

William L. Bonnell Co., Inc., and International Union of District 50, Allied & Technical Workers of the United States and Canada. Case 10-CA-8293

January 15, 1971

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

Upon a charge filed on April 17, 1970, and an amendment thereto filed on May 28, 1970, by International Union of District 50, Allied & Technical Workers of the United States and Canada, herein called the Union, and duly served on William L. Bonnell Co., Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint on August 21, 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)(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 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 or about March 24, 1970, following a Board election in Case 10-RC-7485 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 26, 1970, again on August 26, 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 28, 1970, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. The Respondent alleges that the certification issued to the Union is invalid by reason of the Board's errors in overruling its objections to the election conducted on September 12,

1968, alleges that the allegations of the complaint are without merit, and prays the Board to dismiss the complaint in its entirety.

On September 23, 1970, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, alleging that the Respondent's answer raises no factual issues warranting a hearing in this proceeding, and therefore requests the Board to grant the Motion for Summary Judgment. Subsequently, on October 2, 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

In its response, the Respondent contends that the granting of the Motion for Summary Judgment would attempt to force the Respondent to recognize and bargain with an unlawfully certified bargaining representative, and would, contrary to law, deprive the Respondent and its employees of the rights guaranteed them by the National Labor Relations Act. By this assertion, and more specifically by its denials, in whole or in part, of the allegations in paragraphs 7 through 12 of the complaint,² the affirmative defenses alleged in its answer, and the arguments propounded in its response to the General Counsel's motion the Respondent is attempting to relitigate the same issues which it raised and litigated in the representation proceeding in Case 10-RC-7485, and which, after a hearing before a Trial Examiner, were determined by the Board in its Decision and Certification of Representative³ issued on March 24, 1970, and reaffirmed by its Order

¹ Official notice is taken of the record in the representation proceeding, Case 10-RC-7485 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, enf. 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, enf. 397 F.2d 91 (CA 7, 1968), Sec. 9(d) of the NLRA

² By its answer the Respondent alleges that the election conducted on September 12, 1968, was not determinative of the employees' free choice of a bargaining agent and the certification issued to the Union on March 24, 1970, was unlawful, and it denies that the Union is the collective-bargaining representative of a majority of the employees in the bargaining unit. These issues were raised and litigated by the Respondent in the prior representation case, the record of which is before us, and for the reasons

recited herein, may not be relitigated in this unfair practice case. The Respondent also denies paragraphs 10 and 11 of the complaint which allege that the Union has requested and the Respondent has refused to bargain. Attached to the General Counsel's Motion for Summary Judgment are two letters dated March 26 and August 26, 1970, which purport to be requests made by the Union to the Respondent for bargaining. In its Response to the Notice to Show Cause, the Respondent neither alludes to nor seeks to controvert the contents or the receipt of the letters attached to the General Counsel's Motion, nor does it aver that it responded, or intended to respond, to the Union's requests for bargaining. Accordingly, we shall deem the allegations in paragraphs 10 and 11 of the complaint to be admitted. *The May Department Stores Company*, 186 NLRB No. 17, and *Carl Simpson Buick*, 161 NLRB 1389

³ Not reported in the bound volumes of the Board's decisions.

denying the Respondent's Motion for Reconsideration issued on August 17, 1970.

It is established Board policy, in the absence of newly discovered or previously unavailable evidence or special circumstances, not to permit litigation in an unfair labor practice case of issues which were or could have been litigated in a prior representation proceeding.⁴ It is clear that the Respondent had, and exercised, the opportunity in the representation proceeding in Case 10-RC-7485 to litigate the issues raised in its answer to the complaint and its response to the Motion for Summary Judgment. The Respondent alleges no newly discovered or previously unavailable evidence, and it alludes to no special circumstances which would require the Board to reexamine the decision made in the representation proceeding. As all material issues have been previously decided by the Board, are admitted by the Respondent's answer to the complaint, or stand admitted by failure of the Respondent to controvert the averments of the General Counsel's motion, we find that there are no matters requiring an evidentiary hearing before a Trial Examiner. Accordingly, the General Counsel's Motion for Summary Judgment is granted.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is, and has been at all times material herein, a Georgia corporation, with its principal office and place of business located at Newnan, Georgia, where it is engaged in the manufacture and sale of aluminum extrusions. The Respondent, during the past calendar year, which period is representative of its operations at all times material herein, sold and shipped finished products valued in excess of \$50,000 directly to customers located outside the State of Georgia.

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 of District 50, Allied & Technical Workers of the United States and Canada 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 employees of the Respondent at its Newnan, Georgia, operation, but EXCLUDING office clerical employees, technical employees, buyers, salesmen, professional employees, guards, watchmen and supervisors as defined in the Act.

2. The certification

On September 12, 1968, 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 10 designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on March 24, 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 24, 1970, again on August 26, 1970, 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 March 26, 1970, again on August 26, 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 26, 1970, again on August 26, 1970, 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 the Respondent set forth in section

⁴ *Pittsburgh Plate Glass Co v NLRB*, 313 U.S. 146, 162 (1941), Rules and Regulations of the Board, Secs. 102.67 (f) and 102.69 (c)

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; *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 1419, 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. William L. Bonnell Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of District 50, Allied & Technical Workers of the United States and Canada is a labor organization within the meaning of Section 2(5) of the Act.

3. "All employees of the Respondent at its Newnan, Georgia, operation, but EXCLUDING office clerical employees, technical employees, buyers, salesmen, professional employees, guards, watchmen 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 March 24, 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 collec-

tive bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 26, 1970, again on August 26, 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 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 Respondent, William L. Bonnell Co., Inc., 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 of District 50, Allied & Technical Workers of the United States and Canada as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees of the Respondent at its Newnan, Georgia, operation, but EXCLUDING office clerical employees, technical employees, buyers, salesmen, professional employees, guards, watchmen 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 Newnan, Georgia, operations copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 10, 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 10, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

⁵ 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 International Union of District 50, Allied & Technical Workers of the United States and Canada 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 employees of the Respondent at its Newnan, Georgia, operation, but EXCLUDING office clerical employees, technical employees, buyers, salesmen, professional employees, guards, watchmen and supervisors as defined in the Act.

WILLIAM L. BONNELL
Co., Inc.
(Employer)

Dated _____ By _____ (Title)
(Representative)

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, Peachtree Building, Room 701, 730 Peachtree Street, N.E., Atlanta, Georgia 30308, Telephone 404-526-5760.