

Aydin Energy Division and International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115. Case 32-CA-1844

September 27, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO
AND TRUESDALE

Upon a charge and amended charge filed on June 7 and 27, 1979, respectively, by International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, herein called the Union, and duly served on Aydin Energy Division, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 32, issued a complaint on June 28, 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 1, 1979, following a Board election in Case 32-RC-498 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing or about May 7, 1979, and continuing to date, the Union requested that Respondent meet and bargain with it and that Respondent furnish it with "all information regarding the employees at your company who we represent pertaining to all wages, benefits, pension or any other pertinent information that will assist us in our joint effort of collective bargaining . . . [and] a current list of the names, classifications and addresses of all bargaining unit employees." 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 furnish the information sought, although the Union has requested and is requesting it to do so. On June 29,

¹ Official notice is taken of the record in the representation proceeding, Case 32-RC-498, 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.

1979, Respondent filed its answer to the complaint, admitting in part, and denying in part, the allegations in the complaint, submitting affirmative defenses, and requesting that the complaint be dismissed in its entirety.

On June 24, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and a memorandum in support thereof, with exhibits attached. Subsequently, on July 27, 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 the General Counsel's Motion for Summary Judgment.

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 for Summary Judgment, Respondent admits its refusal to bargain, and admits its refusal to furnish information to the Union, but contends it is not obligated to bargain or furnish the information requested because the election did not fairly and truly represent the views of the employees and further because the employees did not validly designate and select the Union. In this regard, Respondent contends that the Regional Director and the Board improperly failed to afford it an evidentiary hearing on its objections to the election held in the underlying representation case; that the results of the election were improperly influenced by objectionable conduct therein; that the Board's certification is invalid and unenforceable; and that, as substantial and material factual issues remain unresolved as to the relevance of the information requested by the Union, the Motion for Summary Judgment should be denied. The General Counsel contends Respondent is improperly seeking to relitigate issues which were raised and decided in the underlying representation case. We agree with the General Counsel.

Review of the record herein, including the record in Case 32-RC-498, reveals that on October 17, 1978, in the representation proceeding, the Union sought to represent certain employees of Respondent, and that pursuant to a Stipulation for Certification Upon Consent Election, approved by the Regional Director on November 8, 1978, an election by secret ballot was conducted on December 22, 1978, under the supervision of the Regional Director, in the unit set forth

herein. The tally of ballots revealed that 19 ballots were cast for, and 13 against, the Union. There were four challenged ballots, which were not determinative of the outcome of the election. On January 2, 1979, Respondent filed objections to the conduct of the election. After an investigation of said objections, the Regional Director, on February 22, 1979, issued his Report and Recommendation on Objections, recommending that the objections be overruled in their entirety and that a certification issue. Thereafter, Respondent filed exceptions thereto, and the Board, on May 1, 1979, issued a Decision and Certification of Representative wherein it adopted the Regional Director's findings and recommendations.²

Respondent contends that it was denied due process by the Board's refusal to hold a hearing, in the underlying representation case, on the matter of the objections. It is well established, however, that a party is not entitled to a hearing on objections absent a showing of substantial and material issues.³ Further, the Board has held, with judicial approval, that evidentiary hearings are not required in unfair labor practice and summary judgment cases where, as here, there are no substantial or material facts to be determined.⁴ It thus appears that Respondent is attempting to relitigate issues raised and resolved in the underlying representation case.

Respondent also contends that the information sought by the Union in connection with collective bargaining is not necessary or relevant. However, the information sought—wage and benefit data, and names, addresses, and job classifications of unit employees—is presumptively relevant in view of Respondent's obligation to recognize and bargain with the Union by virtue of the certification herein involved.

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.⁵

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 re-

quire 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 now, and has been at all times material herein, a corporation duly organized under the existing by virtue of the laws of the State of Delaware, with a facility located in Mountain View, California, where it is engaged in the manufacture of electronics equipment. During the past 12 months, Respondent, in the course and conduct of its business operations in Mountain View, California, purchased and received goods and services valued in excess of \$50,000 directly from suppliers located outside the State of California.

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 Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, 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 production and maintenance employees employed at Respondent's fabrication shop at 2581 Leghorn St., Mountain View, California; excluding office clerical employees, professional employees, salesmen, guards, and supervisors as defined in the Act.

2. The certification

On December 22, 1978, a majority of the employees of Respondent in said unit, in a secret-ballot elec-

² Not reported in bound volumes of Board Decisions.

³ *National Beryllia Corporation*, 222 NLRB 1289 (1976), and cases cited therein.

⁴ *Handy Hardware Wholesale, Inc.*, 222 NLRB 373 (1976), and cases cited therein.

⁵ 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).

tion conducted under the supervision of the Regional Director for Region 32, 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 1, 1979, 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 7, 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. 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.

By letter dated May 7, 1979, and at all times thereafter, the Union has requested, and continues to request, that Respondent furnish it with information concerning employees in the above-described unit, pertaining to all wages, benefits, pensions, a current list of names, classifications, and addresses of all bargaining unit employees or any other pertinent information that will assist in collective bargaining. Since on or about May 29, 1979, Respondent has failed and refused, and continues to fail and refuse, to furnish the Union with the information requested.

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 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 mean-

ing 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. Aydin Energy Division is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed at Respondent's fabrication shop at 2581 Leghorn St., Mountain View, California; excluding office clerical employees, professional employees, salesmen, 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 1, 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 refusing on or above May 29, 1979, and at all times thereafter, to bargain collectively with the Union as the exclusive bargaining representative of all employees of Respondent in the appropriate unit,

by refusing to furnish it information concerning said employees, pertaining to all wages, benefits, pensions, a current list of names, classifications, and addresses of all bargaining unit employees, or any other pertinent information that will assist in collective bargaining. 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, 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, Aydin Energy Division, Mountain View, California, 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 Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed at Respondent's fabrication shop at 2581 Leghorn St., Mountain View, California; excluding office clerical employees, professional employees, salesmen, guards and supervisors as defined in the Act.

(b) Refusing to bargain collectively with the above-named labor organization, as the exclusive bargaining representative of the employees in the bargaining unit described above, by refusing to furnish said labor organization with information concerning said employees, pertaining to all wages, benefits, pensions, a current list of names, classifications, and addresses of all bargaining unit employees or any other pertinent information that will assist in collective bargaining.

(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, bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, as the exclusive bargaining representative of all employees in the aforesaid appropriate unit, by furnishing said labor organization with information concerning said employees, pertaining to all wages, benefits, pensions, a current list of names, classifications, and addresses of all bargaining unit employees or any other pertinent information that will assist in collective bargaining.

(c) Post at its facility located at 2581 Leghorn St., Mountain View, California, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 32, 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 32, 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 Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, as the exclusive representative of the employees in the following appropriate unit:

All production and maintenance employees employed by us at our fabrication shop at

2581 Leghorn St., Mountain View, California; excluding office clerical employees, professional employees, salesmen, guards, and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the above-named labor organization, as the exclusive bargaining representative of the employees in the bargaining unit described above, by refusing to furnish said labor organization with information concerning said employees, pertaining to all wages, benefits, pensions, a current list of names, classifications, and addresses of all bargaining unit employees or any other pertinent information that will assist in collective bargaining.

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 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.

WE WILL, upon request, bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, as the exclusive bargaining representative of all employees in the aforesaid appropriate unit, by furnishing said labor organization with information concerning said employees, pertaining to all wages, benefits, pensions, a current list of names, classifications, and addresses of all bargaining unit employees or any other pertinent information that will assist in collective bargaining.

AYDIN ENERGY DIVISION