

Winnebago Television Corporation d/b/a WTVO-TV and Radio and Television Broadcast Engineers Local Union Number 1220 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC. Case 33-CA-10611

September 23, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On June 1, 1994, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 33-RC-3801. (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.

On August 11, 1994, the General Counsel filed a Motion for Summary Judgment. On August 17, 1994, 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 an opposition.

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

Ruling on Motion for Summary Judgment

In its answer the Respondent denies that the unit is appropriate, that the Union was certified as the exclusive bargaining representative of the unit, and that the Respondent has refused to recognize and bargain with the Union as such representative.

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.¹ We therefore find that the Respondent has

¹In its response to the Board's Notice to Show Cause, the Respondent contends, *inter alia*, that in light of the Supreme Court's recent decision in *NLRB v. Health Care & Retirement Corp.*, 114 S.Ct. 1778 (1994), the Board should reconsider its previous denial of the Respondent's request for review of the Acting Regional Director's finding in his Decision and Direction of Election in the representation proceeding that "weeknight director/supervisor" Hilgendorf was not a statutory supervisor. We reject the Respondent's contention. In that case, the Supreme Court held that the Board had improperly applied an "in the interest of the employer" analysis

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).

Although the Respondent's answer also denies the complaint's allegations that the Union was certified and that the Respondent has since refused to bargain, we find that these denials also do not warrant a hearing in this proceeding. The Respondent in its response to the Notice to Show Cause specifically acknowledges that the Union was certified for the unit. Further, in previous correspondence to the Region, which is attached as an exhibit to the General Counsel's motion, the Respondent specifically stated that it is engaged in a "technical refusal to bargain" with the Union in order to obtain court review of the certification. The Respondent has not disputed the authenticity of that correspondence in its response to the Notice to Show Cause. We therefore find that the Respondent is refusing to bargain with the Union as alleged in the complaint.²

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation with an office and place of business in Rockford, Illinois, has been engaged in the business of television broadcasting. During the calendar year preceding issuance of the complaint, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 directly to customers located outside the State of Illinois, and purchased and received at its Rockford, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held August 23, 1993, the Union was certified on September 22, 1993, as the col-

in finding that the charge nurses at issue were statutory supervisors. That analysis was not applied by the Acting Regional Director here with respect to Hilgendorf. Rather, the Acting Regional Director found that the evidence had failed to show that Hilgendorf's direction of production employees was exercised in other than a routine manner or required independent judgment, or that he made effective recommendations regarding hiring, etc. Accordingly, we deny the Respondent's request for reconsideration.

²See *Biewer Wisconsin Sawmill*, 306 NLRB 732 (1992).

lective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production employees, including creative service assistants, production assistants, directors, technical directors, videographer/editor, and film/satellite coordinator employed at the Rockford, Illinois facility, but excluding production/commercial traffic employees, administrative department employees, news department employees, programming employees, sales department employees, engineers, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since September 14, 1993, the Union has requested the Respondent to bargain and, since September 14, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after September 14, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent 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.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Winnebago Television Corporation d/b/a WTVO-TV, Rockford, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Radio and Television Broadcast Engineers Local Union Number 1220, of the International Brotherhood of Electrical Workers, AFL-CIO-CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) 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 representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production employees, including creative service assistants, production assistants, directors, technical directors, videographer/editor, and film/satellite coordinator employed at the Rockford, Illinois facility, but excluding production/commercial traffic employees, administrative department employees, news department employees, programming employees, sales department employees, engineers, office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Rockford, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³If 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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Radio and Television Broadcast Engineers Local Union Number 1220 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production employees, including creative service assistants, production assistants, directors, technical directors, videographer/editor, and film/satellite coordinator employed at the Rockford, Illinois facility, but excluding production/commercial traffic employees, administrative department employees, news department employees, programming employees, sales department employees, engineers, office clerical employees, guards and supervisors as defined in the Act.

WINNEBAGO TELEVISION CORPORATION
D/B/A WTVO-TV