American Marine Decking Systems, Inc. *and* **Shopmen's Local Union No. 627 of the International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO.** Cases 21-CA-23715 and 21-CA-23824

13 November 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS DENNIS AND BABSON

Upon charges filed by the Union 1 February and 1 April 1985, the Acting Regional Director for Region 21 of the National Labor Relations Board issued a consolidated complaint 28 May 1985 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 11 January 1985, following a Board election in Case 21-RC-17446, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (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), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); *Frontier Hotel*, 265 NLRB 343 (1982).) The complaint further alleges that since 22 March 1985 the Company has refused to bargain with the Union, and since 25 January 1985 the Company has refused to furnish the Union requested information which is necessary for and relevant to its performance as the exclusive collective-bargaining representative. The Company denied committing the unfair labor practices alleged and raised affirmative defenses.

On 22 July 1985 the General Counsel filed a Motion for Summary Judgment. On 24 July 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 Company 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 Company admits its refusal to bargain and to furnish the Union with requested information, but attacks the validity of the certification on the basis that certain foremen, found to be employees within the meaning of Section 2(3) of the Act, were actually supervisors within the meaning of Section 2(11) of the Act and that their participation in the Union's organizing campaign tainted the Union's showing of interest. The Company further contends that the Union received the requested information in the form of testimony and subpoenaed documents produced at the representation hearing. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

The record, including the record in Case 21-RC-17446, reveals that the Acting Regional Director for Region 21 issued a Decision and Direction of Election 4 October 1984, in response to which both the Company and the Union filed requests for review. On 1 November 1984 an election was held pursuant to the Decision and Direction. Thereafter, on 23 November 1984, the Board granted the Union's request for review and denied the Company's. In its Order, the Board found that two of the Company's foremen were supervisors within the meaning of Section 2(11) of the Act and that the Union's showing of interest had not been tainted. The Board modified the unit to include the remaining foremen.

The tally of ballots shows that of approximately 71 eligible voters, 38 cast valid ballots for and 30 against the Union; there were 2 void ballots. The Company filed timely objections to the election, arguing that the Board, by modifying the unit after the election to include all but two foremen, disenfranchised a sufficient number of voters to affect the election results and caused the voters to be unaware of the scope of the unit seeking representation. The Company maintained that all its foremen were statutory supervisors and, further, that certain of those foremen's participation tainted the Union's showing of interest.

On 11 January 1985 the Regional Director issued his Supplemental Decision and Certification of Representative, overruling the Company's objections and certifying the Union as the exclusive representative of the employees in the unit. The Company filed with the Board in Washington, D.C., a request for review of the Regional Director's decision, which the Board denied on 14 March 1985.

On 14 January 1985 the Union requested in writing that the Company furnish the name, date of hire, rate of pay, and job classification or description of each unit employee; and information about bonus or incentive plans, vacation benefits, any group insurance, welfare or pension plans, and any other fringe benefits applicable to unit employees. On 22 March 1985 the Union requested in writing that the Company contact it to schedule meetings for collective bargaining. Since 25 January 1985 the Company has refused to provide the requested information, and since 22 March has refused to bargain with the Union.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company 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. There are no factual issues regarding the Union's request for information because the Company, in its amended answer filed 8 July 1985, admitted that it refused to furnish the information.[1] We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Company is a California corporation engaged in the business of installing and removing marine decking and floor covering in United States naval vessels in San Diego County, California, with its main office located in San Diego, California, where it annually performs services valued over $50,000 for the United States Navy and purchases and receives goods and products valued over $5000 which originated outside the State. We find that the Company 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 1 November 1984, the Union was certified 11 January 1985 as the collective-bargaining representative of the employees in the following appropriate unit:

> All production and maintenance employees employed by the Employer installing and repairing marine decking and floor covering in the San Diego harbor area; excluding all other employees, professional employees, office clerical 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. *Refusals to Bargain*

Since 22 March 1985 the Union has requested that the Company bargain, and, since 14 January 1985, that the Company furnish the name, date of hire, rate of pay, and job classification or description of each unit employee; and information about bonus or incentive plans, vacation benefits, any group insurance, welfare or pension plans, and any other fringe benefits applicable to unit employees. Since 22 March 1985 the Company has refused to bargain, and since 25 January 1985 has refused to furnish the requested information. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing since 22 March 1985 to bargain with the Union, and by refusing since 25 January 1985 to provide the Union requested information necessary for and relevant to its function as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company 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, and to provide the Union on request with the nec-

[1] The Company denied that portion of the complaint which alleged that the requested information was necessary for and relevant to the Union's performance of its function as the exclusive bargaining representative of unit employees It is, however, well established that such information is presumptively relevant for the purposes of collective bargaining. *Mobay Chemical Corp*, 233 NLRB 109, 110 (1977) Accordingly, the Company's denial is insufficient to raise issues warranting a hearing

We reject the Respondent's assertion that the Union received the information through the representation proceeding's testimony and subpoenaed documents The Respondent never communicated this to the Union, nor has it stated whether the information supplied previously is still valid or specified what changes have occurred. In fact, in its 25 January 1985 letter which rejected the Union's request, the Respondent simply stated that the request was premature

In any event, it is well established that absent special circumstances, a party is not relieved of its obligation to furnish relevant information simply because the information may be available to the requesting party from another source. See, e g, *Borden, Inc*, 235 NLRB 982, 983 (1978), enfd in relevant part 600 F 2d 313 (1st Cir 1979), *Kroger Co*, 226 NLRB 512, 513 (1976)

essary and relevant information requested 14 January 1985.

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, American Marine Decking Systems, Inc., San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Shopmen's Local Union No. 627 of the International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to provide the Union with information necessary for and relevant to the Union's performance as the exclusive collective-bargaining representative.

(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 concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement, and provide the Union with the information it requested 14 January 1985, including the name, date of hire, rate of pay, and job classification or description of each unit employee; and information about bonus or incentive plans, vacation benefits, any group insurance, welfare or pension plans, and any other benefits applicable to unit employees:

> All production and maintenance employees employed by the Employer installing and repairing marine decking and floor covering in the San Diego harbor area; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in San Diego, California, copies of the attached notice marked "Appendix."[2] 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 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.

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

CHAIRMAN DOTSON, dissenting.

I would deny the General Counsel's Motion for Summary Judgment and remand the proceeding for a hearing. In the underlying representation proceeding I dissent from the majority position with respect to the requests for review filed by the Union and the Employer, and would have granted the Employer's requests for review alleging that supervisory foremen participated in the organizing campaign in a manner which tainted the Union's showing of interest among unit employees.

[2] 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 Shopmen's Local Union No. 627 of the International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO as the exclusive representative of the employees in the bargaining unit and WE WILL NOT refuse to provide the Union information necessary for and relevant to the Union's performance as the exclusive collective-bargaining representative.

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 my agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All production and maintenance employees employed by the Employer installing and repairing marine decking and floor covering in the San Diego harbor area; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union the information it requested 14 January 1985, including the name, date of hire, rate of pay, and job classification or description of each unit employee; and information about bonus or incentive plans, vacation benefits, any group insurance, welfare or pension plans, and any other fringe benefits applicable to unit employees.

AMERICAN MARINE DECKING SYSTEMS, INC.