Amoco Production Company *and* National Oil Workers Union, Local 16. Case 16–CA–4634

May 10, 1972

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

Upon a charge filed on January 28, 1972, by National Oil Workers Union, Local 16, herein called the Union, and duly served on Amoco Production Company, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 16, issued a complaint on February 10, 1972, 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 November 4, 1971, following a Board election in Case 16–RC–5766, 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 December 2, 1971, 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 February 22, 1972, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 29, 1972, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. The Respondent filed a response to the Motion for Summary Judgment, reiterating contentions presented in its answer. Subsequently, on March 3, 1972, 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 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

The Respondent's answer denies that the unit found by the Regional Director is appropriate for collective bargaining and that the Union's certification is valid. In support of its position the Respondent asserts that no question of representation within the meaning of Section 9(c) of the Act is presented, the unit is not appropriate for collective bargaining, and no election should have been directed as the Union's petition was untimely. The responses to the Motion for Summary Judgment and the Notice To Show Cause do not raise any additional issues. As the answer admits, these reasons were "pointed out by Respondent in detail in the . . . representation case." We thus agree with the General Counsel that the Respondent is merely attempting to relitigate issues that were settled in the representation proceeding.

Anticipating the integration of the Respondent's Fort Worth Division, which the Union represented, into the three remaining divisions, the Union filed a petition to represent hourly rate employees in the Midland District, a part of the Fort Worth Division to be integrated into the Houston Division. The Respondent objected that the Union's petition was untimely filed, that the Midland District was an accretion to the Houston Division already represented by the National Oil Workers Union, Local 14, and that only a divisionwide unit was appropriate.

The Regional Director's Decision and Direction of Election, issued September 14, 1971, rejected the Respondent Employer's contentions and directed an election in the petitioned-for unit. The Regional Director found the petition not untimely filed because the parties' contract urged by the Respondent Employer as a bar was one of indefinite duration. He also found the Midland District was not an accretion to the Houston Division because the district survived as a distinct operational entity, there was a lack of employee interchange and common immediate supervision between them, and the two areas were separated geographically. Finally, he found a divisionwide unit was not the only appropriate unit since the district was a geographic production unit and an administrative subdivision of the Employer and since no labor organization was seeking to represent a larger group. The Respondent then requested Board review of the Regional Director's decision. The request was denied

[1] Official notice is taken of the record in the representation proceeding, Case 16–RC–5766, 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 (C.A. 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 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

by the Board on October 8, 1971, as raising no substantial issues warranting review.

Pursuant to the Regional Director's direction, an election was held in which the Union received a majority of the votes cast. In the absence of objections to the conduct of the election, the Union was certified as the exclusive bargaining representative of the employees in the unit.

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.[2]

All issues raised by the Respondent in this proceeding were or could have been litigated 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 find that the 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Delaware corporation engaged in the production and sale of petroleum and petroleum products in various States of the United States, including Texas, New Mexico, and Oklahoma, with an office and principal place of business at 500 Jefferson Building, Houston, Texas. During the past year, the Respondent shipped goods valued in excess of $50,000 from its facilities in the State of Texas to places outside the State.

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

National Oil Workers Union, Local 16, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE 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 full-time, hourly rate, limited hour, field and plant employees employed by Respondent in its Midland District in Texas and New Mexico (Andrews, Hobbs, Levelland, Odessa, and Slaughter producing areas) exclusive of all other employees, office clerical employees, guards, watchmen, and supervisors as defined in the Act.

2. The certification

On October 27, 1971, 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 16, 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 November 4, 1971, 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 November 11, 1971, 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 December 2, 1971, 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 December 2, 1971, 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

[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).

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. Amoco Production Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. National Oil Workers Union, Local 16, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time, hourly rate, limited hour, field and plant employees employed by Respondent in its Midland District in Texas and New Mexico (Andrews, Hobbs, Levelland, Odessa, and Slaughter producing areas) exclusive of all other employees, office clerical employees, guards, watchmen, and supervisors constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since November 4, 1971, 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 December 2, 1971, 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, Amoco Production 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 National Oil Workers Union, Local 16, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time, hourly rate, limited hour, field and plant employees employed by Respondent in its Midland District in Texas and New Mexico (Andrews, Hobbs, Levelland, Odessa, and Slaughter producing areas) exclusive of all other employees, office clerical 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 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 Midland District facilities in Texas and New Mexico copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms pro-

[3] 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

vided by the Regional Director for Region 16, 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 16, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

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 National Oil Workers Union, Local 16, 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 full-time, hourly rate, limited hour, field and plant employees employed by Respondent in its Midland District in Texas and New Mexico (Andrews, Hobbs, Levelland, Odessa, and Slaughter producing areas) exclusive of all other employees, office clerical employees, guards, watchmen, and supervisors as defined in the Act.

AMOCO PRODUCTION
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, Room 8A24, Federal Office Building, 819 Taylor Street, Fort Worth, Texas 76102, Telephone 817–334–2921.

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."