

**Abbott Laboratories, Ross Laboratories Division and
Textile Workers Union of America, AFL-CIO. Case
5-CA-6969**

May 9, 1975

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

Upon a charge filed on November 6, 1974, by Textile Workers Union of America, AFL-CIO, herein called the Union, and duly served on Abbott Laboratories, Ross Laboratories Division, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 5, issued a complaint on December 4, 1974, 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 October 22, 1974, following a Board election in Case 5-RC-8530, 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 October 30, 1974, 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 December 11, 1974, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint and raising affirmative defenses.

On January 7, 1975, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 13, 1975, 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 entitled "Reply in opposition to motion to the Board for Summary Judgment."

¹ Official notice is taken of the record in the representation proceeding, Case 5-RC-8530, as the term "record" is defined in Sec. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.* 166 NLRB 938 (1967), enfd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), 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 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA

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 to the Notice to Show Cause, Respondent, in effect, disputes the representative status of the Union because of errors it alleges occurred in the denial of hearing on certain of its objections and in the rulings and findings of the Hearing Officer at the hearing on the rest of its objections which deprived Respondent of due process.

Our review of the record herein, including that of representation Case 5-RC-8530, reveals that following a Stipulation for Certification Upon Consent Election an election was held on July 20, 1973, which the Union won after, upon agreement of the parties, the challenged ballots were opened and counted. The Respondent filed timely objections to conduct affecting the results of the election alleging, in substance, that the Union threatened loss of employment and violence to the persons and property of employees, created fear among the employees, engaged in improper electioneering, and made misrepresentations; that official NLRB notices were marked and defaced so as to benefit the Union; and that, during the time the polls were open, the security of the ballots was not maintained, the union observer engaged in conduct disruptive of the appearance of neutrality, and the Board agent engaged in conversation and remarks prejudicial to the Employer in the presence of eligible voters.

On September 23, 1973, after investigation, the Regional Director issued a Report on Objections and Challenges recommending that Respondent's objections be overruled as they did not raise substantial or material issues and that the Union be certified. Respondent filed with the Board exceptions to the Regional Director's report and a brief in support thereof requesting a hearing. Thereafter, the Respondent filed with the Regional Director a Motion for Reconsideration based on an additional statement corroborating, and in support of, its objections. In a Supplemental Report on Objections and Denial of Motion for Reconsideration, the Regional Director denied reconsideration. Respondent then filed exceptions thereto with the Board again requesting a hearing on its objections.

The Board on January 16, 1974, issued its Decision and Order in which it adopted the Regional Director's rulings and recommendations in the report and supplemental report with the modification that it found the issues raised in the objections concerning threatened

violence, marked and defaced NLRB official notices, Board agent remarks, and union observer conduct could best be resolved in a hearing. After 3 days of hearing, the Hearing Officer on April 4, 1974, issued his Report and Recommendations on Objections in which he found the objections did not raise substantial and material issues with respect to the election and recommended that they be overruled, and that, as the Board had previously overruled the other objections, the Union be certified.

Respondent filed with the Board exceptions, a brief, and a motion for oral argument wherein it alleged that its exceptions involved novel and substantial questions concerning Board law and policy. Respondent excepted to the Hearing Officer's findings especially with respect to credibility resolutions and conduct of the union observer and remarks of the Board agent during the polling. Respondent further argued that the Hearing Officer deprived it of a fundamental and substantive right by refusing to receive briefs and prejudiced its right to a fair and unbiased hearing by refusing to state whether he or counsel for the Regional Director was a member of, or represented by, the NLRB union and his subsequent failure to disqualify himself and counsel for the Regional Director for that reason. Respondent also contended that the Hearing Officer erred by quashing a *subpoena duces tecum* requesting certain materials from the Regional Director's file.

The Board, on October 22, 1974, issued its Supplemental Decision and Certification of Representative. After reviewing the Hearing Officer's rulings, it found they were free from prejudicial error and expressly noted that the Hearing Officer properly refused to receive briefs, to require himself and counsel for the Regional Director to disclose whether they were union members, and to delay the hearing to subpoena an investigating Board agent, and that he properly quashed a *subpoena duces tecum*. Then, after considering the entire record, the Board denied the motion for oral argument because the briefs adequately presented the issues and positions of the parties, adopted the Hearing Officer's recommendation that the objections be overruled in their entirety, and certified the Union.

Respondent in its answer to the complaint and response to the Notice To Show Cause claims that the Board wrongfully deprived it of a hearing on some of its objections which were overruled and that it was denied due process because of the Hearing Officer's rulings at the hearing in the remaining objections. As to the objections which were overruled without a hearing, the Board, considering the Regional Director's report and supplemental report, adopted in its Decision and Order the finding that those objections did not raise substantial and material issues. It is well settled that parties do not have an absolute right to a hearing

on objections to an election and only when the moving party presents a *prima facie* showing of substantial and material issues which would warrant setting aside the election is it entitled to a hearing. It is clear that this qualified right to a hearing satisfies all statutory and constitutional requirements.² With respect to the hearing which was held on the other objections, as indicated above, in the Decision and Certification of Representative, we considered the Hearing Officer's rulings and decided that they were proper and not prejudicial and therefore it is clear that Respondent has not been denied due process.

Since in its response to the Notice To Show Cause Respondent concedes, and it so appears, that all the Respondent's contentions raised in this case have been previously presented to the Board in the underlying representation case, we find Respondent may not relitigate them herein. 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.³

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.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

Abbott Laboratories, an Illinois corporation, is engaged in the production of infant formula at its Altavista, Virginia, location. During the preceding 12 months, a representative period, Respondent purchased and received, in interstate commerce, goods and

² *Heavenly Valley Ski Area*, 215 NLRB No. 129 (1974); *Lynden Frosted Foods, Inc.*, 216 NLRB No. 87 (1975).

³ 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)

⁴ In its answer to the complaint, Respondent denies the allegation that it has failed and refused to bargain with the Union insofar as such allegation alleges that Respondent has a legal obligation to meet and bargain with the Union. Respondent's letter of October 30, 1974, in which it refuses to meet with the Union, is appended to the Motion for Summary Judgment and the contents thereof are uncontroverted by the Respondent. Therefore, we find the refusal to bargain to be admitted and true.

materials valued in excess of \$50,000 from points outside the Commonwealth of Virginia.

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

Textile Workers Union of America, 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 production and maintenance employees employed by the Employer at its Altavista, Virginia, facility, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, as amended.

2. The certification

On July 20, 1973, 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 5, 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 October 22, 1974, 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 28, 1974, 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 October 30, 1974, 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 October 30, 1974, 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 Abbott Laboratories, Ross Laboratories Division, 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 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 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. Abbott Laboratories, Ross Laboratories Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer at its Altavista, Virginia, facility, but excluding all office clerical employees, professional employees, guards, and supervisors as de-

fined in the Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since October 22, 1974, 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 October 30, 1974, 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, Abbot Laboratories, Ross Laboratories Division, Altavista, Virginia, 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 Textile Workers Union of America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed by the Employer at its Altavista, Virginia, facility, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, as amended.

(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 re-

spect 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 Altavista, Virginia, facility copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 5, 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 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁵ 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 Textile Workers Union of America, 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 production and maintenance employees employed by the Employer at its Altavista, Virginia, facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, as amended.

ABBOTT LABORATORIES, ROSS
LABORATORIES DIVISION