

Adrian Belt Company, Hollywood Leather Creations, Harry Goldberg Belt Company, Inc , Jolie Belts, Inc , Mahler Sales Co , Inc , and Patricia Belt Company and Los Angeles Joint Board of the International Ladies' Garment Workers' Union, AFL-CIO
Case 21-CA-14233

June 18, 1976

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND PENELLO

Upon a charge filed on December 10, 1975, as amended on December 19, 1975, by Los Angeles Joint Board of the International Ladies' Garment Workers' Union, AFL-CIO, herein called the Union, and duly served on Adrian Belt Company, Hollywood Leather Creations, Harry Goldberg Belt Company, Inc , Jolie Belts, Inc ., Mahler Sales Co , Inc , and Patricia Belt Company, herein collectively called the Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 21, issued a complaint and notice of hearing on December 22, 1975, and an erratum on January 2, 1976, 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, erratum, 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 November 17, 1975, following a Board election in consolidated Cases 21-RM-1654, 21-RM-1656, 21-RM-1658, 21-RM-1659, 21-RM-1660, 21-RM-1663, 21-RM-1664, and 21-RM-1665, 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 December 10, 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 re-

¹ Official notice is taken of the record in the representation proceeding Cases 21-RM-1654 *et al* 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'd 388 F.2d 683 (C.A. 4 1968) *Golden Age Beverage Co* 167 NLRB 151 (1967) enf'd 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) enf'd 397 F.2d 91 (C.A. 7 1968) Sec. 9(d) of the NLRA as amended.

quested and is requesting it to do so. On January 15 and 30, 1976, respectively, Respondent filed its answer and amended answer to the complaint, admitting in part, and denying in part, the allegations in the complaint.

On February 26, 1976, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 3, 1976, 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 "Motion in Opposition to General Counsel's Motion for 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

In its answer and amended answer and its response to the Notice to Show Cause, Respondent admits its refusal to bargain, but attacks the validity of the Union's certification. In this regard, Respondent contends the Board erred (1) with respect to four challenged ballots, (2) in refusing to direct a hearing on objections and challenges prior to the issuance of the Regional Director's Supplemental Decision, and (3) refusing to enforce Respondent's *subpoenas duces tecum* directed to the California unemployment insurance and disability insurance offices.

Review of the record herein, including the record in Cases 21-RM-1654, *et al*, reveals that, pursuant to the Regional Director's Decision and Direction of Election, as amended, an election was held on November 8, 1974, among the employees in the stipulated unit. The tally of ballots revealed 42 votes for the Union, 36 votes against, and 11 challenged ballots which were sufficient to affect the results of the election. Thereafter, Respondent filed timely objections to conduct affecting the results of the election, alleging, in substance, illegal electioneering, impermissible captive audience speeches, misrepresentations, threats, and promises of benefits. On February 24, 1975, after investigation, the Regional Director issued his Supplemental Decision and Order in which he, *inter alia*, (1) upheld the Union's challenge of Luis Beltran and Robert Garcia as supervisors, (2) found Beatrice Polanco to be a plant clerical employee and, therefore, eligible to vote, (3) provisionally ordered a hearing as to Yvonne King's eligibility in

the event her challenged ballot is determinative of the election,² and (4) overruled Respondent's objections to the election in their entirety. Respondent filed a timely request for review of the Regional Director's Supplemental Decision, contending the Regional Director erred in his determinations as to the above four challenged ballots, and requested that the Board order a hearing thereon. No review of the overruling of Respondent's objections was requested. By telegraphic order dated April 9, 1975, the Board, with Member Kennedy dissenting in part, denied Respondent's request for review as it raised no substantial issues warranting review.

On April 11, 1975, a revised tally of ballots was issued showing 43 votes for and 43 votes against the Union, leaving determinative the challenged King ballot. Following a hearing, the Hearing Officer, on August 19, 1975, issued his report and recommendations in which he found that King was an employee on a leave of absence on the eligibility date and, therefore, recommended that the challenge to her ballot be overruled. The Hearing Officer further recommended that Respondent's application for enforcement of *subpoenas duces tecum* directed to the California unemployment insurance and disability insurance offices, whose representatives testified, be denied. Respondent filed with the Regional Director timely exceptions to the Hearing Officer's report. The Regional Director, on September 22, 1975, issued his Second Supplemental Decision and Order in which he adopted the Hearing Officer's findings of fact and, accordingly, overruled the challenge to King's ballot and ordered that the ballot be opened and counted. Thereafter, Respondent filed with the Board a timely request for review, contending that King was erroneously found eligible to vote and that Respondent's application for enforcement of the *subpoenas duces tecum* should have been granted. The Board considered Respondent's request for review and, by telegraphic order dated November 5, 1975, denied the request as it raised no substantial issues warranting review.

