

Adams Potato Chips, Inc. and Teamsters and Chauffeurs, Local Union No. 580, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. Case 7-CA-6929

May 22, 1969

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On February 26, 1969, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief. The General Counsel filed a brief in answer to the Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board had delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Adams Potato Chips, Inc., Lansing, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹In last paragraph of sec. II, A, of his Decision, the Trial Examiner inadvertently referred to Karr rather than Brett (correct spelling Brett) as testifying in support of McKim's version of the events occurring at the August 27 meeting. We hereby correct this error.

²The Respondent has requested oral argument. This request is hereby denied as the record, the exceptions and briefs adequately present the issues and the positions of the parties.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOHN F. FUNKE, Trial Examiner: Upon a charge filed August 30, 1968, by Teamsters and Chauffeurs, Local Union No. 580, herein Local 580, against Adams Potato

Chips, Inc., herein Adams or the Respondent, the General Counsel issued complaint dated October 26, 1968, alleging Respondent violated Section 8(a)(1) and (5) of the Act.

The amended answer of the Respondent denied the commission of any unfair labor practices and denied that Local 580 represented a majority of the employees in the appropriate bargaining unit.

This proceeding, with the Respondent and the General Counsel represented, was heard before me at Lansing, Michigan, on January 23, 1969. A brief was received from the Respondent on February 19, 1969.

Upon the entire record in this case and from my observation of the witnesses while testifying, I make the following:

FINDINGS AND CONCLUSIONS

I. THE MOTION FOR JUDGMENT ON THE PLEADINGS

On December 4, 1968, Trial Examiner Charles W. Schneider issued an order granting Respondent's request for leave to file an amended answer and vacated in part his previous order granting the General Counsel's motion for judgment on the pleadings. Summary judgment was granted by the Trial Examiner as to paragraphs 2 to 10, inclusive, of the complaint and denying summary judgment as to paragraphs 1¹ and 11 through 16 of the complaint.

II. THE UNFAIR LABOR PRACTICES

A. *The Evidence*

Following a petition filed in Case 7-RC-8230 and an election conducted by the National Labor Relations Board Local 580 was certified on September 20, 1967, as the exclusive bargaining representative of Respondent's employees in a unit described as:

All driver-salesmen employed by the Employer at its Lansing, Michigan, place of business, excluding production employees, office and plant clerical employees, professional and technical employees, guards and supervisors as defined by the Act.

I find the unit so described appropriate.

Following the certification of Local 580 bargaining negotiations were held. Based on uncontradicted testimony I find that the parties agreed that any contract reached by the negotiators, Donald F. Strutz and Eugene Cawvey for Respondent and Lloyd C. McKim for Local 580,² would be subject to ratification by Charles Seyfert, Respondent's president, and by vote of the employees in the bargaining unit.

McKim testified that starting in November 1967, some 15 bargaining meetings were held, concluding with a meeting on August 27, 1968. At this meeting McKim submitted to Strutz a proposed contract which had twice been unanimously rejected by the driver-salesmen.³ Both Strutz and McKim agreed that this proposal was identical with the one which they had agreed upon but which the drivers had rejected. McKim discussed it with the drivers who still wanted changes related to overages and shortages

¹Par. 1 alleges that the charge was filed August 30, 1968, and served on Respondent on August 31, 1968, I so find.

²According to McKim members of Local 580 employed by Respondent also attended the meetings.

³G.C. Exh. 5. The original tentative agreement had been prepared by Strutz.

which were again rejected by Strutz. McKim requested that the contract term be reduced from 3 years to 2 years and this was likewise turned down.⁴ McKim then told Strutz that he had learned the previous night that the inside employees received 3 weeks vacation after 10 years of service, and that he would like to have the proposed contract, which provided for 3 weeks after 15 years, changed to 10 years. According to McKim, Strutz told him that this had been company policy and that he could agree to it without referral to Seyfert. McKim then told the drivers another vote should be taken on the contract. The only change was from the 15 to 10 years service requirement which McKim stated had been agreed to by Strutz. Six unit employees were present and voted four to two to accept the contract. When Strutz and Cawvey returned McKim said the employees had voted acceptance and suggested that the contract, with the vacation clause change, be signed. Strutz then told him that he would not sign the contract because he did not believe Local 580 represented a majority of the employees and that the National Labor Relations Board was going to hold another election to determine Local 580's majority status.⁵ McKim said he would turn the matter over to his attorney and no further meetings were held.

