

**Unique Handicraft Corp. and Local 1814, International Longshoremen's Association, AFL-CIO.**  
Case 29-CA-8998

January 7, 1982

**DECISION AND ORDER**

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

Upon a charge filed on July 6, 1981, by Local 1814, International Longshoremen's Association, AFL-CIO, herein called the Union, and duly served on Unique Handicraft Corp., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on August 11, 1981, 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 May 27, 1981, following a Board election in Case 29-RC-5202, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate,<sup>1</sup> and that, commencing on various dates since May 27, 1981, including particularly June 2 and 15 and July 8, 1981, 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 August 20 and September 23, 1981, Respondent filed its answer and amended answer to the complaint admitting in part, and denying in part, the allegations in the complaint. Specifically Respondent admits that it refused to bargain collectively with the Union commencing on the various dates alleged in the complaint. In addition, Respondent stated by letter dated June 11, 1981, that it declined the Union's request to begin collective-bargaining negotiations on the basis of its belief that the certification of the Union is invalid.

On October 1, 1981, counsel for the General Counsel filed directly with the Board a Motion for

Summary Judgment. Subsequently, on October 7, 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 brief in opposition to the 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 to the complaint Respondent affirmatively pleads that it is under no duty to recognize and bargain with the Union because the Union's certification is based upon an election which should have been set aside due to a misrepresentation by the Union and the Union's designation of an ineligible person to act as its election observer.

Respondent reiterates these contentions in its brief in opposition to the General Counsel's Motion for Summary Judgment and essentially repeats the arguments made in its exceptions to the Regional Director's Report on Objections in the underlying representation case. The General Counsel contends that Respondent admits the material allegations of the complaint and is merely attempting to relitigate issues which were or could have been disposed of in the underlying representation case. We agree with the General Counsel.

Our review of the record, including the record in the underlying representation case (Case 29-RC-5202), reveals that pursuant to a Stipulation for Certification an election was conducted on December 5, 1980, in a unit of all warehousemen employed by Respondent at its premises located at 37-11 48th Avenue, Long Island City, New York, including packers, pickers and shipping clerks, and excluding all office clerical employees, guards and supervisors as defined in the Act. The tally of ballots indicated nine votes for the Union and eight votes against; there were no challenged ballots. Respondent filed timely objections alleging (1) the Union improperly designated Robert Evans as an observer since he was not an employee at the time of the election; (2) the Union distributed a letter which misrepresented the nature of a Board settlement in Case 29-CA-7986; and (3) the list of eligible employees failed to include the name of employee Robert Limehouse, an eligible employee, and Limehouse therefore was deprived of his right to vote. On January 16, 1981, the Regional Direc-

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 29-RC-5202, 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.

tor for Region 29 issued his Report on Objections in which he overruled the Employer's objections in their entirety and recommended that a certification of representative issue. On January 23, 1981, Respondent filed with the Board exceptions to the Regional Director's report arguing that the Regional Director erred in overruling Employer's Objections 1 and 2 above because, *inter alia*, he failed to acknowledge that a copy of the Board's settlement notice was attached to the Union's letter. On May 27, 1981, the Board issued a Decision and Certification of Representative (not published in bound volumes) in which it adopted the Regional Director's report overruling the Employer's Objections 1, 2, and 3 above. Therein the Board specifically found no merit to the Employer's contention that the Regional Director erred by failing to refer to a Board settlement notice attached to the Union's campaign letter at issue in the Employer's Objection 2 because, if anything, the attachment reinforced the Regional Director's finding that there had been no substantial misrepresentation of the Board document. It thus appears that Respondent is attempting to relitigate matters which were or could have been heard and determined in the representation proceeding.

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.<sup>2</sup>

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, a corporation organized under the laws of the State of New York, operates a facility located at 47-09 30th Street in the Borough of Queens, New York, where it is engaged in the

warehousing, sale, and distribution of decorative housewares and related products. During the past year, a representative period, Respondent in the course and conduct of its business operations purchased and caused to be transported and delivered to its Queens warehouse brass ornaments and related products and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its Queens warehouse in interstate commerce directly from States of the United States other than the State of New York, and from foreign countries.

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

Local 1814, International Longshoremen's Association, 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 Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All warehousemen employed by the Respondent at its premises located at 37-11 48th Avenue, Long Island City, New York, including packers, pickers and shipping clerks, excluding all office clerical employees, guards and supervisors as defined in the Act.

##### 2. The certification

On December 5, 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 29, 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 May 27, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

<sup>2</sup> 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).

*B. The Request To Bargain and Respondent's Refusal*

Commencing on various dates since May 27, 1981, including particularly June 2 and 15 and July 8, 1981, 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 various dates since May 27, 1981, including particularly June 2 and 15 and July 8, 1981, 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 May 27, 1981, 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 (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. Unique Handicraft Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 1814, International Longshoremen's Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All warehousemen employed by Respondent at its premises located at 37-11 48th Avenue, Long Island City, New York, including packers, pickers and shipping clerks, excluding all office clerical employees, 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 May 27, 1981, 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 May 27, 1981, 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, Unique Handicraft Corp., Long Island City, New York, 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 Local 1814, International Longshoremen's Association, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All warehousemen employed by Respondent at its premises located at 37-11 48th Avenue, Long Island City, New York, including packers, pickers and shipping clerks, excluding all office clerical 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 Respondent's Queens, New York, facility copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, on forms provided by the Regional Director for Region 29, 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 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

## 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 Local 1814, International Longshoremen's Association, 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 warehousemen employed by us at our premises located at 37-11 48th Avenue, Long Island City, New York, including packers, pickers and shipping clerks, excluding all office clerical employees, guards and supervisors as defined in the Act.

UNIQUE HANDICRAFT CORP.

<sup>3</sup> 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."