

**American Enka Company, A Division of Akzona Incorporated and Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC. Case 11-CA-7266**

April 5, 1978

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND MURPHY

Upon a charge filed on October 31, 1977, by Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, herein called the Union, and duly served on American Enka Company, A Division of Akzona Incorporated, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 11, issued a complaint on November 15, 1977, 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 September 14, 1977, following a Board election in Case 11-RC-4097, 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 October 19, 1977, 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 November 25, 1977, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. 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 denies that on December 22 and 23, 1975, a majority of the employees in the unit found appropriate cast ballots to designate the Union their exclusive collective-bargaining agent, but admits that on September 14, 1977, the Board certified the Union as the collective-bargaining representative of the employees in said unit. Respondent admits the allegation that it refused, and continues to refuse, to meet and bargain

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 11-RC-4097, 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 (C.A. 4,

with the Union as the collective-bargaining representative, but denies the conclusory 8(a)(1) and (5) allegations. Respondent alleges that the Board's decision and certification in the underlying representation proceeding was in error and invalid as a matter of law.

On January 12, 1978, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 20, 1978, 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 preelection conduct which Respondent alleges improperly influenced the results of the election. Respondent further challenges the Union's certification on the ground that the Board erred in granting the Union's motion to amend its representation petition to change its name from Textile Workers Union of America, AFL-CIO-CLC, to Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC.

Review of the record herein reveals that in Case 11-RC-4097 the petition was filed by the Union on October 20, 1975. On November 12, 1975, a Stipulation for Certification Upon Consent Election was approved by the Regional Director, and the election was conducted on December 22 and 23, 1975. On December 30, 1975, Respondent filed timely objections to the election. The Regional Director issued his Report on Objections on March 25, 1976, recommending that certain objections be overruled and ordering a hearing on the remaining objections. Pursuant to timely exceptions to the Regional Director's Report on Objections, on May 28, 1976, the Board issued a Decision and Order (not published in bound volumes) directing a hearing as recommended by the Regional Director but including additional issues raised by other of Respondent's objections,

1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA, as amended.

while otherwise adopting his recommendation to overrule certain objections.<sup>2</sup> Said hearing was held before a duly designated Hearing Officer on July 6, 7, and 8, 1976. Thereafter, on October 12, 1976, the Hearing Officer issued his report wherein he recommended that Respondent's objections be overruled in their entirety. Following receipt of Respondent's timely exceptions to the Hearing Officer's report, the Board, on September 14, 1977, issued its Decision and Certification of Representative, in which it adopted the Hearing Officer's findings and recommendations and certified the Union as the exclusive bargaining representative of the employees in the appropriate unit.<sup>3</sup>

On or about October 19, 1977, Respondent advised the Union by letter that Respondent was seeking judicial review of the Board's certification of the Union and was therefore engaging in a "technical refusal to bargain" with the Union as the exclusive representative of Respondent's employees in the certified unit and concurrently did refuse, and continues to refuse, to recognize or bargain with the Union.<sup>4</sup>

In response to a Motion for Summary Judgment, an adverse party may not rest upon denials in its pleadings, but must present specific facts which demonstrate that there are material facts at issue which require a hearing.<sup>5</sup> Respondent in the instant case presented no material facts not admitted or previously determined.

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>6</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, although it does allege that special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We have carefully reviewed the record and the briefs and find Respondent's allegation to be without merit. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor

practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.<sup>7</sup>

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

Respondent is a Delaware corporation engaged in the manufacturing of textured polyester yarn. During the past 12 months, which period is representative of all times material herein, Respondent purchased and received material valued in excess of \$50,000 from points directly outside the State of North Carolina. During the same period of time, Respondent shipped directly to points outside the State of North Carolina material valued in excess of \$50,000.

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

Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, 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, including laboratory and plant clerical employees at the Employer's Whitakers, North Carolina, plant, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

##### 2. The certification

On December 22 and 23, 1975, a majority of the employees of Respondent in said unit, in a secret-

<sup>2</sup> In overruling these objections, the Board necessarily found that there were no issues of fact or law warranting a hearing as to them.

<sup>3</sup> See *American Enka Company, A Division of Akzona Incorporated*, 231 NLRB 1335 (1977).

<sup>4</sup> Respondent alleges in its answer that it thereafter offered to bargain with the Union concerning the limited subject of the effects of a planned reduction in force at Respondent's Whitakers, North Carolina, plant.

<sup>5</sup> *Western Electric Company, Hawthorne Works*, 198 NLRB 623 (1972).

<sup>6</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).

<sup>7</sup> We deny the General Counsel's motion to strike portions of Respondent's answer to complaint. The Charging Party's "Motion for Inclusion of Special Remedies if Motion for Summary Judgment is Granted" is denied for all the reasons set forth in *Ex-Cell-O Corporation*, 185 NLRB 107 (1970); see also *Metco, Incorporated*, 205 NLRB 875 (1973); *Trustees of Boston University*, 228 NLRB 1008 (1977); Sec. 8(d) of the Act.

ballot election conducted under the supervision of the Regional Director for Region 11, 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 September 14, 1977, 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 October 19, 1977, and continuing at all times thereafter, 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 the above-described unit.<sup>8</sup>

Accordingly, we find that Respondent has, since October 19, 1977, 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 com-

mences 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 (C.A. 5, 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### CONCLUSIONS OF LAW

1. American Enka Company, A Division of Akzona Incorporated, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including laboratory and plant clerical employees at the Employer's Whitakers, North Carolina, plant, excluding office clerical employees, professional 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 September 14, 1977, 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 October 19, 1977, 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.

<sup>8</sup> Respondent's allegation, noted above, that it thereafter offered to bargain concerning the limited subject of the effects of a planned reduction in force does not absolve it of the basic violation of refusing to recognize the

Union as exclusive bargaining representative for employees in the certified unit. Cf. *N.L.R.B. v. American National Insurance Co.*, 343 U.S. 395, 399, fn. 4. (1952).

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, American Enka Company, A Division of Akzona Incorporated, Whitakers, North Carolina, 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 Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, including laboratory and plant clerical employees at the Employer's Whitakers, North Carolina, plant, excluding office clerical employees, professional employees, guards, and 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 Whitakers, North Carolina, plant copies of the attached notice marked "Appendix."<sup>9</sup> Copies of said notice, on forms provided by the Regional Director for Region 11, 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 11, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>9</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 Amalgamated Clothing and Textile Workers Union, 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 production and maintenance employees, including laboratory and plant clerical employees at the Employer's Whitakers, North Carolina, plant, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

AMERICAN ENKA  
COMPANY, A DIVISION  
OF AKZONA  
INCORPORATED