

**Wintz Distribution Company and General Teamsters Local Union No. 836, an affiliate of the International Brotherhood of Teamsters, AFL-CIO.** Case 9-CA-32604

April 28, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

Pursuant to a charge filed by the Union on February 7, 1995, the General Counsel of the National Labor Relations Board issued a complaint on March 13, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 9-RC-16161. (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 and an amended answer admitting in part and denying in part the allegations in the complaint and submitting affirmative defenses.

On April 7, 1995, the General Counsel filed a Motion for Summary Judgment. On April 11, 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 April 25, 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 answers and response to the Notice to Show Cause, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election.<sup>1</sup>

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.<sup>2</sup> We therefore find that the Respondent has

<sup>1</sup>The Respondent's answers also deny the appropriateness of the unit. However, by entering into a Stipulated Election Agreement in the underlying representation proceeding, the Respondent agreed that the unit was appropriate. We therefore find that the Respondent's denial in this regard does not raise any issue warranting a hearing in this proceeding.

<sup>2</sup>In its response to the Notice to Show Cause, the Respondent submits that, on information and belief, the Union has been placed in "receivership" since the March 1993 election. The Respondent contends that it should therefore not be required to bargain with the Union or that a hearing on the issue should be held. The Respondent

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). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with its principal place of business in St. Paul, Minnesota, has been engaged in furnishing personnel to companies engaged in trucking, distribution, and warehousing operations, including its Cincinnati, Ohio and Dayton, New Jersey facilities involved in this proceeding. During the 12 months preceding the issuance of the complaint, the Respondent, in conducting its operations, performed services valued in excess of \$50,000 for customers outside the State of Minnesota.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held March 27 and 28, 1993, the Union was certified on April 20, 1994, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers employed by [Respondent] and assigned to Cincinnati, Ohio and Dayton, New Jersey, excluding all dispatchers, office clerical employees, all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About August 10, 1994, the Union, by letter, and on numerous occasions thereafter, requested the Respondent to bargain and, since about August 10, 1994, 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.

fails to set forth any facts as to the nature or date(s) of the "receivership," however, or to support its contentions with any legal authority. We accordingly reject the Respondent's contentions and find that the Respondent has failed to raise any issue warranting a hearing in this proceeding. Cf. *Chicago Tribune Co.*, 298 NLRB 1082 fn. 2 (1990), enf'd. 943 F.2d 791 (7th Cir. 1991).

## CONCLUSION OF LAW

By refusing on and after August 10, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate 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 Union, 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 the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *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, Wintz Distribution Company, St. Paul, Minnesota, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with General Teamsters Local Union No. 836, an affiliate of the International Brotherhood of Teamsters, AFL-CIO 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 Union 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:

All full-time and regular part-time drivers employed by [Respondent] and assigned to Cincinnati, Ohio and Dayton, New Jersey, excluding all dispatchers, office clerical employees, all other

employees, guards and supervisors as defined in the Act.

(b) Post at its facilities in Cincinnati, Ohio, and Dayton, New Jersey, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, 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.

<sup>3</sup>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 General Teamsters Local Union No. 836, an affiliate of the International Brotherhood of Teamsters, AFL-CIO 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 Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time drivers employed by us and assigned to Cincinnati, Ohio and Dayton, New Jersey, excluding all dispatchers, office clerical employees, all other employees, guards and supervisors as defined in the Act.

WINTZ DISTRIBUTION COMPANY