Alvin J. Bart and Co., Inc. *and* **New York Printing Pressmen & Offset Workers Union, Local 51, I.P.P. & A.U. of N.A., AFL–CIO.** Case 2–CA–12637

August 25, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Upon a charge filed on April 10, 1972, by New York Printing Pressmen & Offset Workers Union, Local 51, I.P.P. & A.U. of N.A., AFL–CIO, herein called the Union, and duly served on Alvin J. Bart and Co., Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint on April 21, 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 February 16, 1972, following a Board election in Case 2–RC–15771 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 April 4, 1972, 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 May 5, 1972, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On June 7, 1972, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 15, 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, called a Reply to Motion for Summary Judgment. Subsequently, the General Counsel filed a Reply to Respondent's Opposition to Summary Judgment.

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 to the complaint and response to the Notice To Show Cause challenge the Union's majority status and certification as exclusive bargaining representative of the employees in the stipulated unit on the facts alleged in its objections to the conduct of the election. The General Counsel contends that the issues Respondent is seeking to raise have already been determined by the Board and may not be relitigated. We agree.

The record herein establishes that, pursuant to a Stipulation for Certification Upon Consent Election in Case 2–RC–15771, an election by secret ballot was conducted on January 7, 1972, in which a majority of the employees in the stipulated unit selected the Union as their representative for the purposes of collective bargaining with the Respondent. Thereafter, the Respondent filed timely objections to conduct affecting the results of the election alleging, in substance, that the Union threatened employees and, by its acts and statements, prevented a free choice in the election. After an investigation which included interviewing all employees who voted in the election and seeking evidence from the Respondent, the Regional Director, on January 28, 1972, issued his Report on Objections and Recommendations in which he found the objections to be without merit because of insufficient evidentiary support. Accordingly, he recommended that the objections be overruled and the Union be certified. In the absence of exceptions to the Regional Director's report, the Board, on February 16, 1972, issued its Decision and Certification of Representative adopting the Regional Director's recommendations, overruling the objections, and certifying the Union in the appropriate stipulated 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

[1] Official notice is taken of the record in the representation proceeding, Case 2–RC–15771, 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.

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.[3] We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.[4] 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 New York corporation, has maintained an office and place of business at 28 West 23rd Street in the City and State of New York, herein called its New York plant, where it is, and has been at all times material herein, continuously engaged in operating a printing plant providing lithographic services for commercial customers and related services. During the past year, a representative annual period, the Respondent, in the course and conduct of its business operations, performed services valued in excess of $1 million of which services valued in excess of $75,000 were performed in and for various enterprises located in States other than New York.

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

New York Printing Pressmen & Offset Workers Union, Local 51, I.P.P. & A.U. of N.A., AFL–CIO, 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 pressroom and preparatory department employees including pressmen, assistant pressmen, cameramen, strippers, platemakers, opaguers, and apprentices in both of said departments, employed by the Respondent at its New York plant, exclusive of office clerical employees, bindery employees, shipping department employees, guards and all supervisors as defined in the Act.

2. The certification

On January 7, 1972, 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 2, 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 February 16, 1972, 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 April 3, 1972, 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 April 4, 1972, 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,

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[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)

[3] In its answer to the complaint and response to the Notice To Show Cause, the Respondent argues, in effect, that since its objections were investigated without a hearing, it is entitled to a hearing on the objections despite its failure, through oversight and "bad" advice, to file exceptions to the Regional Director's Report on Objections We do not agree The Respondent was afforded the opportunity to submit evidence to the Regional Director in support of its objections, but submitted insufficient evidence to sustain them thereby failing to raise substantial and material issues of fact warranting the holding of a hearing Further, there has been no showing of good and sufficient cause to justify the failure to file exceptions to the Regional Director's report in accordance with Sec 102 69(c) of the Board's Rules and Regulations In these circumstances, relitigation of the objections will not be permitted

[4] Except as indicated hereinafter, the Respondent has failed to answer the allegations of the complaint and therefore they are deemed to be admitted and found to be true The answer questions the Union's status as a labor organization This issue was determined in the underlying representation case and may not be relitigated The answer also raises a question concerning the filing and service of the charge Timely filing and service of the charge are established by the uncontroverted evidence attached to the Motion for Summary Judgment, as Exhs F1 and F2

since April 4, 1972, 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 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)(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. Alvin J. Bart and Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. New York Printing Pressmen & Offset Workers Union, Local 51, I.P.P. & A.U. of N.A., AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All pressroom and preparatory department employees including pressmen, assistant pressmen, cameramen, strippers, platemakers, opaquers, and apprentices in both of said departments, employed by the Respondent at its New York plant, exclusive of office clerical employees, bindery employees, shipping department employees, guards and all 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 February 16, 1972, 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 April 4, 1972, 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, Alvin J. Bart and 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 New York Printing Pressmen & Offset Workers Union, Local 51, I.P.P. & A.U. of N.A., AFL–CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All pressroom and preparatory department employees including pressmen, assistant pressmen, cameramen, strippers, platemakers, opaquers, and apprentices in both of said departments, employed by the Respondent at its New York plant, exclusive of office clerical employees, bindery employees, shipping department employees, guards and all 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 New York, New York, plant copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 2 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 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event 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."

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 New York Printing Pressmen & Offset Workers Union, Local 51, I.P.P. & A.U. of N.A., 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 pressroom and preparatory department employees including pressmen, assistant pressmen, cameramen, strippers, platemakers, opaquers, and apprentices in both of said departments, employed by the Respondent at its New York plant, exclusive of office clerical employees, bindery employees, shipping department employees, guards and all supervisors as defined in the Act.

ALVIN J. BART AND CO., INC.
(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, 36th Floor, Federal Building, 26 Federal Plaza, New York, New York 10007, Telephone 212–264–3311.