On November 11, 1975, a second revised tally of ballots was issued showing 44 votes for the Union and 43 votes against. Thereupon, on November 17, 1975, in the absence of objections to the tally, the Regional Director certified the Union as the exclusive representative of Respondent's employees in the appropriate 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 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 RESPONDENTS

The California Apparel Accessory Association, Inc., herein called the Association,⁵ is, and at all times material herein has been, an association comprising various employers, including all Respondents, and exists for, and engages in, collective bargaining for, and negotiates collective-bargaining agreements on behalf of, its employer-members with the Union. The employer-members of the Association, including Respondents, are engaged in business in southern California in the manufacture and sale of belts. In the course and conduct of their business operations, the employer-members of the Association, including all Respondents which participate in multiemployer bargaining through said Association, in the aggregate annually sell and ship goods, materials, and supplies valued in excess of \$50,000 directly to customers located outside the State of California.

We find, on the basis of the foregoing, that the Association and each of its employer-members, including all Respondents, are and at all times material herein have been employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act,

³ See *Pittsburgh Plate Glass Co v NLRB* 313 US 146 162 (1941) Rules and Regulations of the Board Secs 102 67(f) and 102 69(c)

⁴ Respondent's request for a hearing herein is denied as a hearing is not required where as here there are no properly litigable issues of fact to be resolved. *Solon Manufacturing Company* 222 NLRB 542 (1976) *Locust Industries Inc* 221 NLRB 604 (1975)

⁵ In the answer to the complaint Respondents admit the existence of the Association and that they are employer members of a multiemployer bargaining unit for purposes of collective bargaining but deny present membership in the Association. At the representation hearing the parties including all Respondents herein stipulated that certain employers again including all Respondents herein were employer members of the Association and that the associationwide unit was appropriate. In these circumstances whether or not Respondents are technically present members of the Association in no way impinges upon their obligation to bargain with the Union in the certified multiemployer bargaining unit.

² The challenges to the remaining seven ballots were overruled.

and that it will effectuate the policies of the Act to assert jurisdiction herein

II THE LABOR ORGANIZATION INVOLVED

Los Angeles Joint Board of the International Ladies' Garment Workers' Union, 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, maintenance, shipping, and receiving employees employed by the employer-members of the California Apparel Accessory Association, Inc., which includes all Respondents herein, excluding all designers, head shipping clerks, office and clerical employees, salesmen, guards, and supervisors as defined in the Act

2 The certification

On November 8, 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 21 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 November 17, 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 November 25, 1975, and at all times thereafter, the Union has requested the Respondents to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about December 10, 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 December 10, 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), enf'd 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964), *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), 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 The California Apparel Accessory Association, Adrian Belt Company, Hollywood Leather Creations, Harry Goldberg Belt Company, Inc., Jolie Belts, Inc., Mahler Sales Co., Inc., and Patricia Belt Company, are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act

2 Los Angeles Joint Board of the International

Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act

3 All production, maintenance, shipping, and receiving employees employed by the employer-members of the California Apparel Accessory Association, Inc, which includes all Respondents herein, excluding all designers, head shipping clerks, office and clerical 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 November 17, 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 December 10, 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 Respondents in the appropriate unit, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act

6 By the aforesaid refusal to bargain, Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby have engaged in and are 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 the Respondent Employers, Adrian Belt Company, Hollywood Leather Creations, Harry Goldberg Belt Company, Inc, Jolie Belts, Inc, Mahler Sales Co, Inc, and Patricia Belt Company, Los Angeles, California, their 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 Los Angeles Joint Board of the International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive bargaining representative of their employees in the following appropriate unit

All production, maintenance, shipping, and receiving employees employed by the employer-members of the California Apparel Accessory Association, Inc, which includes all Respondents herein, excluding all designers, head shipping clerks, office and clerical 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 their Los Angeles, California, facilities copies of the attached notice marked "Appendix"⁶ Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondents' representative, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material

(c) Notify the Regional Director for Region 21, 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 Los Angeles Joint Board of the International Ladies' Garment Workers' Union, AFL-CIO, as the ex-

clusive 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 any understanding is reached, embody such understanding in a signed agreement. The bargaining unit is

All production, maintenance, shipping, and receiving employees employed by the employer-members of the California Apparel Accessory Association, Inc, which includes all Respondents herein, excluding all designers, head shipping clerks, office and clerical employees, salesmen, guards, and supervisors as defined in the Act

ADRIAN BELT COMPANY, HOLLYWOOD
LEATHER CREATIONS, HARRY GOLDBERG
BELT COMPANY, INC, JOLIE BELTS, INC,
MAHLER SALES CO, INC, AND PATRICIA BELT
COMPANY