

**Versail Manufacturing, Inc., Subsidiary of Phillips Industries, Inc. and United Paper & Allied Workers Teamsters Local 1049 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Case 25-CA-6493

September 26, 1977

### DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS  
PENELLO AND MURPHY

Upon a charge filed on August 27, 1974, by United Paper & Allied Workers Teamsters Local 1049 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Versail Manufacturing, Inc., Subsidiary of Phillips Industries, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint on October 7, 1974, 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 July 29, 1974, following a Board election in Case 25-RC-5512, 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 July 29, 1974, and at all times thereafter, and more particularly on or about August 14, 1974, 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 October 15, 1974, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint and alleging certain affirmative defenses. Counsel for the General Counsel filed a motion for a bill of particulars dated October 18, 1974, to which Respondent filed an opposition dated October 31, 1974. Respondent also filed a motion for the production of documents and a motion for prehearing discovery dated October 31.

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 25-RC-5512, 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,

By documents dated November 5, 1974, counsel for the General Counsel filed a response to the opposition to motion for bill of particulars and an opposition to Respondent's motions.

Thereafter, by orders dated November 8, 1974, Administrative Law Judge Arthur Leff granted the General Counsel's motion for a bill of particulars and denied Respondent's motion for the production of documents and motion for prehearing discovery. Accordingly, Respondent filed a bill of particulars dated November 18, 1974.

On November 29, 1974, counsel for the General Counsel filed directly with the Board a motion to strike portions of Respondent's answer and Motion for Summary Judgment. Respondent filed an opposition to the Motion for Summary Judgment on or about January 2, 1975, and filed a supplemental footnote to the opposition on January 13, 1975. The General Counsel filed a response to the supplemental footnote on January 27, 1975. Subsequently, on April 1, 1975, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion to strike portions of Respondent's answer and Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the 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 denies the material allegations of the complaint and asserts as affirmative defenses that: (1) the Union "improperly and illegally offered to waive initiation fees, made material and misleading representations and otherwise interfered [sic] with, restrained and coerced employees in the exercise of their rights under Section 7 of the Act during the period of the representation campaign . . ."; (2) a valid majority of the ballots in the election conducted in Case 25-RC-5512 were not cast for the Union; and (3) the Union "has been and is engaging in illegal discrimination on the basis of race, sex and age," citing *N.L.R.B. v. Mansion House Center Management Corp.*, 473 F.2d 471 (C.A. 8, 1973). Respondent further asserts its third affirmative defense in its opposition to Motion for Summary Judgment, its

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.

motions for prehearing discovery and for production of documents, and its response to Notice To Show Cause. The General Counsel asserts that Respondent's first two affirmative defenses involve matters which were litigated in the underlying representation proceeding, that the Board has rejected these contentions, and that the Board's decision on these issues is therefore *res judicata*. Respondent makes no claim that such alleged defenses are in fact newly discovered or based on previously unavailable evidence.

Our review of the record herein, including the record in Case 25-RC-5572, discloses that pursuant to a Stipulation for Certification Upon Consent Election an election was conducted among the employees in the stipulated unit on December 7, 1973, and that the tally of ballots furnished the parties after the election showed 75 votes cast for and 71 against the Union, 4 ballots were void, and 10 ballots were challenged, a sufficient number to affect the result. Respondent filed timely objections which alleged in substance that the Union (1) coerced employees into not voting in the election; (2) promised to waive initiation fees for current employees if it won the election; (3) prevented two eligible employees from voting by establishing an illegal highway blockade; and (4) furnished transportation to the polling place, thereby granting voters an economic benefit in order to influence their votes. After investigation, the Acting Regional Director on April 4, 1974, issued his Report on Challenged Ballots, Objections to Conduct Affecting Results of Election and Recommendations to the Board in which he recommended that the objections be overruled, that eight of the challenges be sustained, and that, if the Board adopted his recommendations, the remaining two challenged ballots would no longer be determinative, and a Certification of Representative in favor of the Union should be issued. The Acting Regional Director further recommended that, if the Board did not adopt his recommendation that eight of the challenges be sustained, thus causing the remaining two challenges to become determinative, a hearing be directed thereon.

On April 18, 1974, Respondent filed exceptions to the Acting Regional Director's report and a supporting brief in which it essentially reiterated the allegations set forth in its objections and the contentions made in support thereof and its position on the challenges. On July 29, 1974, the Board issued

a Decision and Certification of Representative<sup>2</sup> adopting the Acting Regional Director's report and recommendations, with certain modifications not material herein.

On or about August 14, 1974, in response to a request for bargaining by the Union, Respondent informed the Union by telegram that the validity of the certification was at issue in pending litigation in a United States District Court and that "bargaining sessions can serve no useful purpose."

In response to the Notice To Show Cause of April 1, 1975, Respondent contends, *inter alia*, that because no hearing was held on its objections in Case 25-RC-5512, "Respondent has never been afforded access to the full record upon which its objections were denied."<sup>3</sup> However it is well settled that the parties do not have an absolute right to a hearing. Only when the objecting party presents a *prima facie* showing of "substantial and material" issues of fact concerning matters which would warrant the election being set aside does the right to an evidentiary hearing exist.<sup>4</sup> Absent arbitrary action, this qualified right to a hearing satisfies all statutory and constitutional requirements.<sup>5</sup> In this case the Board fully considered Respondent's objections and exceptions and did not order a hearing, but rather adopted the Acting Regional Director's recommendations that the objections be overruled.

