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Baker Concrete Construction, Inc. and its wholly owned subsidiary Flint Concrete Construction, LLC and Carpenters Local Union No. 551 A/W Texas State District Council of Carpenters. Case 16-CA-22119

October 28, 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 August 19, 2002, the General Counsel issued the complaint on August 30, 2002, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 16-RC-10399. (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 alleging an affirmative defense.

On September 17, 2002, the General Counsel filed a Motion for Summary Judgment. On September 23, 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.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information to the Union, 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. It also denies that the requested information is relevant and necessary to the Union's role as the bargaining representative.

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 un-

fair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The Respondent's answer admits that the Union requested it to provide certain information, and further admits that it has refused to provide the requested information.

In its letter dated August 2, 2002, the Union requested the following information from the Respondent:

- (1) a list of dates and times available to begin the bargaining process;
- (2) all current names, addresses and telephone numbers of unit employees, including classification and pay rates;
- (3) all applicable company seniority lists;
- (4) copies of all employee benefit plans covering unit employees;
- (5) copies of all applicable rules and regulations for unit employees;
- (6) OSHA logs;
- (7) MSDS sheets

Although the Respondent's answer denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it does so based on its assertion that the Union was not properly certified. In any event, it is well established that all of the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request. *Maple View Manor, Inc.*, 320 NLRB 1149 (1996), *enfd. mem.* 107 F.3d 923 (D.C. Cir. 1997); *Masonic Hall*, 261 NLRB 436 (1982); *Mobay Chemical Corp.*, 233 NLRB 109 (1977); and *Honda of Hayward*, 314 NLRB 443 (1994) (OSHA 200 logs and other health and safety information, including material safety data sheets). The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information to the Union.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation with an office and place of business in Houston, Texas, has been engaged in the business of concrete construction. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Houston,

Texas facility goods valued in excess of \$50,000 directly to points outside the State of Texas. 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 March 22, 2002, the Union was certified on July 25, 2002, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees and truck drivers employed by the Employers at their 8300 Hempstead Highway, Houston, Texas location, excluding all office clerical employees, field personnel, contract drivers, 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*

Since about August 2, 2002, the Union, by letter, has requested the Respondent to bargain and to furnish information, and, since August 23, 2002, the Respondent has failed and refused. 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 refusing on and after August 23, 2002, 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 the information requested.

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, Baker Concrete Construction, Inc. and its wholly owned subsidiary Flint Concrete Construction, LLC, Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Carpenters Local Union No. 551 a/w Texas State District Council of Carpenters 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 production and maintenance employees and truck drivers employed by the Employers at their 8300 Hempstead Highway, Houston, Texas location, excluding all office clerical employees, field personnel, contract drivers, guards, and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on August 2, 2002.

(c) Within 14 days after service by the Region, post at its facility in Houston, Texas, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 16, 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 Respon-

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."

dent 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 23, 2002.

(d) 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. October 28, 2002

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Wilma B. Liebman,	Member
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William B. Cowen,	Member
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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 had 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 Carpenters Local Union No. 551 a/w Texas State District Council of Carpenters 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 production and maintenance employees and truck drivers employed by us at our 8300 Hempstead Highway, Houston, Texas location; excluding: all office clerical employees, field personnel, contract drivers, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on August 2, 2002.

BAKER CONCRETE CONSTRUCTION, INC. AND ITS WHOLLY OWNED SUBSIDIARY FLINT CONCRETE CONSTRUCTION, LLC