

**Andrew Craft, a sole proprietor, d/b/a Vinyl Craft Fence Co. and United Steelworkers of America.**  
Case 25-CA-10105

January 4, 1979

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND MURPHY

Upon a charge filed on August 15, 1978, by United Steelworkers of America, herein called the Union, and duly served on Andrew Craft, a sole proprietor, d/b/a Vinyl Craft Fence Co., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint and notice of hearing on August 25, 1978, 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 16, 1978, following a Board election in Case 25-RC-6517 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 February 15, 1978, and more particularly, on May 3, 1978, 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 August 31, 1978, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 8, 1978, counsel for the General Counsel filed directly with the Board a motion to strike portions of Respondent's answer and Motion for Summary Judgment, submitting in effect, that no issues remain between the parties in the case which have not been previously decided by the Board, and that Respondent, in its answer, is attempting to liti-

tage issues which were or could have been raised in the prior representation proceeding. He, therefore, moved that Respondent's denial of complaint paragraphs 5(b), 5(c), 5(d), and 5(e) be stricken, that the Board enter a summary judgment that Respondent has violated Section 8(a)(1) and (5) of the Act, order the Respondent to bargain with the Union, and all other relief, in the premises. Subsequently, on September 15, 1978, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motions should not be granted. Respondent thereafter filed no 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, Respondent, in effect, attacks the certification of the Union as the bargaining representative of the employees in the appropriate unit by asserting that the Board improperly denied Carl Rossini, William Hobbs, and Danny Hobbs their rights to vote in the representation election held in Case 25-RC-6517.

Our review of the record, including that of Case 25-RC-6517, shows that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on June 9, 1977, in the agreed-upon appropriate unit. Challenged ballots were determinative of the outcome of the election. On July 26, 1977, the Regional Director for Region 25 issued a report recommending that one of the challenged ballots be overruled and that the remaining seven be sent to hearing. The Board adopted the Regional Director's report on August 17, 1977. After a hearing, the Hearing Officer recommended that the challenges to the ballots of three employees be overruled and the challenges to the ballots of the other four employees, including Rossini and the two Hobbs, be sustained. On April 19, 1978, the Board adopted these recommendations and directed the Regional Director to take certain further appropriate action based thereon. Consequently, on May 4, 1978, the Regional Director opened and counted the four ballots to which challenges had been overruled and thereupon issued a revised tally of ballots which showed that the Union had won the election. On May 16, 1978, the Acting Regional Director certified the Union as the bargaining representative of the employees in the appropriate unit.

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 25-RC-6517, 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.

It thus appears that Respondent's contentions that Carl Rossini and William and Danny Hobbs were denied the right to vote in the election held in the underlying representation proceeding were considered by the Board and rejected in that proceeding and, therefore, may not be reconsidered here.

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.<sup>3</sup>

On the basis of the entire record, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

Respondent Andrew Craft, a sole proprietor, d/b/a Vinyl Craft Fence Co., with principal offices and place of business in Kokomo, Indiana, is engaged in the manufacture, sale, and distribution of vinyl-coated fencing and related products. In the course and conduct of its business operations during the past year, Respondent caused to be manufactured, sold, and distributed at its facility products valued in excess of \$50,000 directly to customers in the State of Indiana, each of which, in the same representative time period, in the course and conduct of their business operations at their Indiana establishments, received goods and materials valued in excess of \$50,000 directly from sources located outside the State of Indiana and/or each of which enterprises manufactured, sold, and distributed at their respective Indiana establishments products valued in excess of \$50,000 which were shipped directly to States other than the State of Indiana.

<sup>2</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Secs. 102.67(f) and 102.69(c).

<sup>3</sup> As we are granting the General Counsel's Motion for Summary Judgment, we find it unnecessary to rule upon his motion to strike portions of Respondent's answer.

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 Steelworkers of American 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 by the Respondent at its facility in Kokomo, Indiana, including all extruder operators, all inspectors, and all truckdrivers, but excluding all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act.

###### 2. The certification

On June 9, 1977, 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 25, 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 16, 1978, 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 February 15, 1978, and more particularly on June 21, 1978, 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 3, 1978, and continuing at all times thereafter to day, 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 3, 1978, 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. Respondent, Andrew Craft, a sole proprietor, d/b/a Vinyl Craft Fence Co., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union, United Steelworkers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by Respondent at its facility in Kokomo, Indiana, including all extruder operators, all inspectors, and all truckdrivers, but excluding all office clerical employees, all professional employees, all guards, and all 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 16, 1978, 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 3, 1978, 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 to 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 Respondent, Andrew Craft, a sole proprietor, d/b/a Vinyl Craft Fence Co., Kokomo, Indiana, its 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 Steelworkers of America as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed by the Respondent at its facility in Kokomo, Indiana, including all extruder operators, all inspectors, and all truckdrivers, but excluding all office clerical employees, all professional employees, all guards, and all 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 Kokomo, Indiana, facilities copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 25, 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 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>4</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

I WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America as the exclusive representative of the employees in the bargaining unit described below.

I WILL NOT in any like or related manner interfere with, restrain, or coerce my employees in the exercise of the rights guaranteed them by Section 7 of the Act.

I 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 production and maintenance employees employed by the Respondent at its facility in Kokomo, Indiana, including all extruder operators, all inspectors, and all truckdrivers, but excluding all office clerical employees, all professional employees, all guards, and all supervisors as defined in the Act.

ANDREW CRAFT, A SOLE PROPRIETOR, d/b/a  
VINYL CRAFT FENCE CO.