

Allied Meat Company and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. Case 27-CA-4464

August 28, 1975

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

Upon a charge filed on March 26, 1975, by Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, herein called the Union, and duly served on Allied Meat Company, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint on April 30, 1975, 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 27, 1975, following a Board election in Case 27-RC-4663, 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 March 21, 1975, 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 12, 1975, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. Respondent admits all the factual allegations of the complaint, including *inter alia*, the appropriateness of the unit, the certification of the Union, and the Union's request and its refusal to bargain. In addition, Respondent submits affirmative defenses, to wit: that the Board erred in not certifying the results of an election conducted November 30, 1973;² a hearing should have been

conducted on its objections to the second election conducted October 18, 1974; and the employees were denied rights guaranteed them by Section 7 and other provisions of the Act by the conduct alleged in its objections to the election.

On June 16, 1975, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. She submits, in effect, that Respondent by its answer is attempting to relitigate issues which were raised and litigated in the underlying representation proceeding. Under well-settled rules precluding relitigation in an unfair labor practice proceeding of issues which were previously litigated in a representation proceeding, she moves for judgment and the entry of an appropriate order. Subsequently, on June 19, 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 has not 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

As noted above, Respondent admits all the factual allegations of the complaint, including its refusal to bargain with the certified Union, and basically attacks the Board's direction of a second election in the representation proceeding and reasserts its objections to the second election and argues that a hearing is required on its affirmative defenses. By these assertions, Respondent is attempting to relitigate issues which were raised and litigated in the underlying representation case, as its objections to the second election included these issues, and were before the Board along with its argument that a hearing was required on its objections, which were a part of Respondent's exceptions to the Acting Regional Director's Report on Objections to the second election. On that occasion, the Board adopted the Acting Regional Director's findings and recommendation that the objections be overruled and certified the Union. Moreover, with regard to the necessity of a hearing, it is well settled that the parties do not have an absolute right to a hearing. It is only when the moving party presents a *prima facie* showing of "substantial and

er conducted because prejudicial misconduct by the Respondent had affected the results thereof. On August 28, 1974, the Board adopted the Hearing Officer's recommendation and directed a second election. The second election was conducted October 18, 1974, and resulted in a 19-to-4 vote in favor of the Union

¹ Official notice is taken of the record in the representation proceeding, Case 27-RC-4663, as the term "record" is defined in Secs. 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), enf. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf. 415 F.2d 26 (C.A. 5, 1969); *Inertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1967), *Follett Corp.*, 164 NLRB 378 (1967), enf. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

² An election was conducted in Case 27-RC-4663 on November 30, 1973. Upon objections thereto by the Union, a hearing was held which resulted in the Hearing Officer recommending that the election be set aside and another

material" issues which would warrant setting aside the election is he entitled to an evidentiary hearing.³ It is clear that, absent arbitrary action, this qualified right to a hearing satisfies all statutory and constitutional requirements.⁴ In the instant case, the Board fully considered Respondent's objections and exceptions and did not order a hearing, but rather adopted the Acting Regional Director's recommendations that they be overruled.

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.⁵

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

Respondent is a corporation organized and existing by virtue of the laws of the State of Colorado and maintains its principal office and place of business in Denver, Colorado, where it is engaged in wholesale meat processing. In the course and conduct of its business operations annually, Respondent sells and ships goods valued in excess of \$50,000 directly to points and places outside the State of Colorado.

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.

³ *N.L.R.B. v. Modine Manufacturing Co.*, 500 F.2d 914 (C.A. 8, 1974).

⁴ *Amalgamated Clothing Workers of America [Winfield Manufacturing Company] v. N.L.R.B.*, 424 F.2d 818, 828 (C.A.D.C., 1970).

⁵ 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).

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North 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 full-time and regular part-time production and maintenance employees, including sanitation and clean-up employees and delivery drivers employed by the Employer at 4900 Clarkson Street, and 709 West 8th Avenue, Denver, Colorado, excluding office clerical employees, professional employees, salesmen, guards and supervisors as defined in the Act.

2. The certification

On October 18, 1974, 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 27, 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 27, 1975, 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 March 10, 1975, 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 March 21, 1975, 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 March 21, 1975, 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 (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. Allied Meat Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees, including sanitation and clean-up employees and delivery drivers employed by the Employer at 4900 Clarkson Street, and 709 West 8th Avenue, Denver, Colorado, excluding office clerical employees, professional employees,

salesmen, guards and 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 27, 1975, 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 March 21, 1975, 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 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, Allied Meat Company, Denver, Colorado, 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 Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including sanitation and clean-up employees and delivery drivers employed by the Employer at 4900 Clarkson Street, and 709 West 8th Avenue, Denver, Colorado, excluding office clerical employees, professional employees, salesmen, guards 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 4900 Clarkson Street and 709 West 8th Avenue locations in Denver, Colorado, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 27, 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 27, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁶ 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 Amalgamated Meat Cutters and Butcher Workmen of North 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 full-time and regular part-time production and maintenance employees, including sanitation and clean-up employees and delivery drivers employed by the Employer at 4900 Clarkson Street, and 709 West 8th Avenue, Denver, Colorado, excluding office clerical employees, professional employees, salesmen, guards and supervisors as defined in the Act.

ALLIED MEAT COMPANY