Chayes Virginia Corporation, a Wholly Owned Subsidiary of BCC Industries, Inc. *and* International Union of Electrical, Radio and Machine Workers, a/w AFL–CIO–CLC. Case 25–CA–5606

November 6, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

Upon a charge filed on June 1, 1973, by International Union of Electrical, Radio and Machine Workers, a/w AFL–CIO–CLC, herein called the Union, and duly served on Chayes Virginia Corporation, a Wholly Owned Subsidiary of BCC Industries, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint on June 20, 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 February 7, 1973, following a Board election in Case 25–RC–5155 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 February 14, 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 July 1, 1973, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On July 9, 1973, counsel for the General Counsel filed directly with the Board a motion to strike portions of Respondent's answer and Motion for Summary Judgment. Subsequently, on August 6, 1973, 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

Respondent's answer to the complaint and response to the Notice To Show Cause herein contend that the complaint should be dismissed and summary judgment denied because the Board made erroneous determinations in the underlying representation case.

Our review of the record in Case 25–RC–5155 indicates that, pursuant to the Regional Director's Decision and Direction of Election, an election was conducted on December 14, 1972, in the appropriate unit. Of approximately 80 eligible voters, 34 cast ballots for, and 31 against, the Union, 1 ballot was challenged, and 1 void. Thereafter, the Respondent timely filed nine objections, which alleged, in substance, that the Union had interfered with the election by polling employees, intimidating them, waiving its initiation fee, and making various misrepresentations, and requested, in view of the closeness of the election, either that the election be set aside or that a hearing be held. After investigation, on February 7, 1973, the Regional Director issued his Supplemental Decision and Order and Certification of Representative in which he overruled the objections in their entirety and certified the Union. The Respondent then filed a request for review entitled "Exceptions with Brief Annexed," in which it reiterated all the aforementioned contentions and renewed its request for a hearing. By telegraphic order dated March 19, 1973, the Board denied the request for review "as it raises no substantial issues warranting review." Subsequently, on March 28, 1973, Respondent filed a request for an explicated decision why Respondent's request was denied. By letter of April 5, 1973, the Board's Executive Secretary replied that, under Rule 102.67(f) of the Board's Regulations, a denial of review constitutes affirmance of the Regional Director's actions, that the Board does not issue an explicated decision unless review has been granted, and that the Board did not contemplate issuing a further decision in the matter. Thereafter, by letter dated April 10, 1973, the Respondent wrote the Board in which it contended that the Supreme Court's decision in *Metropolitan Life*[2] required the Board to give an explicated decision in any matter.

Respondent now raises again the same issues it

[1] Official notice is taken of the record in the representation proceeding, Case 25–RC–5155, 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.*, 164 NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

[2] *Metropolitan Life Insurance Co* v. *N.L.R B*, 380 U.S 438.

raised in the underlying representation proceeding. However, these issues have already been decided adversely to it. Further, where no substantial and material issues of fact and law are presented, no due process issue can properly be raised and, therefore, no hearing is warranted,[3] despite the closeness of the election.[4]

Finally, with respect to Respondent's request for a Board explication of its decision to deny review, we are of the opinion, after review of the Regional Director's Supplemental Decision and the Respondent's request for review thereof, that our conclusion that the request for review raises no substantial issues warranting review is a sufficient explication of the decision to deny review, and that the Regional Director's Supplemental Decision, articulating the reasons for his overruling of the Respondent's objections to the election and his certification of the Union as the exclusive representative of the employees in the appropriate bargaining unit, sufficiently discloses the basis for our Order herein so as to afford a proper basis for judicial review.[5]

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.[6]

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.[7]

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana, maintains its principal office and place of business at Evansville, Indiana, and a satellite facility at Loogootee, Indiana, where it is engaged in the manufacture, sale, and distribution of dental chairs and equipment and related products.

During 1972, Respondent, in the course and conduct of its business operations, purchased and delivered to its above-named locations goods and materials valued in excess of $50,000, which were transported to them directly from States other than the State of Indiana, and also manufactured, sold, and delivered products valued in excess of $50,000, which were shipped from the Evansville and Loogootee locations directly to States other than the State of Indiana.

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 Electrical, Radio and Machine Workers, a/w AFL–CIO–CLC, 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 production and maintenance employees of the Respondent at its Evansville and Loogootee establishments, but excluding all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act.

2. The certification

On December 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 25, designated the Union as their representative for the purpose of collective bargaining

[3] *Farah Manufacturing Company,* 203 NLRB No. 78; *Reeves-Bowman, Division of Cyclops Corporation,* 194 NLRB 155, and cases cited in fns. 3 and 4 thereof.

[4] *Henderson Trumbull Supply Corporation,* 205 NLRB No. 8; *Modine Manufacturing Company,* 203 NLRB No. 77.

[5] The *Metropolitan Life* decision does not require more.

[6] 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).

[7] In view of our determination, it is unnecessary to consider General Counsel's motion to strike.

with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on February 7, 1973, 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 February 13, 1973, 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 February 14, 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 February 14, 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 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. Chayes Virginia Corporation, a wholly owned subsidiary of BCC Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Union of Electrical, Radio and Machine Workers, a/w AFL–CIO–CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees of the Respondent at its Evansville and Loogootee establishments, but excluding all office clerical employees, all professional employees, all 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 7, 1973, 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 February 14, 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, Chayes Virginia Corporation, a wholly owned subsidiary of

BCC Industries, Inc., Evansville, Indiana, 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 Electrical, Radio and Machine Workers, a/w AFL–CIO–CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees of the Respondent at its Evansville and Loogootee establishments, but excluding all office clerical employees, all professional employees, all 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 Evansville and Loogootee, Indiana, facilities copies of the attached notice marked "Appendix." [8] Copies of said notice, on forms provided by the Regional Director for Region 25 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 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[8] 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 Union of Electrical, Radio and Machine Workers, a/w AFL–CIO–CLC, 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 of the Respondent at its Evansville and Loogootee establishments, but exluding all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act.

CHAYES VIRGINIA CORPORATION
(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, 615 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317–633–8921.