Strutz testified that after about 6 months of negotiations tentative agreement was reached, that he prepared a contract embodying the agreement which was rejected unanimously by the employees and that the employees voted five to three to strike. On or about July 30, Strutz and Cawvey, at McKim's request, met with the drivers to explain the contract. (Strutz testified it was the same contract previously rejected). It was again rejected unanimously by the drivers. On August 27, McKim met again and six drivers were present. McKim then presented his own prepared version of the Respondent's prior proposal, assuring Strutz it was identical. When McKim suggested the vacation change Strutz told him he saw no objection but that he would seek approval from Seyfert. McKim also asked for a shorter term contract which was turned down. McKim then returned to the room and later announced that the men had approved the contract by four to two. Strutz then told him that in view of the fact that a decertification petition had been filed and that only four of the drivers had approved the contract, he would not submit it for approval.

Cawvey's testimony supported that of Strutz respecting the necessity of taking the vacation change back to Seyfert for approval although he admitted it was policy for the inside employees to receive 3 weeks after 10 years. He testified briefly as to some of the difficulties that would be encountered in rescheduling the drivers to provide for the change and that the change was never submitted to Seyfert for approval.

Four drivers testified, Brett, Dolph, Karr and Moorehead and their testimony is generally consistent with that of the other witnesses.

Karr testified that Cawvey told McKim that the vacation clause change was acceptable since it was a matter of policy with respect to the other employees and that McKim proceeded to make the change. Dolph and Moorehead, on the other hand, stated that Strutz told

McKim he would take the vacation clause to Seyfert for approval.⁶

B. Conclusions

The sole issue providing any problem is whether complete agreement was reached between the parties on a contract, including the change in the vacation clause. The testimony of the negotiators establishes that full agreement had been reached on August 27 as to all other terms. McKim's testimony indicates that Strutz readily agreed to the vacation change on the ground that since the inside employees received 3 weeks after 10 years service there was no problem. His testimony is supported by one of the driver-salesmen who attended the meeting. Strutz testified he would have to take the change back to Seyfert and he is supported by Cawvey and two of the driver-salesmen. I do not think the issue can be decided by weight of numbers nor does the demeanor of the chief witnesses provide any clue. McKim, Strutz and Cawvey not only gave every appearance of truthfulness but apparently trusted each other. (Witness Strutz's acceptance of McKim's assurance that his proposed contract did not differ from that submitted by Strutz.) This compounds the difficulty in reaching decision.

I do find, however, that complete and final agreement was reached between the parties on August 27. This finding is based upon the following extrinsic facts as distinguished from the testimony:

1. The change in the vacation clause requested by McKim was a minor one and conformed to the current policy of the Respondent with respect to inside employees. I see no reason why such a change would have to be referred to Seyfert and I accept McKim's testimony that Strutz said the change imposed no difficulty.

2. Strutz never stated that the vacation clause was the reason for rejecting the agreement. Strutz stated that Respondent doubted Local 580's continuing majority status and was therefore rejecting the contract.

3. The conduct of McKim at the meeting of August 27 indicated that he would accept the contract proposed by the Respondent if he could have it ratified by the membership. All changes which were proposed by McKim and refused by Respondent were discarded by McKim and it is evident that he was willing to accept the agreement proposed by Respondent.

I therefore find that by refusing to sign the contract agreed upon by the parties, including the change in the vacation clause from 15 to 10 years of service for eligibility for a 3-week vacation, Respondent violated Section 8(a)(5) of the Act.

I cannot accept Respondent's contention that Local 580 lost its majority status during the certification year and that Respondent was thereby relieved of its bargaining obligation. It is clear as any proposition in labor law can be that an employer is not relieved of his obligation during the certification year absent unusual circumstances.⁷ The mere filing of a decertification petition during the exempted period does not serve to justify a good faith doubt on the part of the employer.⁸ The allegation that the meeting of six employees was a "rump" meeting and

⁴Dolph was a witness for Respondent and while his testimony, as the record reveals, was unclear as to everything else that was said he did clearly state that Strutz told McKim he would go to Seyfert for approval of the vacation change. Moorehead was likewise a witness for Respondent.

⁷*Ray Brooks v. N.L.R.B.*, 348 U.S. 96; *Celanese Corporation of America*, 95 NLRB 664.

