

Acme Bus Corp., Brookbus Bus Corp., Bauman & Sons Buses, Inc., Alert Coach Lines, Inc., a Single Employer and Local 868, International Brotherhood of Teamsters, AFL-CIO. Case 29-CA-18973

June 20, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

Upon a charge filed on March 10, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on April 12, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the request to bargain by Local 868, International Brotherhood of Teamsters, AFL-CIO and District Lodge 15, International Association of Machinists and Aerospace Workers, AFL-CIO (Joint Petitioners), following their certification in Cases 29-RC-8162 and 29-RC-8167. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 12, 1995, the General Counsel filed a Motion for Summary Judgment. On May 16, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 9, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits that the Joint Petitioners were certified as the exclusive collective-bargaining representative of the unit, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. In addition, the Respondent's answer asserts that the Joint Petitioners' bargaining request was improper inasmuch as the Joint Petitioners have "consistently bypassed the designated representative of the Respondent in violation of [Sec. 8(b)(1) and (3)]," and also denies that the Respondent has refused to bargain with the Joint Petitioners.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that no issue warranting a hearing is raised by the Respondent's contentions regarding the Joint Petitioners' bargaining request and the Respondent's refusal to bargain. The Respondent's answer admits that the Joint Petitioners sent a letter dated February 27, 1995, to the Respondent's vice president requesting bargaining. Although the Respondent's answer asserts that the demand was improper and therefore ineffective because it was not sent to Respondent's designated representative, we reject this assertion as without merit. See *S. E. Nichols Co.*, 156 NLRB 1201, 1212 (1966). Further, it is clear that the Respondent is in fact refusing to bargain. A copy of the letter that Respondent's attorney subsequently sent to the Joint Petitioners acknowledging receipt of the Joint Petitioners' February 27, 1995 letter and stating that Respondent "will continue to seek judicial relief" is attached to the General Counsel's motion, and the Respondent has not disputed the authenticity of that document in response to the Notice to Show Cause. Rather, the Respondent's answer denies the allegation that it has refused to bargain since February 27, 1995, and the Respondent's response to the Notice to Show Cause contests the General Counsel's Motion for Summary Judgment, solely on the basis of the Respondent's objections to the election. In these circumstances, we find that the Respondent has unlawfully refused to bargain as alleged in the complaint. Cf. *Albright & Zimmerman*, 261 NLRB 1035 (1982). Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, each of the Respondent's constituent companies, Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., and Alert Coach Lines, Inc., are and have been New York corporations, with their principal office and place of business collectively located at 3355 Veterans Memorial Highway, Ronkonkoma, New York (Ronkonkoma location), where they have been engaged in providing bus transportation services for various school districts, private organizations, and for the general public and with bus yards in Bohemia, Northport, Jericho, and Westhampton, New York.

During the past calendar year, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$250,000 and pur-

chased and received at its Ronkonkoma, New York facility products, goods, and materials valued in excess of \$50,000 from other enterprises located directly outside the State of New York.

At all times material, each of the Respondent's constituent companies, Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., and Alert Coach Lines, Inc., have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise. By virtue of its foregoing operations, the Respondent's constituent companies collectively constitute a single integrated business enterprise and a single employer within the meaning of the Act.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Joint Petitioners are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held July 30, 1993, the Joint Petitioners were certified on February 10, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time drivers, drivers' assistants and mechanics employed by Respondent at its Bohemia, Northport, Westbury/Jericho and Westhampton locations.

Excluded: All other employees, office clerical employees, guards and supervisors as defined in the Act.

The Joint Petitioners continue to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About February 27, 1995, the Joint Petitioners, by letter, requested the Respondent to bargain and, since about the same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 27, 1995, to bargain with the Joint Petitioners as the exclusive collective-bargaining representative of employees in the ap-

propriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Joint Petitioners, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Joint Petitioners. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., Alert Coach Lines, Inc., a single employer, Ronkonkoma, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 868, International Brotherhood of Teamsters, AFL-CIO/District Lodge 15, International Association of Machinists and Aerospace Workers, AFL-CIO, Joint Petitioners, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Joint Petitioners as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time drivers, drivers' assistants and mechanics employed by Respondent at its Bohemia, Northport, Westbury/Jericho and Westhampton locations.

Excluded: All other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Ronkonkoma, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If 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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 868, International Brotherhood of Teamsters, AFL-CIO/-District Lodge 15, International Association of Machinists and Aerospace Workers, AFL-CIO, Joint Petitioners, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Joint Petitioners and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

Included: All full-time and regular part-time drivers, drivers' assistants and mechanics employed by us at our Bohemia, Northport, Westbury/Jericho and Westhampton locations.

Excluded: All other employees, office clerical employees, guards and supervisors as defined in the Act.

ACME BUS CORP., BROOKSET BUS
CORP., BAUMANN & SONS, BUSES, INC.,
ALERT COACH LINES, INC., A SINGLE
EMPLOYER