

Alpha Baking Company, Inc. and Teamsters Local Union No. 344, Sales and Service Industry, affiliated with the International Brotherhood of Teamsters, AFL-CIO. Case 30-CA-17029

February 16, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS
LIEBMAN AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 25, 2004, the General Counsel issued the complaint on November 29, 2004, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 30-RC-6569.¹ (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On December 27, 2004, the General Counsel filed a Motion for Summary Judgment. On January 6, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. The General Counsel filed a reply to the Respondent's response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information, but contends that the Union was improperly certified because the Board erred in overruling its objection to the election. The Respondent's objection alleged that the election should be set aside because an alleged statutory supervisor, Paul Janke, campaigned on behalf of the Union during the critical period, including promising employees improved working conditions if they voted for the Union.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence.

In its response to the Notice to Show Cause, the Respondent urges the Board to reconsider its overruling of the Respondent's objection in light of the Board's De-

¹ The complaint inadvertently referred to this case as Case 30-RC-6503.

ember 8, 2004 decision in *Harborside Healthcare, Inc.*, 343 NLRB No. 100 (2004). In *Harborside*, the Board set forth the legal standard for determining when supervisory pro-union activity is objectionable. The Respondent contends that the standard stated in *Harborside* is directly related to the issues raised in the Respondent's objection.

We reject the Respondent's argument. In adopting the hearing officer's overruling of the Respondent's objection, the Board relied solely on the hearing officer's finding that the Respondent was precluded from contending in its objection that Janke was a supervisor, because the Respondent agreed, in the Stipulated Election Agreement, to a unit description that included Janke's job classification in the bargaining unit. Thus, the Board expressly found it unnecessary to pass on the hearing officer's finding that, assuming Janke was a supervisor, his preelection conduct was not objectionable. Accordingly, the Board's recent decision in *Harborside* has no bearing on the Board's certification of the Union in the instant case because the Board determined that it need not address Janke's alleged conduct during the preelection period.

We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.² See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no genuine issues of material fact warranting a hearing regarding the Union's request for information. In its letters dated September 3 and 20, 2004, the Union requested the following information from the Respondent:

- 1) The wage rates, classifications, seniority dates, and work schedules for all employees in the bargaining unit.
- 2) Copies of plan documents and summary plan description for the health and welfare plan for the employees in the bargaining unit.
- 3) Copies of plan documents and summary plan description for the pension plan for the employees in the bargaining unit.
- 4) Copies of plan documents and summary plan description for any 401K plan for the employees in the bargaining unit.
- 5) Copies of all company handbooks and/or policy manuals covering general working conditions, vacations, funeral leave, jury duty,

² Member Schaumber did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding.

work rules, etc. for the employees in the bargaining unit.

- 6) Information explaining or reflecting why “time was of the essence” in regard to route changes, as stated in your August 4, 2004 letter to Tim Hall.
- 7) Information concerning the economic condition which led the Company to make route changes.
- 8) The fifty-two (52) week route average for all routes domiciled out of the Cudahy Wisconsin depot at the time of the N.L.R.B. election.

In its answer, the Respondent relies on its challenge to the Union’s certification as a defense to its refusal to bargain and to provide the Union with the requested information. However, it is well established that the foregoing type of employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Metropolitan Health Foundation, Inc.*, 338 NLRB 802 (2003); *Baker Concrete Construction*, 338 NLRB No. 48 (2002) (not reported in Board volume). The Respondent has not asserted any basis for rebutting the presumptive relevance of the information, apart from its contention, rejected above, that the Union’s certification is invalid. We therefore find that the Respondent unlawfully refused to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the production and distribution of bakery products at its Cudahy, Wisconsin facility.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, sold and shipped goods and materials valued in excess of \$50,000 directly to points located outside the State of Wisconsin.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Teamsters Local Union No. 344, Sales and Service Industry, affiliated with the International Brotherhood of Teamsters, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 27, 2004, the Union was certified on September 16, 2004, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer at its East College Avenue facility in Cudahy, Wisconsin, including sales drivers, route supervisors, shippers and trainees; but excluding all office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

On August 4, 2004, the Respondent informed the Union of potential route changes. On September 3, 2004, the Union, by letter, requested information about the potential route changes and information in anticipation of negotiations. On September 20, 2004, the Union, by letter, requested additional information. On October 5, 2004, the Union, by letter, requested the Respondent to bargain. On October 20,³ the Respondent by letter, notified the Union that it intended to challenge the Union’s certification, and was refusing to bargain. Since at least September 16, 2004, the Respondent has refused to recognize and bargain with the Union as the exclusive bargaining representative of its employees in the unit, and to furnish necessary and relevant information to the Union. We find that the Respondent’s conduct constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing since September 16, 2004, to bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and to furnish the Union necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respon-

³ The complaint inadvertently referred to this date as October 8.

dent to furnish the Union the information it requested on September 3 and 20, 2004.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Alpha Baking Company, Inc., Cudahy, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local Union No. 344, Sales and Service Industry, affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by the Employer at its East College Avenue facility in Cudahy, Wisconsin, including sales drivers, route supervisors, shippers and trainees; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on September 3 and 20, 2004.

(c) Within 14 days after service by the Region, post at its facility in Cudahy, Wisconsin, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on

forms provided by the Regional Director for Region 30 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 16, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Teamsters Local Union No. 344, Sales and Service Industry, affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

⁴ If 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."

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees employed by us at our East College Avenue facility in Cudahy, Wisconsin, including sales drivers, route su-

perators, shippers and trainees; but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on September 3 and 20, 2004.

ALPHA BAKING COMPANY, INC.