

All American Service and Supplies, Inc. and International Union of Operating Engineers, Local 12, AFL-CIO. Case 21-CA-35833

September 18, 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 in the underlying representation proceeding. Pursuant to a charge filed on July 14, 2003, the General Counsel issued the complaint on July 21, 2003, 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 Cases 21-RC-20460 and 21-RC-20464. (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 asserting affirmative defenses.

On August 15, 2003, the General Counsel filed a Motion for Summary Judgment. On August 19, 2003, 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 September 9, 2003, 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 but contests the validity of the certification based on its objections to 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.¹

¹ Chairman Battista did not participate in the underlying representation proceeding. However, he agrees that the Respondent has not raised any new matters or special circumstances warranting a hearing in

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with principal offices located at 400 East Sixth Street, Corona, California, and a place of business located at 1776 All American Way, Corona, California, has been engaged in the repair and maintenance of heavy construction equipment, automobiles and trucks.

During the 12-month period ending June 30, 2003, a period representative of the Respondent's operations, the Respondent, in conducting its business operations described above, purchased and received at its California locations goods valued in excess of \$50,000 directly from points located outside the State of California.

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.²

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the elections in Cases 21-RC-20460 and 21-RC-20464, which were held on May 16 and 28, 2003, respectively, the Union was certified on June 23, 2003, as the exclusive collective-bargaining representative of the employees in the following appropriate units:³

Unit A

All full-time and regular part-time heavy duty mechanics, light truck mechanics, truck mechanics and welders employed by the Respondent at its facil-

this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is appropriate.

² The Respondent in its answer denies the conclusory allegations in pars. 3 and 4 of the complaint that it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. However, the Respondent's answer admits the underlying factual allegation that Respondent annually purchases and receives at its California locations goods valued in excess of \$50,000 directly from points located outside the State of California. This admission is sufficient to establish that the Respondent is engaged in commerce. See *Siemens Mailing Service*, 122 NLRB 81 (1959). Further, in the underlying representation proceeding, the Respondent stipulated both that it is an employer engaged in commerce, and that the Union is a labor organization, within the meaning of the Act. Accordingly, we find that the Respondent's denials in its answer do not raise any issue warranting a hearing in this proceeding. See, e.g., *Spruce Co.*, 321 NLRB 919 fn. 2 (1996), and cases cited there.

³ As noted in the General Counsel's Motion for Summary Judgment, the Board's June 23, 2003 Decision and Certification of Representative inadvertently omitted the classification of "light truck mechanics" in the description for Unit A, and the specific street address of the Respondent's facility in Units A and B. The unit descriptions set forth herein have been corrected to include this information.

ity located at 1776 All American Way, Corona, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Unit B

All full-time and regular part-time parts employees employed by the Respondent at its facility located at 1776 All American Way, Corona, California; excluding all other employees, office clerical employees, heavy duty mechanics, light truck mechanics, truck mechanics, welders, professional 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

On or about July 1, 2003, the Union, by letter, requested the Respondent to bargain, and, since about July 1, 2003, the Respondent has failed and refused to do so. We find that the Respondent's conduct 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 July 1, 2003, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, 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, All American Service and Supplies, Inc.,

Corona, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 12, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining units.

(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 units on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Unit A

All full-time and regular part-time heavy duty mechanics, light truck mechanics, truck mechanics and welders employed by the Respondent at its facility located at 1776 All American Way, Corona, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Unit B

All full-time and regular part-time parts employees employed by the Respondent at its facility located at 1776 All American Way, Corona, California; excluding all other employees, office clerical employees, heavy duty mechanics, light truck mechanics, truck mechanics, welders, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Corona, California, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 21, 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 Re-

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 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."

spondent 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 July 1, 2003.

(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 International Union of Operating Engineers, Local 12, AFL-CIO, as the exclusive representative of the employees in the bargaining units.

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 units:

Unit A

All full-time and regular part-time heavy duty mechanics, light truck mechanics, truck mechanics and welders employed by us at our facility located at 1776 All American Way, Corona, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Unit B

All full-time and regular part-time parts employees employed by us at our facility located at 1776 All American Way, Corona, California; excluding all other employees, office clerical employees, heavy duty mechanics, light truck mechanics, truck mechanics, welders, professional employees, guards and supervisors as defined in the Act.

ALL AMERICAN SERVICE AND SUPPLIES, INC.