

**Worley Mills, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 492.** Case 28-CA-5841

September 30, 1980

### DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO

Upon a charge filed on May 1, 1980, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 492, herein called the Union, and duly served on Worley Mills, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 28, issued a complaint on May 16, 1980, against Respondent, and an amendment to the complaint on June 2, 1980, 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, amendment to 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, as amended, alleges in substance that on April 10, 1980, following a Board election in Case 28-RC-3671, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about April 28, 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 May 29 and August 11, 1980, Respondent filed its answers to the complaint and to the amendment to the complaint, respectively, admitting in part, and denying in part, the allegations in the complaint as amended.

On August 18, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 22, 1980, the Board issued an order transferring the

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 28-RC-3671, 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.

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 answers to the complaint and the amendment to the complaint, and in its response to the Notice To Show Cause, Respondent admits that it has refused to recognize or bargain collectively with the Union in order to test the Board's certification of the Union in Case 28-RC-3671 as the exclusive bargaining representative of certain employees at its Clovis, New Mexico, facility. Respondent denies, however, that it thereby violated Section 8(a)(5) and (1) of the Act. Respondent contends in its response to the Notice To Show Cause that its refusal to recognize or bargain collectively with the Union is based on threats and coercion engaged in by the Union, improper supervisory involvement in the election, and improper campaigning in the voting area during the election, all as set forth in the record in Case 28-RC-3671. Respondent also contends that in an effort to resolve the present dispute it offered to participate in a second election at its Clovis, New Mexico, facility if campaigning were not permitted in the immediate voting area and proper election conditions were otherwise to exist.

A review of the record herein, including the record in Case 28-RC-3671, reveals the following: On September 7 and 8, 1979, pursuant to a Stipulation for Certification Upon Consent Election, an election was held in the appropriate unit. The tally of ballots shows that 28 votes were cast for, and 23 against, the Union, with no challenged ballots. On September 14, 1979, Respondent filed objections to conduct affecting the results of the election. Pursuant to an order and notice of hearing issued by the Regional Director of Region 28, a hearing was held before Hearing Officer Kathleen McCorkell on October 30, 1979. The Hearing Officer's Report on Objections found no merit in Respondent's objections. The Hearing Officer therefore recommended that the objections be overruled, and the Union be certified.

On April 10, 1980, the Board issued a Decision and Certification of Representative in which it adopted the Hearing Officer's report and certified

the Union as the exclusive bargaining representative of the employees in the appropriate unit.

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.<sup>2</sup>

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

At all times material herein, Respondent has been a New Mexico corporation and has maintained a place of business at 408 South Prince, Clovis, New Mexico, where it has been engaged in the manufacture and sale of livestock feed. During the 12 months preceding the issuance of the complaint herein, Respondent, in the course and conduct of its business operations, has had a gross volume of retail business which was in excess of \$500,000 and has sold goods and materials valued in excess of \$50,000 which were transported in interstate commerce and delivered directly to customers located in the States of the United States other than the State of New Mexico.

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 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 492, is a labor organization within the meaning of Section 2(5) of the Act.

<sup>2</sup> 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).

### 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 mill production and maintenance employees including all truckdrivers and elevator employees employed by the Employer at its Clovis, New Mexico, facility; excluding all feedlot employees, office clerical employees, guards, watchmen, and supervisors as defined by the Act, as amended.

##### 2. The certification

On September 7 and 8, 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 28, 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 April 10, 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 April 14, 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 April 28, 1980, 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 April 28, 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. Worley Mills, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 492, is a labor organization within the meaning of Section 2(5) of the Act.

3. All mill production and maintenance employees including all truckdrivers and elevator employees employed by the Employer at its Clovis, New Mexico, facility; excluding all feedlot employees, office clerical employees, guards, watchmen, and supervisors as defined by the Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since April 10, 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 April 28, 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, Worley Mills, Inc., Clovis, New Mexico, 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 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 492, as the exclusive bargaining representative of its employees in the following appropriate unit:

All mill production and maintenance employees including all truckdrivers and elevator employees employed by the Employer at its Clovis, New Mexico, facility; excluding all feedlot employees, office clerical employees, guards, watchmen, and supervisors as defined by the Act, as amended.

(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 Clovis, New Mexico, facility copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, on forms provided by the Regional Director for Region 28, 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 28, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>3</sup> 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 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 492, 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 mill production and maintenance employees employed by the Employer at its Clovis, New Mexico, facility; excluding all feedlot employees, office clerical employees, guards, watchmen, and supervisors as defined by the Act, as amended.

WORLEY MILLS, INC.