decision and the request for review that no substantial and material issues of fact exist, we find no abuse of the Board's discretion in denying the request solely on the basis of those documents. This finding is supported by the Act's policy of expeditiously resolving questions concerning representation. E.g., *Northeastern University*, 261 NLRB 1001 (1982). See also *Summa Corporation d/b/a Frontier Hotel*, 265 NLRB 343 (1982).

[3] Contrary to the argument made by Respondent, the Union's August 12 and September 24, 1982, requests for bargaining information were tantamount to a legal request for bargaining. E.g., *Grand Islander Health Center, Inc.*, 256 NLRB 1255, 1256 (1981).

[4] *Villa Care, Inc., d/b/a Edmonds Villa Care Center*, 249 NLRB 705 (1980); *White Farm Equipment Company, a Subsidiary of White Motor Corporation*, 242 NLRB 1373 (1979); *Dynamic Machine Co.*, 221 NLRB 1140 (1975).

directly from its Deer Park facility to points located outside the State of New York.

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

Local One, Amalgamated Lithographers of America, affiliated with the International Typographical Union, 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 Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by the Employer at its Deer Park, New York facility, excluding office clerical employees, salespersons, guards and supervisors as defined in the Act.

2. The certification

On April 29, 1982, 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 29, 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 June 15, 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 August 12, 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 12, 1982, and continuing at all 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.

Commencing on August 12, 1982, and at all times thereafter, the Union has requested Respondent to furnish the Union with the following information: the names, classifications, and regular and overtime wage rates of unit employees; classification wage ranges; hours of work; benefits received by employees; and merit and incentive awards. This information is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. Since August 12, 1982, Respondent has failed and refused to furnish the Union with the information described above.

Accordingly, we find that Respondent has, since August 12, 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 has failed and refused to provide the Union with requested information which is relevant to the Union in its role as a bargaining representative. 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. We shall also order Respondent, upon request, to furnish the Union with the information which it requested by letter on August 12 and September 24, 1982.

In order to ensure 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 com-

mences 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. Accurate Web, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by the Employer at is Deer Park, New York facility, excluding office clerical employees, salespersons, guards 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 June 15, 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 12, 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 refusing on or about August 12, 1982, and at all times thereafter, to furnish the Union with information it requested by letter on August 12 and September 24, 1982, concerning the names, classifications, and regular and overtime wage rates of unit employees; classification wage ranges; hours of work; benefits received by employees; and merit and incentive awards, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain and refusal to furnish information, 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.

8. 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, Accurate Web, Inc., Deer Park, New York, 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 Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by the Employer at its Deer Park, New York facility, excluding office clerical employees, salespersons, guards and supervisors as defined in the Act.

(b) Refusing to furnish the aforesaid labor organization with the information requested by it on August 12 and September 24, 1982, concerning the names, classifications and regular and overtime wage rates of unit employees, classification wage ranges, hours of work, benefits received by employees, and merit and incentive awards.

(c) 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) Upon request, furnish the above-named labor organization with the information which it request-

ed for bargaining purposes on August 12 and September 24, 1982.

(c) Post at its office and place of business at 355 Marcus Boulevard, Deer Park, New York, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 29, 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 ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] 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 Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to furnish the above-named labor organization with the information requested by it by letter on August 12 and September 24, 1982, concerning the names, classifications and regular and overtime wage rates of unit employees, classification wage ranges, hours of work, benefits received by employees, and merit and incentive awards.

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 full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by the Employer at its Deer Park, New York facility, excluding office clerical employees, salespersons, guards and supervisors as defined in the Act.

WE WILL, upon request, furnish the above-named labor organization with the information requested by it on August 12 and September 24, 1982.

ACCURATE WEB, INC.