

Zeno Table Company, Inc. and Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.
Case 21-CA-15900

January 6, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND MURPHY

Upon a charge filed on July 29, 1977, by Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called the Union, and duly served on Zeno Table Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint and notice of hearing on August 4, 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.

On August 29, 1977, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based upon Respondent's failure to file an answer as required by Section 102.20 of the Board's Rules and Regulations, Series 8, as amended. Thereafter, on August 31, 1977, Respondent filed with the Regional Director an answer to the complaint admitting in part, and denying in part, the allegations of the complaint. On September 13, 1977, 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 Notice To Show Cause, entitled "Motion In Opposition To General Counsel's Motion for Summary Judgment," and counsel for the General Counsel filed a memorandum in support of the motion and in response to Respondent's opposition.

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:

¹ Official notice is taken of the record in the representation proceeding, Case 21-RC-14574, 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,

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegations in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in said complaint shall be deemed to be admitted to be true and may be so found by the Board."

Respondent does not dispute that it was duly served with the complaint and notice of hearing. In explanation of its failure to file a timely answer, however, Respondent asserts that its counsel, Fred R. Long, was on vacation during that time period allowed for the filing of an answer and did not receive a copy of the complaint and notice of hearing. The Regional Director did attempt to serve these documents on Long, who represented Respondent in the underlying representation proceeding,¹ but Respondent asserts that service on its attorney was not properly made, contending that the documents were mailed to Long's Southern California office rather than to his Northern California office and that, in any event, the person upon whom service was made was not in fact Long's agent.

Section 102.111(b) of the Board's Rules and Regulations, Series 8, as amended, requires that a party's attorney be served when the attorney "has entered a written appearance in the proceeding on behalf of the party." Since Respondent itself received service and Long did not enter a written appearance on behalf of Respondent in this proceeding, it is clear that the requirements of the Board's Rules and Regulations have been satisfied. In any event, even assuming *arguendo* that Long in fact has at all times in this proceeding been Respondent's representative, it is

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.

undisputed that the manner and the location of the Regional Director's service upon Long conforms with the service of documents upon him in the underlying representation proceeding. In addition, counsel for the General Counsel has submitted a letter bearing the letterhead of Long's Southern California office, the validity of which is not disputed, in which Long, on behalf of Respondent, denied the Union's request to bargain. Furthermore, the fact that Respondent's representative was on vacation during the time period allowed for filing an answer does not excuse Respondent's failure to file an answer or request an extension of time within which to do so. *Aaron Convalescent Home*, 194 NLRB 750 (1971), *enfd.* 479 F.2d 736 (C.A. 6, 1973).

As Respondent has not filed an answer within 10 days from the service of the complaint, and as no good cause to the contrary has been shown, in accordance with Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, the allegations of the complaint herein are deemed to be admitted to be true.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Zeno Table Company, Inc., at all times material herein, has been a corporation engaged in the business of manufacturing furniture, with its principal place of business located at 2001 East Dyer Road, Santa Ana, California. In the normal course of its business operations, Respondent annually sells and ships goods and products valued in excess of \$50,000 directly to customers 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

Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, 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, truckdrivers, shipping and receiving employees employed by Respondent at its facility located at 2001 East Dyer Road, Santa Ana, California; excluding all office clerical employees, professional employees, guards, supervisors, and those lead employees who possess and exercise supervisory authority as defined in the Act.

2. The certification

On April 30, 1976, 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 21, 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 June 24, 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 July 12, 1977, and at all times thereafter, the Union has requested the 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 July 22, 1977, and continuing at all times thereafter to date, the 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 the Respondent has, since July 22, 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 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. Zeno Table Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, truckdrivers, shipping and receiving employees employed by Respondent at its facility located at 2001 East Dyer Road, Santa Ana, California; excluding all office clerical employees, professional employees, guards, supervisors, and those lead employees who possess and exercise supervisory authority 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 June 24, 1977, the above-named labor organization has been and is now 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 July 22, 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 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 the Respondent, Zeno Table Company, Inc., Santa Ana, 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 Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, truckdrivers, shipping and receiving employees employed by Respondent at its facility located at 2001 East Dyer Road, Santa Ana, California; excluding all office clerical employees, professional employees, guards, supervisors, and those lead employees who possess and exercise supervisory authority 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 facility at 2001 East Dyer Road, Santa Ana, California, copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 21 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 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

² 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 Orange County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, 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, truckdrivers, shipping and receiving employees employed by Respondent at its facility located at 2001 East Dyer Road, Santa Ana, California; excluding all office clerical employees, professional employees, guards, supervisors, and those lead employees who possess and exercise supervisory authority as defined in the Act.

ZENO TABLE COMPANY,
INC.