

Valley Bakery, Inc. and Bakery, Confectionery & Tobacco Workers International Union, Local No. 85, AFL-CIO. Case 32-CA-11540

March 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On December 19, 1990, the General Counsel of the National Labor Relations Board issued a complaint 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 and to provide necessary and relevant information following the Union's certification in Case 32-RC-3252. (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, and submitting certain affirmative defenses.

On January 15, 1991, the General Counsel filed a Motion for Summary Judgment. On January 18, 1991, 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 February 11, 1991, 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 its refusal to bargain with or to provide information to the Union, but attacks the validity of the Union's certification on the basis of its objections to the election in the representation proceeding. In addition, the Respondent in its answer denies that the information requested by the Union is necessary and relevant.

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).

With respect to the relevance of the information requested by the Union,¹ we find that the Respondent's

¹ The complaint alleges that the Union requested the Respondent to provide it with certain information pertaining to the employees in the unit, including

denial of this allegation does not raise any issue warranting a hearing. It is well established that employment information of the type requested by the Union is presumptively relevant for purposes of collective bargaining, and must be furnished on request.²

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, with an office and place of business in Fresno, California, has been engaged in the operation of a retail and nonretail bakery. During the 12 months preceding issuance of the complaint, the Respondent had gross revenues in excess of \$50,000 and sold and shipped goods or provided services valued in excess of \$50,000 directly to customers located outside the State of California. 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 June 6, 1990, the Union was certified on September 18, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production, packaging, shipping and sanitation employees, and mechanics and engineers employed by Respondent at its 502 "M" Street, Fresno, California facility; excluding all sales clerks, office clerical employees, guards, and supervisors as defined in the Act.

their names, addresses, hire dates, job classifications, rates of pay, and fringe benefits.

² See, e.g., *Trustees of Masonic Hall*, 261 NLRB 436 (1982); *Verona Dye-stuff Division*, 233 NLRB 109 (1977). Although the Union's letter to the Respondent (Exh. 7) also requested employee phone numbers, the General Counsel has not specifically alleged this in the complaint, nor alleged that such information is necessary and relevant. Further, even assuming arguendo that the numbers were not presumptively relevant, we note that this would not excuse the Respondent's failure to provide the other information. See, e.g., *A-Plus Roofing*, 295 NLRB 967 fn. 7 (1989). Accordingly, we find it unnecessary to address the issue and will order the Respondent to provide only the information specifically alleged in the complaint.

Contrary to his colleagues, Member Devaney finds that the complaint allegations with respect to the Union's request for information include employee phone numbers. In this regard, he notes that the complaint refers to the Union's letter of October 4, 1990, and that the letter itself specifically includes phone numbers among the requested information. Further, he does not, as his colleagues apparently do, construe the complaint's description of the information requested by use of the word "including;" followed by references to other information requested, as excluding the phone numbers. Finally, Member Devaney would find the unit employees' phone numbers presumptively relevant and, therefore, would order the Respondent to provide that information.

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

B. Refusal to Bargain

Since on or about October 4, 1990, the Union has requested the Respondent to bargain and to furnish information and, since on or about the same day, 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 October 4, 1990, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, 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. We also shall order the Respondent to furnish the Union with the information it requested regarding the unit employees' names, addresses, hire dates, job classifications, rates of pay, and fringe benefits.

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 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, Valley Bakery, Inc., Fresno, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Bakery, Confectionery & Tobacco Workers International Union, Local No. 85, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(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 production, packaging, shipping and sanitation employees, and mechanics and engineers employed by Respondent at its 502 "M" Street, Fresno, California facility; excluding all sales clerks, office clerical employees, guards, and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Fresno, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 32, 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.

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

³ 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 Bakery, Confectionery & Tobacco Workers International Union, Local No. 85, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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 production, packaging, shipping and sanitation employees, and mechanics and engineers employed by Respondent at its 502 "M" Street, Fresno, California facility; excluding all sales clerks, office clerical employees, guards, and supervisors as defined in the Act.

VALLEY BAKERY, INC.