

Adams Concrete Products Company and North Carolina Laborers' District Council, Affiliated With Laborers' International Union of North America, AFL-CIO, Case 11-CA-4209

December 11, 1970

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

Upon a charge filed on April 16, 1970, and on amendment thereto filed on August 3, 1970, by North Carolina Laborers' District Council, affiliated with Laborers' International Union of North America, AFL-CIO, herein called the Union, and duly served on the Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 11, issued a complaint on July 30, 1970, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on March 6, 1970, following a Board election in Case 11-RC-2987, 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 March 9, 1970, 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 August 11, 1970, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and requesting that the complaint be dismissed in its entirety.

On August 27, 1970, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and a brief in support of the motion contending that the Respondent's answer raises no issue litigable in the instant unfair labor practice proceeding. Subsequently, on September 4, 1970, 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 powers in connection with this case to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Counsel for the General Counsel contends that all issues in dispute were decided by the Board in the representation case and that he is therefore entitled to summary judgment as a matter of law.

The basic position of the Respondent in its Response to Notice to Show Cause is that the Board's certification of the Union was improper and was based upon a denial of due process in that the Respondent was denied a hearing on its objections to the conduct of the election in the representation hearing which resulted in the certification. The Respondent urged in its objections that alleged misrepresentations and rumors circulated by employees or union agents prior to the election, as well as activities of certain supervisors allegedly assisting the Union, affected the results of the election and raised material factual issues warranting a hearing. In his Supplemental Decision and Certification of Representative of March 6, 1970, the Regional Director considered and overruled the objections, finding that they did not raise substantial and material issues. The Respondent renewed its contentions in its Request for Review to the Board and again requested a hearing on its objections. After full consideration, the Board on July 2, 1970, denied the request as raising no issue warranting review or a hearing.

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 raised in a prior representation proceeding.²

All issues raised by the Respondent in this proceeding were or could have been raised in the prior representation proceeding, and the 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. We therefore

¹ Official notice is taken of the record in the representation proceeding, Case 11-RC-2987, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938, enfd. 388 F.2d 683 (CA 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151, *Intertype Co. v. Penello*,

269 F. Supp. 573 (D.C. Va., 1967); *Follett Corp.*, 164 NLRB 378, enfd. 397 F.2d 91 (CA 7, 1968), Sec. 9(d) of the NLRA.

² 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).

find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.³ We shall, accordingly, grant the Motion for Summary Judgment.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a corporation duly organized under and existing by virtue of the laws of the State of North Carolina, maintains offices and places of business in the cities of Durham, Fuguay-Varina, Fayetteville, Kinston, and Raleigh, North Carolina, and is, and has been at all times material herein, engaged in the manufacture of concrete products and cast stone. During the course and conduct of its business operations during the past 12 months, a representative period, Respondent purchased raw materials valued in excess of \$50,000 directly from points outside the State of North Carolina.

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

North Carolina Laborers' District Council, affiliated with Laborers' International Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the 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 truckdrivers and plant clericals at the Employer's North Carolina plants located in the cities of Durham, Fuguay-Varina, Fayetteville, Kinston and Raleigh, and excluding all office clerical employees, guards and supervisors as defined in the Act.

2. The certification

On December 4 and 5, 1969, 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 11, designated and selected the Union as their representative for the purpose of collective bargaining with the Respondent. The Respondent filed timely Objections to Conduct Affecting the Results of the Election with the Regional Director, and thereafter, on March 6, 1970, the Regional Director issued his Supplemental Decision and Certification of Representative finding the objections did not raise substantial and material issues. The Respondent filed a Request for Review with the Board. On July 2, 1970, this request was denied in that it raised no substantial issues warranting review or a hearing. The Union was certified as the collective-bargaining representative of the employees in said unit on March 6, 1970, 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 March 9, 1970, and more recently July 7, 1970, and continuing to date, 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 April 10, 1970, 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 March 19, 1970, and at all times thereafter, refused to bargain collectively with the Union as the exclusive

letter requesting a meeting for purposes of bargaining on the specified date of April 27, 1970. In its Response to the Notice to Show Cause, the Respondent neither alludes to nor seeks to controvert the three requests for bargaining which are attached to the Motion for Summary Judgment. Thus, the truth of the factual allegations of the complaint is either expressly admitted by the Respondent in its answer to the complaint or stands admitted by virtue of the uncontroverted factual averments in the General Counsel's motion. *The May Department Stores Company*, 186 NLRB No. 17, and *Carl Simpson Buick, Inc.*, 161 NLRB 1389. Accordingly, we agree with the General Counsel that the Respondent has raised no issues litigable in the unfair labor practice proceeding before us, and that all of the allegations of the complaint are deemed to be admitted as true.

³ In its answer to the complaint, the Respondent denies that the Union is a labor organization, that the unit is appropriate for purposes of collective bargaining, and that the Union represents a majority of the employees in the appropriate unit. All of these issues were raised and determined in the representation proceeding in Case 11-RC-2987, and, accordingly, they are not subject for litigation in the instant unfair labor practice proceeding. The Respondent's answer also denies the allegations of the complaint pertaining to the Union's requests and the Respondent's refusals to bargain, except that its answer admits the receipt by the Respondent of an undated letter from the Union requesting bargaining on a specified date. Attached to the General Counsel's Motion for Summary Judgment, as Exhibits F, G, and H, are three letters which purport to be requests made by the Union for bargaining, one of which is an undated

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)(1) and (5) 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)(1) and (5) 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; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1421, enfd. 350 F.2d 57 (C.A. 10).

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

CONCLUSIONS OF LAW

1. Adams Concrete Products Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. North Carolina Laborers' District Council, affiliated with Laborers' International Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the 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 truckdrivers and plant clericals at the

Employer's North Carolina plants located in the cities of Durham, Fuguay-Varina, Fayetteville, Kinston and Raleigh, and excluding all office clerical employees, guards and supervisors as defined in the Act.

4. Since March 6, 1970, 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 March 9, 1970, 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 had 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 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 Respondent, Adams Concrete Products Company, 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 North Carolina Laborers' District Council, affiliated with Laborers' International Union of North America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees including truckdrivers and plant clericals at the Employer's North Carolina plants located in the cities of Durham, Fuguay-Varina, Fayetteville, Kinston and Raleigh, and excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in 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 North Carolina plants located in the cities of Durham, Fuguay-Varina, Fayetteville, Kinston, and Raleigh copies of the attached notice marked "Appendix."⁴ 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 10 days from the date of this Order, what steps have been taken to comply herewith.

⁴ In the event that the Board's 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 be changed to 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 North Carolina Laborers' District Council, affiliated with Laborers' International Union of North

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 including truckdrivers and plant clericals at the Employer's North Carolina plants located in the cities of Durham, Fuguay-Varina, Fayetteville, Kinston and Raleigh, and excluding all office clerical employees, guards and supervisors as defined in the Act.

ADAMS CONCRETE
 PRODUCTS
 COMPANY
 (Employer)

Dated _____ By _____
 (Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1624 Wachovia Building, 301 North Main Street, Winston-Salem, North Carolina 27101, Telephone 919-723-2300.