

**White Castle Systems, Inc. and United Catering,
Restaurant, Bar and Hotel Workers, Local
1064, Retail, Wholesale and Department Store
Union, AFL-CIO. Case 7-CA-19337**

September 30, 1981

DECISION AND ORDER

**BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN**

Upon a charge filed on May 22, 1981, by United Catering, Restaurant, Bar and Hotel Workers, Local 1064, Retail, Wholesale and Department Store Union, AFL-CIO, herein called the Union, and duly served on White Castle Systems, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on June 10, 1981, 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 May 7, 1981, following a Board election in Case 7-RC-16276, 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 May 15, 1981, 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 June 16, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On June 29, 1981, counsel for the General Counsel filed directly with the Board a "Motion To Transfer Case to and Continue Proceedings Before the Board and Motion for Summary Judgment." Subsequently, on July 13, 1981, 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 contests the validity of the Union's certification. Respondent admits its refusal to bargain, but denies that it thereby violated Section 8(a)(5) and (1) of the Act. Specifically, Respondent contends that the Union should not have been certified as the collective-bargaining representative of its employees because the Regional Director directed an election in an inappropriate unit. Respondent further asserts that the Board should reconsider its denial of review of the Regional Director's Decision and Direction of Election.

In his Motion for Summary Judgment, the General Counsel argues that there are no issues requiring a hearing, and that Respondent is attempting to relitigate issues which were raised and determined by the Board in the underlying representation case. We agree with the General Counsel. Review of the record, including the record in Case 7-RC-16276, shows that on April 3, 1981, following a hearing and the submission of a brief by Respondent, the Regional Director issued a Decision and Direction of Election wherein, contrary to Respondent's contention that only a multifacility unit was appropriate, he found appropriate the petitioned-for single-facility unit of all full-time and regular part-time employees at Respondent's Fort Street, Southgate, Michigan, facility. On April 10, 1981, Respondent filed a request for review of the Regional Director's decision. Respondent argued that only a multifacility unit was appropriate because the alleged facts rebutted the presumption that a single-facility unit is appropriate. On April 29, 1981, the Board telegraphically denied the request for review on the ground that the request raised no substantial issues warranting review. On May 7, 1981, after an election conducted by the Regional Director, the Union was certified as the exclusive collective-bargaining agent for the unit employees. By letter dated May 15, 1981, Respondent expressly stated to the Union that it declined a request to bargain with the Union as the certified representative of its employees because it believed that the Board's unit

¹ Official notice is taken of the record in the representation proceeding, Case 7-RC-16276, 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 N.L.R.A., as amended.

determination in the representation proceeding had been erroneous.

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 which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the 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 a Delaware corporation engaged in the business of operating restaurants that provide food and beverages to the general public with its principal office and place of business located in Farmington, Michigan. Respondent maintains other facilities in the State of Michigan, and in various other States, including a facility located at Fort Street, Southgate, Michigan. During the year ending December 31, 1980, which period is representative of its operations during all times material herein, Respondent, in the course and conduct of its business operations, earned gross revenues in excess of \$500,000, and during that same period of time it purchased food, beverages, and other goods and materials valued in excess of \$50,000 which were transported and delivered to its place of business in Southgate, Michigan, directly from points located outside the State of Michigan.

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

United Catering, Restaurant, Bar and Hotel Workers, Local 1064, Retail, Wholesale and De-

partment Store 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 employees, including castle operators, auxiliary castle operators, and castle instructors, employed by the Employer at its Fort Street, Southgate, Michigan, facility, designated as castle unit #20; but excluding office clerical employees, professional employees, and guards and supervisors as defined in the Act.

2. The certification

On April 29, 1981, 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 7, 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 May 7, 1981, 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 May 11, 1981, 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 May 15, 1981, 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.

Accordingly, we find that Respondent has, since May 15, 1981, 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.

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).

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. White Castle Systems, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Catering, Restaurant, Bar and Hotel Workers, Local 1064, Retail, Wholesale and Department Store 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 employees, including castle operators, auxiliary castle operators, and castle instructors, employed by Respondent at its Fort Street, Southgate, Michigan, facility, designated as castle unit #20, but excluding office clerical employees, professional employees, and 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 May 7, 1981, 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 May 15, 1981, 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, White Castle Systems, Inc., Southgate, Michigan, 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 United Catering, Restaurant, Bar and Hotel Workers, Local 1064, Retail, Wholesale and Department Store Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time employees, including castle operators, auxiliary castle operators, and castle instructors, employed by the Employer at its Fort Street, Southgate, Michigan, facility, designated as castle unit #20; but excluding office clerical employees, professional employees, and guards 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 Fort Street, Southgate, Michigan, facility copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 7, 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 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ 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 United Catering, Restaurant, Bar, and Hotel Workers, Local 1064, Retail, Wholesale and Department Store 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 full-time and regular part-time employees, including castle operators, auxiliary castle operators, and castle instructors, employed by the Employer at its Fort Street, Southgate, Michigan, facility, designated as castle unit #20; but excluding office clerical employees, professional employees, and guards and supervisors as defined in the Act.

WHITE CASTLE SYSTEMS, INC.