

Alaska State Bank and United Food and Commercial Workers Union Local 1496, AFL-CIO-CLC, Case 19-CA-12114

August 4, 1980

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND TRUESDALE

Upon a charge filed on February 15, 1980, by United Food and Commercial Workers Union Local 1496, AFL-CIO-CLC, herein called the Union, and duly served on Alaska State Bank, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 19, issued a complaint and notice of hearing on March 12, 1980, 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 January 3, 1980, following a Board election in Case 19-RC-9526, 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 January 13 and 16, 1980, 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 March 24, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 28, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 2, 1980, 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.

¹ Official notice is taken of the record in the representation proceeding, Case 19-RC-9526, 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.

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 in its opposition to the General Counsel's motion, Respondent denied that the unit was appropriate and that the Union was the exclusive bargaining representative of the employees. Respondent admitted that the Union was certified as the collective bargaining agent, but it contends that the certification was invalid and without legal effect. Respondent also admitted that the Union, orally and in writing, requested Respondent to recognize and to bargain collectively with the Union on behalf of the employees in the unit. Respondent further admitted that it failed to recognize and to bargain with the Union. However, Respondent denied that it violated Section 8(a)(5) and (1) of the Act by this conduct, and it maintains that since the representation hearing on November 1, 1979, it has further centralized and consolidated several bank functions into its main office, rendering the single-bank unit herein even more inappropriate. Thus, it urges that it should be allowed to introduce evidence of this ongoing process. It also asserted that the Union's intention to organize all of its employees raises factual issues concerning the appropriateness of the certified unit. Respondent further asserted that the Board should reconsider its presumption, and reverse its policy that a single-branch unit in the banking business is appropriate.²

In his motion, the General Counsel contended that the pleadings herein raise no issue of fact which requires a hearing. He also contended that matters relating to consolidation and centralization of banking functions were raised and fully considered in the representation proceeding. The General Counsel further contended that the Union's desire to engage in further organizing efforts and to represent all of Respondent's employees has no bearing on the issues herein. We agree with the General Counsel.

Review of the record herein, including the record in Case 19-RC-9526, reveals that on November 15, 1979, following a hearing, the Regional Director for Region 19 issued his Decision and Direction of Election wherein, contrary to Respondent's contention that only a bankwide unit of all employees was appropriate, he found appropriate a

² See *Wyandotte Savings Bank*, 245 NLRB No. 120 (1979).

single-bank unit of all employees at Respondent's Kenai, Alaska, branch, but excluding officers, guards, professional employees, and supervisors as defined in the Act. The Regional Director found no merit in Respondent's argument that only a bankwide bargaining unit was appropriate because of the alleged high degree of centralization of personnel, operational, and administrative functions. On November 23, 1979, Respondent filed a request for review of the Regional Director's decision. Respondent argued that the facts showed that it was highly centralized in terms of its operational, administrative, and personnel functions, and truly operated as a single bank. Respondent requested the Board to reconsider its policies concerning appropriate units in the banking industry, especially the presumption in *Wyandotte Savings Bank, supra*. On December 26, 1979, the Board denied review on the ground that the request raised no substantial issues warranting review. On January 3, 1980, the Union was certified as the exclusive collective-bargaining agent for the unit employees. Thus, it appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

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 significant 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 banking corporation organized under the laws of the State of Alaska, with its main office in Anchorage, Alaska, and is engaged in the banking business throughout the State of Alaska.

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).

Respondent, during the past 12 months, which period is representative of all times material herein, in the course and conduct of its business operations, had gross income in excess of \$500,000, transferred funds in excess of \$50,000 directly to banks outside the State of Alaska, and held United States securities valued in excess of \$100,000.

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 Food and Commercial Workers Union Local 1496, AFL-CIO-CLC, is, and has been at all times material herein, 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 employees of the Kenai Branch of the Alaska State Bank, but excluding officers, guards, professional employees and supervisors within the meaning of the Act.

2. The certification

On December 11, 1979, 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 19, 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 January 3, 1980, 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 January 13 and 16, 1980, 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 January 13 and 16, 1980, and continuing at all times thereafter to date, Re-

spondent has refused, and continues to refuse, to recognize and to bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since January 13 and 16, 1980, 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. Alaska State Bank is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Food and Commercial Workers Union Local 1496, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees of the Kenai Branch of Alaska State Bank, but excluding officers, guards, professional employees, and supervisors within the meaning of the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since January 3, 1980, 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 January 13 and 16, 1980, 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, Alaska State Bank, Kenai, Alaska, 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 Food and Commercial Workers Union Local 1496, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees of the Kenai Branch of the Alaska State Bank, but excluding officers, guards, professional employees and supervisors within the meaning of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex-

ercise 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 Kenai, Alaska, bank copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 19, 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 19, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ 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 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 Food and Commercial Workers Union Local 1496, AFL-CIO-CLC, 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 employees of the Kenai Branch of the Alaska State Bank, but excluding officers, guards, professional employees and supervisors within the meaning of the Act.

ALASKA STATE BANK