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# Ausmus Corporation *and* General Teamsters Local 397 a/w International Brotherhood of Teamsters, AFL-CIO. Case 6-CA-32364

May 7, 2002

#### DECISION AND ORDER

#### BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

This is a refusal-to-bargain case in which the Respondent seeks to contest the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 18, 2001, the General Counsel issued the complaint on November 13, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-11951. (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 January 14, 2002, the General Counsel filed a Motion for Summary Judgment. On January 16, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the notion should not be granted. 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

The Respondent admits its refusal to bargain, but contests the validity of the certification based on its objections to conduct alleged to have affected the results of the election in the representation proceeding.

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). Accordingly, we grant the Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

#### I. JURISDICTION

At all material times, the Respondent, a corporation headquartered in the State of New York, is engaged in the interstate transportation of coke products. This case involves only the Employer's Erie, Pennsylvania jobsite. During the 12-month period ending September 30, 2001, the Respondent, in conducting its business operations, derived gross revenues in excess of \$50,000 for the transportation of freight from the Commonwealth of Pennsylvania directly to points outside the Commonwealth of Pennsylvania. 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 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 April 24, 2001, the Union was certified on August 3, 2001,<sup>2</sup> as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers and yard drivers/cokehandlers employed by the Employer and working at its Erie, Pennsylvania jobsite; excluding all office clerical employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

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

#### B. Refusal to Bargain

About August 20, 2001, the Union, by letter, requested the Respondent to recognize it and bargain, and, since about that same date, the Respondent has refused to respond to the Union's letter requesting bargaining and has failed and refused to recognize and bargain with the Union. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By failing and refusing on and after August 20, 2001, to recognize and 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.

<sup>&</sup>lt;sup>1</sup> Members Cowen and Bartlett did not participate in the underlying representation proceeding. They find, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding.

<sup>&</sup>lt;sup>2</sup> The Respondent admits that a certification issued, but states that the certification was not properly issued.

#### 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, Ausmus Corporation, Erie, Pennsylvania, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with General Teamsters Local 397 a/w 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 truck drivers and yard drivers/cokehandlers employed by the Employer and working at its Erie, Pennsylvania jobsite; excluding all office clerical employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Erie, Pennsylvania, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are cus-

tomarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 20, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 7, 2002

Wilma B. Liebman,	Member
William B. Cowen,	Member
Michael J. Bartlett,	Member

## (SEAL) 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 Federal labor law and has ordered us to post and obey by this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Chose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with General Teamsters Local 397 a/w 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

<sup>&</sup>lt;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."

AUSMUS CORP. 3

conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers and yard drivers/cokehandlers employed by us and working at our Erie, Pennsylvania jobsite; excluding all office

clerical employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

**AUSMUS CORPORATION**