

**A. Brandt Company, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 47. Case 16-CA-5011**

June 29, 1973

**DECISION AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS FANNING  
AND PENELLO

Upon a charge filed on December 14, 1972, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 47, herein called the Union, and duly served on A. Brandt Company, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 16, issued a complaint on January 19, 1973, 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 an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 29, 1972, following a Board election in Case 16-RC-5850 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about January 9, 1973, 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 January 25, 1973, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 5, 1973, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 13, 1973, the Respondent filed a Response in Opposition to Motion for Summary Judgment. On February 14, 1973, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 16-RC-5850, 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, enfd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1967); *Follett Corp.*, NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec 9(d) of the NLRA

why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file 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**

In its answer to the complaint and response opposing Motion for Summary Judgment, the Respondent contends that the Board erred in certifying the Union in Case 16-RC-5850. It argues that it not only had raised a reasonable question concerning fraud on the Board's processes prior to the election, but, that it also had been deprived of due process in not being able to litigate at a hearing the representation case issues. The General Counsel contends that the Respondent is attempting to relitigate issues which had been litigated and determined in the representation case. We agree with the General Counsel.

Our review of the record in Case 16-RC-5850 reflects that, after he issued his Decision and Direction of Election of January 31, 1972, the Regional Director was requested by the Respondent to investigate alleged collusion and fraud between the Union and the representation case petitioner. As set forth in his Supplemental Decision and Order of March 2, 1972, the Regional Director's administrative investigation showed, *inter alia*, that the petitioner had requested withdrawal from the ballot while the Union sought to become a cross-petitioner. Accordingly, satisfied that there was no collusion or fraud between the Union and the petitioner and that the Union's showing of interest was substantial and timely, the Regional Director granted the petitioner's withdrawal request, accepted the Union as a cross-petitioner, directed that the election be conducted, and denied the Respondent's motions to dismiss the petition. The Respondent's request for review of the Regional Director's Supplemental Decision and Order was denied by the Board on March 13, 1972, as raising no substantial issues warranting review.

In the election held on March 14, 1972, the Union secured a majority of the valid votes counted plus challenged ballots. The Respondent thereafter timely filed three objections to conduct affecting the results of the election. On April 21, 1972, the Regional Director issued a Second Supplemental Decision and Order in which, after bypassing Objections 1 and 2, he set aside the election and, on the basis of Objection 3,<sup>2</sup>

<sup>2</sup> This objection alleged that the Union interferred with the election by

directed the holding of a second election. On May 19, 1972, the Board granted the Union's request for review of the Regional Director's ruling sustaining Objection 3, but deferred review thereon until after the disposition of Objections 1 and 2 which, upon the Respondent's request for review, were remanded to the Regional Director for his investigation and ruling thereon.

On June 15, 1972, the Regional Director issued his Third Supplemental Decision in which he overruled Objections 1 and 2.<sup>3</sup> Thereafter, the Respondent filed with the Board a timely request for review thereof on the ground that the Regional Director had departed from precedent.

On September 29, 1972, the Board issued its Decision on Review and Certification of Representative (199 NLRB No. 55) in which it concluded that the Respondent's request for review of the Regional Director's overruling Objections 1 and 2 raised no substantial issues warranting review and that the disputed propaganda alleged in Objection 3 did not impair the voters' free choice in the election. Accordingly, the Board overruled the objections and certified the Union.<sup>4</sup>

It thus appears that the Respondent's contentions and arguments in support thereof are the same as those advanced by it in the underlying representation case and have been previously considered and determined by the Board.

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.<sup>5</sup>

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

reproducing and publishing the Regional Director's Supplemental Decision and Order with untruthful notations thereon, thereby creating the impression that the Board favored and supported the Union.

<sup>3</sup> Objection 1 generally dealt with the Regional Director's acceptance of the Union as a cross-petitioner despite allegations of fraud and collusion whereby the original petitioner assisted the Union in securing its showing of interest. Objection 2 dealt with the Union's injection of racial appeals during the election campaign.

<sup>4</sup> Although joining his colleagues in overruling Objections 1 and 3, Chairman Miller dissented from denial of review of Objection 2 and, therefore, dissented from the certification of the Union.

<sup>5</sup> 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).

which is properly litigable in this unfair labor practice proceeding.<sup>6</sup> 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, a Delaware corporation with its principal office in Fort Worth, Texas, is engaged in the business of manufacturing furniture and wood products. During the past 12 months, a representative period, the Respondent, in the course and conduct of its business operations, purchased goods and materials from points outside the State of Texas valued in excess of \$50,000, which it caused to be shipped directly to its operations in Texas. During the same period, Respondent sold goods produced in Texas to purchasers outside of Texas valued in excess of \$50,000.

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 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 47, 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 inventory clerks and local truckdrivers employed by the Respondent at its Fort Worth

<sup>6</sup> In its response in opposition to Motion for Summary Judgment, the Respondent alleges that the policy, practice, and procedure of the Board in representation cases fail to provide interested parties the opportunity to litigate issues at a hearing so as to obtain due process. Accordingly, it urges the Board to reexamine and change its policy with respect to litigation of issues in representation cases so that it would be able to litigate at an evidentiary hearing the representation issues raised by it herein. We find no merit in the Respondent's position. Our litigation policies, practices, and procedures in representation cases have long been established and judicially approved, *N L R B v. Golden Age Beverage Co.*, 415 F.2d 26, 32 (C.A. 5, 1969)

plant exclusive of office clerical employees, over-the-road drivers, firemen, watchmen, sales employees, draftsmen, and all supervisors as defined in the Act.

## 2. The certification

On March 14, 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 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 September 29, 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 October 2, 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 January 9, 1973, 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 January 9, 1973, 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 mean-

ing 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, enf.d. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421, enf.d. 350 F.2d 57 (C.A. 10, 1965).

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

#### CONCLUSIONS OF LAW

1. A. Brandt Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 47, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including inventory clerks and local truckdrivers employed by the Respondent at its Fort Worth plant, but excluding office clerical employees, over-the-road drivers, firemen, watchmen, sales employees draftsmen, 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 September 29, 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 January 9, 1973, 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, A. Brandt Company, 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 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 47, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, including inventory clerks and local truckdrivers employed by the Respondent at its Fort Worth plant, but excluding office clerical employees, over-the-road drivers, firemen, watchmen, sales employees, draftsmen, 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 Fort Worth, Texas, plant copies of the attached notice marked "Appendix."<sup>7</sup> Copies of said notice, on forms provided 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.

CHAIRMAN MILLER, dissenting:

I dissented from the certification of the Union in the Board's Decision on Review and Certification of Representative because I disagreed with the refusal to review Objection 2, involving the injection of racial appeals during the election campaign. I therefore would deny the General Counsel's Motion for Summary Judgment.

<sup>7</sup>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 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 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 47, 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 inventory clerks and local truckdrivers employed by the Employer at its Fort Worth plant, but excluding office clerical employees, over-the-road drivers, firemen, watchmen, sales employers, draftsmen, and all supervisors as defined in the Act.

A. BRANDT COMPANY, INC.

Dated \_\_\_\_\_  
By \_\_\_\_\_  
(Employer) (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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 8-A-24, 819 Taylor Street, Fort Worth, Texas 76102, Telephone 817-332-2921.

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