

All Seasons Heating and Air Conditioning, Inc. and Sheet Metal Workers Local Union #242, Sheet Metal Workers International Association, AFL-CIO, CLC. Case 19-CA-12955

May 18, 1981

DECISION AND ORDER

Upon a charge filed on November 13, 1980, by Sheet Metal Workers Local Union #242, Sheet Metal Workers International Association, AFL-CIO, CLC, herein called the Union, and duly served on All Seasons Heating and Air Conditioning, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 19, issued a complaint and notice of hearing on December 15, 1980, 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 and 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 30, 1980, following a Board election in Case 19-RC-9811, 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 15, 1980, 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 22, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On January 5, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 13, 1981, 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 the Notice To Show Cause.

¹ Official notice is taken of the record in the representation proceeding, Case 19-RC-9811, 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), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

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, Respondent admits that the Union has been certified as the collective-bargaining representative of the employees in the appropriate unit. Respondent also admits that the Union requested it to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and that it has failed and refused to recognize and to bargain with the Union. Respondent contends, however, that the certification was improper, and denies that the Union is the exclusive representative of the employees. In its response to the Notice to Show Cause dated January 20, 1981, Respondent asserts that its objections to the election were meritorious, and also asserts for the first time that the Regional Director failed to make a full investigation into its objections.² Respondent does not explicate the basis for this last assertion.

Review of the record herein, including the record in Case 19-RC-9811, reveals that on or about June 4, 1980, Respondent and the Union entered into a Stipulation for Certification Upon Consent Election in a unit of all employees but excluding office clerical employees, salespersons, professional employees, guards and supervisors as defined in the Act. Subsequently, on June 26, 1980, in a secret-ballot election a majority of the unit employees designated and selected the Union as their collective-bargaining representative.

On July 1, 1980, Respondent filed timely objections to conduct affecting the results of the election. Subsequently, the Regional Director for Region 19 conducted an investigation of these objections. In a Report on Objections dated August 18, 1980, the Regional Director recommended that Respondent's objections be overruled in their entirety, and that the Board issue a Certification of Representative.

On August 25, 1980, Respondent filed exceptions to the Regional Director's Report on Objections. On September 30, 1980, the Board issued a Decision and Certification of Representative, finding that the exceptions did not raise any material issues of fact or law which would warrant reversal of the Regional Director, and certified the Union as the collective-bargaining representative for the above-described unit of employees. On or about October 2, 1980, the Union requested Respondent to bargain

² On January 26, 1981, Respondent, to supplement its answer to the General Counsel's motion, filed a copy of its exceptions to the Regional Director's Report on Objections in the underlying representation case.

with it concerning rates of pay, wages, hours of employment, and other terms and conditions of employment. On October 15, 1980, Respondent denied the Union's request to bargain.

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 We find no merit in Respondent's assertion, made for the first time in its response to the Notice To Show Cause, that the Regional Director failed to fully investigate its objections. Respondent did not raise this issue in its exceptions to the Regional Director's Report on Objections in the underlying representation proceeding, nor does it offer any evidence to substantiate its claim at this time. Furthermore, the balance of Respondent's defense herein is an attempt to relitigate its objections considered and rejected by the Board in the underlying representation proceeding.

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and 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 Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we 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 RESPONDENT

Respondent is engaged in the business of sheet metal fabrication with offices and place of business in Yakima, Washington. During the past 12 months preceding the issuance of the complaint, a period representative of all times material herein, Respondent had gross sales of goods and services valued in excess of \$500,000 and during the same period it purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside the State or from suppliers within the State which in turn obtained goods and materials from outside the State of Washington.

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).

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

Sheet Metal Workers Local Union #242, Sheet Metal Workers International Association, 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 Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees of the Employer at its Yakima, Washington, facility, but excluding office clerical employees, salespersons, professional employees, guards and supervisors as defined in the Act.

2. The certification

On June 26, 1980, 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 19, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on September 30, 1980, 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, 1980, and at all times thereafter, the Union has requested 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 15, 1980, and continuing at all times thereafter to date, 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 Respondent has, since October 15, 1980, and at all times thereafter, re-

fused 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 All Seasons Heating and Air Conditioning, Inc., 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 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

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

CONCLUSIONS OF LAW

1. All Seasons Heating and Air Conditioning, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Sheet Metal Workers, Local Union #242, Sheet Metal Workers International Association, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. All employees of the Employer at its Yakima, Washington, facility, but excluding office clerical employees, salespersons, professional employees, guards and supervisors as defined in the Act, con-

stitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 30, 1980, 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 15, 1980, 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 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 the Respondent, All Seasons Heating and Air Conditioning, Inc., Yakima, Washington, 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 Sheet Metal Workers, Local Union #242, Sheet Metal Workers International Association, AFL-CIO, CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees of the Employer at its Yakima, Washington, facility, but excluding office clerical employees, salespersons, professional employees, 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 Yakima, Washington, facility copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 19, 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 19, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ 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 Sheet Metal Workers, Local Union #242, Sheet Metal Workers International Association, 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 employees of the Employer at its Yakima, Washington, facility, but excluding office clerical employees, salespersons, professional employees, guards and supervisors as defined in the Act.

ALL SEASONS HEATING AND AIR
CONDITIONING, INC.