

Winkie Mfg. Co., Inc. and Manufacturing, Production & Service Workers Union, Local No. 24, AFL-CIO. Case 13-CA-40451

February 26, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative of the Respondent's regular seasonal employees in the underlying representation proceeding. Pursuant to a charge filed on August 29, 2002, the General Counsel issued the complaint on October 11, 2002, 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 13-RC-20595. (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 November 25, 2002, the General Counsel filed a Motion for Summary Judgment. On December 3, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion 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 contention in the underlying representation proceeding that the petitioned-for seasonal employees are ineligible to vote because they are temporary employees with no expectation of future employment.

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.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation, with an office and place of business in Chicago, Illinois, has been engaged in the manufacture of dance wear. During the 12-month period preceding the issuance of the complaint, the Respondent derived gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of Illinois. 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 a March 13, 2002 election, the Board issued a certification of representative on May 15, 2002, certifying that the Union may bargain for the voting group described below as part of the existing unit of production and maintenance employees it currently represents:

All regular seasonal employees employed by the Employer at its facility currently located at 1900 N. Narragansett Avenue, Chicago, Illinois; excluding all other employees, guards and supervisors as defined in the Act.²

At all material times since May 15, 2002, the Union has been and continues to be the exclusive representative of the unit, including the employees in the voting group, under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since August 26, 2002, the Respondent has refused to bargain with the Union as the exclusive bargaining representative of the voting group described above. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

¹ Chairman Battista and Member Schaumber did not participate in the underlying representation proceeding. However, they agree that the Respondent has not raised any new matters warranting a hearing in this proceeding, and that summary judgment is therefore appropriate.

² Although the complaint alleges that the certification issued on May 15, 2002, certified the Union as exclusive representative of the entire unit, including the voting group, this is an incorrect statement of the results of the election. The representation proceeding involved a self-determination election among the voting group and the certification simply certified that the Union may bargain for the employees in the voting group as part of the unit of employees it currently represents.

CONCLUSION OF LAW

By refusing on and after August 26, 2002, to bargain with the Union as the exclusive bargaining representative of the voting group as part of the production and maintenance 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.³

ORDER

The National Labor Relations Board orders that the Respondent, Winkie Mfg. Co., Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Manufacturing, Production & Service Workers Union, Local No. 24, AFL-CIO, as the exclusive bargaining representative of 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 following group of employees as part of the recognized production and maintenance unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All regular seasonal employees employed by the Employer at its facility currently located at 1900 N. Narragansett Avenue, Chicago, Illinois; excluding all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on

³ The complaint requests that the Board require the Respondent to bargain in good faith with the Union as the exclusive representative of the unit for the period set forth in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997), and cases cited there.

⁴ 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 Na-

forms provided by the Regional Director for Region 13 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 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. 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 26, 2002.

(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.

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose 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 Manufacturing, Production & Service Workers Union, Local No. 24, AFL-CIO, as the exclusive representative of 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 as the exclusive representative of the following group of employees as part of the recognized production and maintenance unit, and put in writing and sign any agreement

tiona 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."

reached on terms and conditions of employment for those employees:

All regular seasonal employees employed by us at our facility currently located at 1900 N. Narragansett Ave-

nue, Chicago, Illinois; excluding all other employees, guards and supervisors as defined in the Act.

WINKIE MFG. CO., INC.