

**White Automotive Corporation and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW).
Case 25-CA-9345-2**

April 25, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND MURPHY

Upon a charge filed on November 18, 1977, by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), herein called the Union, and duly served on White Automotive Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint on November 29, 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 August 26, 1977, following a Board election in Case 25-RC-6640, 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 August 26, 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 December 9, 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 on July 22, 1977, a majority

¹ Official notice is taken of the record in the representation proceeding, Case 25-RC-6640, 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, 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.

² Subsequently, on February 6, 1978, counsel for the General Counsel submitted an amendment to the Motion for Summary Judgment, correcting the inadvertent omission of certain appendixes from its original Motion for Summary Judgment, and moved the Board to allow the amendment. We grant counsel for the General Counsel's motion to amend.

³ More particularly, Respondent alleges that certain union campaign materials contained material misrepresentations of fact warranting a new election. The alleged misrepresentations were: (1) a statement that, accord-

ing to Bureau of Labor Statistics information, unionized workers receive an average wage rate of \$2.30 per hour more than nonunion workers, when in fact the differential reported was \$2.30 per hour in total compensation, including fringe benefits; and (2) a union statement that "the UAW 'Cannot' and 'Does Not' fine UAW Members," which Respondent rebutted by citing to its employees art. 31 of the Union's constitution, which authorizes such fines. The Acting Regional Director concluded that the foregoing statements did not constitute material misrepresentations sufficient to warrant a new election under *Hollywood Ceramics*, 140 NLRB 221 (1962), and that, in any event, the Board in *Shopping Kart Food Market, Inc.*, 228 NLRB 1311 (1977), decided it would no longer set aside elections on the basis of alleged misrepresentations, except in rare cases. As noted elsewhere, on September 22, 1977, the Board denied Respondent's request for review of the Acting Regional Director's conclusion. We note that under either the *Hollywood Ceramics* or the *Shopping Kart* rationale the alleged misrepresentations presented herein clearly do not warrant setting aside the election.

of the employees in the unit found appropriate cast ballots to designate the Union as their exclusive collective-bargaining representative. It denies that the Union has been, at all times since July 22, 1977, and is now, the exclusive representative of all the employees in the appropriate unit for the purposes of collective bargaining, but admits that on August 26, 1977, the Acting Regional Director certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit. Respondent admits the allegation that it refused, and continues to refuse, to meet and bargain with the Union as the collective-bargaining representative, but denies the conclusory 8(a)(5) and (1) allegations. Respondent alleges that the Acting Regional Director improperly certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit because the Acting Regional Director failed to uphold Respondent's meritorious objections.

On December 16, 1977, counsel for the General Counsel filed directly with the Board a motion to strike portions of Respondent's answer and a Motion for Summary Judgment.² Subsequently, on February 14, 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 certain preelection conduct by the Union which Respondent alleges improperly influenced the results of the election.³

Review of the record herein reveals that in Case 25-RC-6640 the petition was filed by the Union on May 16, 1977. On June 22, 1977, the Regional Director issued his Decision and Direction of Election, and the election was conducted on July 22, 1977. On July 29, 1977, Respondent filed timely objections to the election, which the Acting Regional Director overruled in their entirety on August 26, 1977. Respondent filed its request for review of the Acting Regional Director's Supplemental Decision, Order, and Certification of Representative on September 8, 1977, which was denied by the Board on September 22, 1977, as it raised no substantial issue warranting review.

Following a request by the Union on or about September 1, 1977, that Respondent bargain collectively in good faith with respect to rates of pay, hours, and other terms and conditions of employment, Respondent refused to recognize and bargain in good faith with the Union as the exclusive bargaining representative of its employees in the certified unit.

In response to a Motion for Summary Judgment, an adverse party may not rest upon denial in its pleadings, but must present specific facts at issue which require a hearing.⁴ 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.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,⁶ 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. We shall, accordingly, grant the Motion for Summary Judgment.⁷

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

Respondent raises two other defenses in its answer which were also raised as objections to the election. We find these other defenses to be untimely because they were decided adversely to Respondent by the Acting Regional Director, and Respondent failed to preserve them by including them in its request for review. See Sec. 102.67(f) of the Board's Rules and Regulations, Series 8, as amended.

⁴ *Western Electric Company, Hawthorne Works*, 198 NLRB 623 (1972).

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).

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Colorado corporation engaged in the manufacture, sale, and distribution of automobile tops, roll bars, tire carriers, automotive products, and related products. During the past 12 months, which period is representative of all times material herein, Respondent shipped directly to points outside the State of Indiana goods valued in excess of \$50,000. During the same 12 months, Respondent purchased goods valued in excess of \$50,000, which were shipped directly to it from points located outside the State of Indiana.

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 & 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 a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees at the Employer's Columbia City, Indiana, plant, but excluding all office clerical employees, guards, all quality control inspectors, and all truckdrivers and supervisors as defined in the Act.

2. The certification

On July 22, 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 bargain-

⁶ Respondent's allegation that it has newly discovered evidence is without merit, inasmuch as the allegedly "newly discovered" evidence was presented to the Acting Regional Director in support of Respondent's objections to the election, and was presented to the Board in support of Respondent's request for review.

⁷ We deny the General Counsel's motion to strike portions of Respondent's answer.

ing with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on August 26, 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 September 1, 1977, 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 September 1, 1977, 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 September 1, 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 commences to bargain in good faith with the Union as the recognized bargaining representative in the ap-

propriate 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. White Automotive Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees at the Employer's Columbia City, Indiana, plant, but excluding all office clerical employees, guards, all quality control inspectors, and all truckdrivers 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 August 26, 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 September 1, 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.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, White Automotive Corporation, Columbia City,

Indiana, 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 & Agricultural Implement Workers of America (UAW), as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees at the Employer's Columbia City, Indiana, plant, but excluding all office clerical employees, guards, all quality control inspectors, and all truckdrivers 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 Columbia City, Indiana, place of business copies of the attached notice marked "Appendix."⁸ 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.

⁸ 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 & Agricultural Implement Workers of America (UAW), 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 at the Employer's Columbia City, Indiana, plant, but excluding all office clerical employees, guards, all quality control inspectors, and all truckdrivers and supervisors as defined in the Act.

WHITE AUTOMOTIVE
CORPORATION