⁸*Ridge Citrus Concentrate, Inc.* 133 NLRB 1178.

⁵The contract term had been an issue throughout negotiations.

⁶On July 18, 1968, Jack H. Karr, an employee had filed a petition for decertification of Local 580 (Case 7-RD-773) which was dismissed by the Regional Director for Region 7 on July 29 on the ground that the one-year certification bar precluded an election. (G.C. Exhs. 4-a and 4-b).

that the vote of four to two in favor of the contract indicates a loss of majority are no more than self-serving allegations.

I therefore find that by refusing on August 27 to recognize and bargain with Local 580 as the exclusive bargaining representative of its employees in the unit found appropriate herein Respondent violated Section 8(a)(5) and (1) of the Act.

III. THE REMEDY

Having found the Respondent has engaged in and is engaging in certain unfair labor practices it shall be recommended that it cease and desist therefrom and take certain affirmative action necessary to effectuate the purposes of the Act.

Having found that Respondent and Local 580 reached agreement on all substantive provisions of a contract (General Counsel's Exhibit No. 5) on August 27, 1968, and that said contract was ratified by the member employees of Local 580 on that date it shall be recommended that Respondent be ordered to execute, sign and give effect to all the terms and conditions of said contract.⁹

It shall be further recommended that Respondent make the employees in the unit found appropriate herein whole for any loss of benefits they may have suffered from August 27, 1968, by reason of Respondent's failure to give effect to said contract to the date of compliance with this Recommended Order.⁹

Upon the foregoing findings and conclusions, and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. By refusing to execute, sign and give effect to the contract agreed by the parties on August 27, 1968, and by refusing, on that date to recognize Local 580 as the exclusive bargaining agent of its employees in a unit appropriate for the purposes of collective bargaining, Respondent violated Section 8(a)(5) and (1) of the Act.

2. The unit appropriate for the purposes of collective bargaining is:

All driver-salesmen employed by the Employer at its Lansing, Michigan, place of business, excluding production employees, office and plant clerical employees, professional and technical employees, guards and supervisors as defined in the Act.

3. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

It is hereby recommended that the Respondent, Adams Potato Chips, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to execute, sign and give effect to the contract agreed upon by the parties of August 27, 1968.

(b) Refusing to recognize and bargain in good faith with Local 580 as the exclusive collective-bargaining agent of its employees in the unit found appropriate herein.

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

(a) Upon request, recognize and bargain collectively and in good faith with Local 580 as the exclusive collective-bargaining agent of its employees in the unit found appropriate herein.

(b) Execute, sign, and maintain in effect all the terms and conditions of the contract agreed upon by the parties on August 27, 1968.

(c) Make whole its employees in the unit found appropriate herein for any loss of benefits they may have suffered from August 27, 1968, by reason of its failure to give effect to the terms and conditions of said contract.

(d) Post at its place of business at Lansing, Michigan, copies of the attached notice marked "Appendix."¹⁰ Copies of said notice, on forms to be provided by the Regional Director for Region 7, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained 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 such notices are not altered, defaced or covered by other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Decision, what steps it has taken to comply herewith.¹¹

¹⁰In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a decree of the United States Court of Appeals Enforcing and Order" shall be substituted for the words "a Decision and Order."

¹¹In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 7, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain, upon request, with Teamsters and Chauffeurs Union No. 580, as the exclusive bargaining agent of our employees in the unit described as follows:

All driver-salesmen employed by us at our Lansing, Michigan, place of business, excluding all production employees, office and plant clerical employees, professional and technical employees, guards and supervisors as defined in the Act.

WE WILL sign and maintain in effect all the terms and conditions of a contract agreed upon between Local Union No. 580 and us on August 27, 1968, and said contract, as agreed upon, shall provide for 3 weeks vacation after 10 years of service.

WE WILL give effect to all the terms of said contract from August 27, 1968, and reimburse our employees for

⁹In view of this it is to be understood that the usual bargaining order recommended herein will be prospective only and will not require bargaining with respect to the contract I find has been agreed upon.

¹⁰*N.L.R.B. v. Joseph T. Strong d/b/a Strong Roofing & Insulating Co.*, 393 U.S. 357.

any loss of benefits they may have suffered because we failed to give effect to such contract on August 27, 1968.

ADAMS POTATO CHIPS,
INC.
(Employer)

Dated

By

(Representative)

(Title)

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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313-226-3244.