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> Aside from its alleged *Mansion House* defense, 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.

With respect to the *Mansion House* defense, we find no merit to Respondent's contention that it is not obligated to bargain with the Union because the latter "engages in illegal and invidious discrimination on the basis of race, sex and age." As the Board recently held in *Bell & Howell Company*,<sup>7</sup> issues involving alleged invidious discrimination by a labor organization "are prematurely raised in a representa-

<sup>2</sup> 212 NLRB 592.

<sup>3</sup> Respondent made a similar contention in its supplemental footnote to opposition to Motion for Summary Judgment.

<sup>4</sup> *Amalgamated Clothing Workers of America, AFL-CIO [Winfield Manufacturing Company, Inc.] v. N.L.R.B.*, 424 F.2d 818, 828 (C.A.D.C., 1970).

<sup>5</sup> *Ibid.*

<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> 230 NLRB 420 (1977).

tion proceeding or in a proceeding, such as this, where the employer refused to bargain in order to test the underlying certification.”

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>8</sup>

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT

Respondent, a corporation, is engaged at its facility in Elkhart, Indiana, in the manufacture, sale, and distribution of doors for mobile homes and related products. During the 12 months preceding issuance of the complaint herein, a representative period, Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed at said facility products valued in excess of \$50,000 which were shipped directly to States other than the State of Indiana. During this same representative period, Respondent, in the course and conduct of its business operations, purchased goods and materials valued in excess of \$50,000 which were transported to its Elkhart, Indiana, facility directly from States other than 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

United Paper & Allied Workers Teamsters Local 1049 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

<sup>8</sup> In its answer to the complaint Respondent, in addition to denying the commission of any unfair labor practices, denies that it is an employer engaged in commerce within the meaning of the Act; that the Union is a labor organization within the meaning of the Act; that a majority of the valid ballots were cast for the Union in the December 7, 1973, election; and that the Union is now and has been at all times since July 29, 1977, the representative of the employees in the stipulated appropriate unit. However, the Board, in its previously referred to Decision and Certification of Representative, disposed of these issues and they therefore cannot be relitigated herein. *Teledyne, Landis Machine*, 212 NLRB 73 (1974). Respondent also denies that the Union has requested bargaining and that it has refused to recognize and/or bargain with the Union. However, Respondent admits receipt of a letter dated August 5, 1974, from the Union and admits sending a telegram to the Union on August 14, 1974. Copies of these documents, the substance of which is described above and which establish the Union's request for bargaining and Respondent's refusal, are attached to the General Counsel's Motion for Summary Judgment and Respondent has submitted nothing to controvert these documents or their

### 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 of Respondent, including all truckdrivers, employed at its Elkhart, Indiana, plant, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

##### 2. The certification

On December 7, 1973, 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 July 29, 1974, 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 29, 1974, and at all times thereafter, and more particularly on or about August 5, 1974, 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 July 29, 1974, and continuing at all times thereafter to date, and more particularly on or about August 14, 1974, 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 deem these allegations of the complaint to be true. *The May Department Stores Company*, 186 NLRB 86 (1970); *Carl Simpson Buick, Inc.*, 161 NLRB 1389 (1966).

In view of our conclusions herein and our decision to grant the General Counsel's Motion for Summary Judgment, we find it unnecessary to pass upon the General Counsel's motion to strike portions of Respondent's answer.

Respondent denies in its answer that it is an Ohio corporation, but avers that it is a corporation duly organized and existing under the laws of the State of Indiana. The General Counsel does not dispute this contention and we therefore find that Respondent is incorporated under the laws of Indiana. Respondent further denies in its answer the allegation of the complaint that certain individuals were its agents and supervisors at "all times material herein" but asserts that said individuals were agents acting on its behalf and supervisors during various specified periods of time. We agree with the General Counsel that the precise dates of these individuals' incumbency in their respective positions are immaterial to this proceeding and therefore find it unnecessary to make findings on this issue.

Accordingly, we find that Respondent has, since July 29, 1974, 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. Versail Manufacturing, Inc., Subsidiary of Phillips Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Paper & Allied Workers Teamsters Local 1049 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

America is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of the Respondent, including all truckdrivers, employed at its Elkhart, Indiana, plant, excluding all 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 July 29, 1974, 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 July 29, 1974, 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, Versail Manufacturing Inc., Subsidiary of Phillips Industries, Inc., Elkhart, 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 United Paper & Allied Workers Teamsters Local 1049 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees of the Respondent, including all truckdrivers, employed at its Elkhart, Indiana, plant excluding all 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 office and place of business in Elkhart, Indiana, copies of the attached notice marked "Appendix."<sup>9</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>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 United Paper & Allied Workers Teamsters Local 1049 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 of Respondent, including all truck-drivers, employed at our Elkhart, Indiana, plant, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

VERSAIL  
MANUFACTURING, INC.,  
SUBSIDIARY OF PHILLIPS  
INDUSTRIES, INC.