

Service America Corporation, a subsidiary of Allegheny Beverage Corporation and Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 25-CA-17864

15 August 1986

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND STEPHENS

Upon a charge filed by the Union 5 March 1986, the General Counsel of the National Labor Relations Board issued a complaint 10 March 1986 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 29 January 1986, following a Board election in Case 25-RC-8209, 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 25 February 1986 the Company has refused to bargain with the Union. On 13 March 1986 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 16 May 1986 the General Counsel filed a Motion to Strike Portions of Respondent's answer and Motion for Summary Judgment. On 28 May 1986 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. The Company filed separate responses to each of the General Counsel's motions.

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's answer admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding. The Company contends that the Board erred in certifying the results of the 5 September 1985 election without, at the very least, conducting a hearing on its postelection objections.

A review of the record reveals that the Company is attempting to relitigate the identical issues

which were considered by the Board in the prior proceedings and which were found to be without merit.

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 re-examine the decision made in the representation proceeding. 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.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a Delaware corporation, operates a full-line vending business at its facility in Indianapolis, Indiana, where it annually purchases and receives products, goods, and materials valued over \$50,000 directly from outside the State and annually derives gross revenues in excess of \$50,000. 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 5 September 1985 the Union was certified as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regularly scheduled part-time route servicemen, nutrition program delivery employees, commissary employees, maintenance employees, warehousemen employees and location attendants employed by the Em-

¹ The General Counsel's motion to strike portions of the Respondent's answer is denied. See, e.g., *G. F. Business Equipment*, 256 NLRB 262 (1981).

ployer at its facility at Indianapolis, Indiana; **BUT EXCLUDING** all office clerical employees, all money room employees, all watchmen, and all guards, professional employees 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 14 February 1986 the Union has requested the Company to bargain, and since 25 February the Company has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after 25 February 1986 to bargain with the Union 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.

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, Service America Corporation, a subsidiary of Allegheny Beverage Corporation, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 regularly scheduled part-time route servicemen, nutrition program delivery employees, commissary employees, maintenance employees, warehousemen employees and location attendants employed by the Employer at its facility at Indianapolis, Indiana; **BUT EXCLUDING** all office clerical employees, all money room employees, all watchmen, and all guards, professional employees and supervisors as defined in the Act.

(b) Post at its facility in Indianapolis, Indiana, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 25, 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.

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 Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135, International Brotherhood of

Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 conditions of employment for our employees in the bargaining unit:

All full-time and regularly scheduled part-time route servicemen, nutrition program delivery

employees, commissary employees, maintenance employees, warehousemen employees and location attendants employed by the Employer at its facility at Indianapolis, Indiana; BUT EXCLUDING all office clerical employees, all money room employees, all watchmen, and all guards, professional employees and supervisors as defined in the Act.

SERVICE AMERICA CORPORATION, A
SUBSIDIARY OF ALLEGHENY BEVER-
AGE CORPORATION