

Ansari Abrasives Manufacturing Company, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Case 18-CA-6315

November 19, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

Upon a charge filed on July 3, 1979, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), herein called the Union, and duly served on Ansari Abrasives Manufacturing Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 18, issued a complaint on July 25, 1979, 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, 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 25, 1979, following a Board election in Case 18-RC-12095, 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 29, 1979, 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, and to provide the Union with information regarding employee wages and benefits, although the Union has requested and is requesting it to do so. On August 2, 1979, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and asserting certain affirmative defenses. Respondent admits that it meets the Board's jurisdictional standards and that the Union is a labor organization within the meaning of the Act. It admits that the Union was certified and has requested Respondent to bargain with it and to supply certain informa-

¹ Official notice is taken of the record in the representation proceeding, Case 18-RC-12095, 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.

tion, and that Respondent has failed to do so. Respondent denies the conclusory 8(a)(5) and (1) allegations, and alleges that the Board's failure and refusal to afford it a fair and impartial hearing on the alleged misconduct of the Union were improper as a matter of law and therefore the complaint should be dismissed. Respondent also contends that the unit alleged in the complaint is not a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

On August 29, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on September 6, 1979, 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 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 attacks the Union's certification on the basis of certain preelection conduct by the Union which Respondent alleges improperly influenced the results of the election.²

Review of the record herein reveals that in Case 18-RC-12095 the petition was filed by the Union on October 24, 1978. On November 21, 1978, a Stipulation for Certification Upon Consent Election was approved by the Regional Director and the election was conducted on December 1, 1978. On December 8, 1978, Respondent filed timely objections to the election, which the Regional Director overruled in their entirety on January 26, 1979. Pursuant to timely exceptions to the Regional Director's report on objections, on May 25, 1979, the Board issued a Decision and Certification of Representative (not published in volumes of Board Decisions), in which it adopted the Regional Director's findings and recommendations and certified the Union as the exclusive bargaining representative of the employees in the appropriate unit.³

² More particularly, Respondent alleges, *inter alia*, that supervisory employees initiated union activity and participated in the Union's organizational campaign and that union agents made misrepresentations and threats affecting the results of the election.

³ In its response to the Notice To Show Cause, Respondent has requested that this case be referred to the Regional Director for a hearing. In overruling Respondent's objections in Case 18 RC 12095, the Board necessarily found that there were no issues of fact or law warranting a hearing.

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.⁴

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

Ansari Abrasives Manufacturing Company, Inc., a Minnesota corporation with offices and places of business in Brooklyn Center, Minnesota, has been engaged in the manufacture and distribution of grinding wheels. During the calendar year ending December 31, 1978, Respondent, in the course and conduct of its business operations, sold and shipped from its Brooklyn Center, Minnesota, facilities products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Minnesota.

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

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), 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

⁴ 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).

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 at the Respondent's 4811 Dusharme Drive and 3400-48th Avenue North, Brooklyn Center, Minnesota facilities; excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

2. The certification

On December 1, 1978, 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 18, 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 25, 1979, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request and Refusal To Bargain*

Commencing on or about May 29, 1979, 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 and to provide certain information. Commencing on or about May 29, 1979, 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, and has refused to provide the Union with the rates and the job classifications of unit employees; the annual wages received by unit employees during 1978-79; the Employer's contributions per hour to unit employee health and life insurance policies; financial information concerning any pension or profit-sharing plans covering unit employees; and the length of service, sex, and age of unit employees. The information requested was and is relevant to the Union's duty and function of acting as the collective-bargaining representative of the employees in the aforementioned appropriate unit.⁵

Accordingly, we find that Respondent has, since May 29, 1979, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and refused to furnish the information requested by the Union, and that, by such refusal, Respondent

⁵ See *Westinghouse Electric Corporation*, 239 NLRB 106 (1978); *Borden, Inc., Borden Chemical Division*, 235 NLRB 982 (1978).

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 and provide the Union with the information requested.

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 (1964); *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. Ansari Abrasives Manufacturing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), 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 at the Respondent's 4811

Dusharme Drive and 3400-48th Avenue North, Brooklyn Center, Minnesota, facilities; excluding office clerical employees, managerial employees, 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 25, 1979, 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 29, 1979, 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 its failure and refusal to provide the Union with the rates and the job classifications of unit employees; the annual wages received by unit employees during 1978-79; the Employer's contributions per hour to unit employee health and life insurance policies; financial information concerning any pension or profit-sharing plans covering unit employees; and the length of service, sex, and age of unit employees, Respondent has engaged in and is continuing to engage in unfair labor practices in violation of Section 8(a)(5) and (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, Ansari Abrasives Manufacturing Company, Inc., Brooklyn Center, Minnesota, 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 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees at the Respondent's 4811 Dusharme Drive and 3400-48th Avenue

North, Brooklyn Center, Minnesota facilities; excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to provide the Union with the rates and the job classifications of unit employees; the annual wages received by unit employees during 1978-79; the Employer's contributions per hour to unit employee health and life insurance policies; financial information concerning any pension or profit-sharing plans covering unit employees; and the length of service, sex, and age of unit employees.

(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, provide the Union with the information requested above.

(c) Post at its places of business in Brooklyn Center, Minnesota, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 18, 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.

(d) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁶ 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 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide the Union with the information and data it requested pertaining to rates of pay, benefits, and length of service, sex, and age of unit employees.

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 at the Employer's 4811 Dusharme Drive and 3400-48th Avenue North, Brooklyn Center, Minnesota facilities; excluding office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL, upon request, provide the Union with the rates and the job classifications of unit employees; the annual wages received by unit employees during 1978-79; the Employer's contributions per hour to unit employee health and life insurance policies; financial information concerning any pension or profit-sharing plans covering unit employees; and the length of service, sex, and age of unit employees.

ANSARI ABRASIVES MANUFACTURING COMPANY, INC.