

**Adair Standish Corporation and Flint Local 282-C,
Graphic Communications International Union,
AFL-CIO. Case 7-CA-25973**

17 April 1987

DECISION AND ORDER

BY MEMBERS BABSON, STEPHENS, AND
CRACRAFT

On 10 November 1986 Administrative Law Judge Bernard Ries issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in response to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Adair Standish Corporation, Standish, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dwight R. Kirksey, Esq., for the General Counsel.
Francis T. Coleman, Esq., and *Scott R. Merrill, Esq.*
(*Boothe, Prichard & Dudley*), of Washington D.C., for the Respondent.

Donald B. Greenspon, Esq. (*Greenspon, Sheff & Washington, P.C.*), of Detroit, Michigan, for the Charging Party.

DECISION

BERNARD RIES, Administrative Law Judge. This case was originally consolidated for hearing with Case 7-CA-25059 by the Regional Director for Region 7, by his order consolidating cases, amended complaint and notice of hearing issued on 16 July 1986. As explained in my order granting motion to sever, dated 5 November 1986, and attached hereto as Appendix A, I granted the Charging Party's motion to sever the two cases for the reason set out in that order.

As shown in that order, following an election won by the Union on 11 September 1986, a hearing was held on objections filed by Respondent in which the hearing officer concluded that the objections were without merit, and a Certification of Representative issued by the Board on 27 May 1986.¹ The Regional Director issued a com-

¹ Not included in bound volumes. On 6 June, Respondent filed a motion for reconsideration of the Board's ruling; on 24 September, the Board denied the motion.

plaint in this case, based on a charge filed by the Union on 26 June 1986 and, on 16 July, consolidated it for hearing with the outstanding complaint in Case 7-CA-25059. The complaint in the present case alleges that, since about 6 June 1986, Respondent has refused the 30 May request of the Union to commence bargaining collectively with it and to provide certain information to it.

As the order granting motion to sever makes clear, the Respondent does not contest that it has refused to bargain and to supply information, and the only apparent basis for these refusals is its belief that its objections in the representation proceeding should have been sustained.

The Respondent has adduced no evidence or issues that it did not have the opportunity to litigate at the representation proceeding. There are no factual issues aside from the underlying objections themselves, because the record shows Respondent's refusal to engage in collective-bargaining negotiations and to furnish the requested information.²

Accordingly, I conclude that by its refusal to meet with the Union and to furnish relevant information to the Union, in and after June 1986, Respondent has violated and is violating Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By virtue of the representation election of 11 September 1985, the Union is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its facility at 4334 Airpark Drive, Standish, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.

4. By refusing, on and after 6 June 1986, to recognize and bargain with the Union and to provide relevant information requested by it, Respondent has violated, and is violating, Section 8(a)(5) and (1) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of 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, I shall recommend that it be ordered to cease and desist therefrom, to bargain on

² The Respondent does not challenge, and there can be no doubt, that the information requested in the Union's 30 May letter—a list of current employees with their dates of hire, current pay rates, current classifications, holidays, vacation periods and qualifications therefor, fringe benefit plans, hours of work, and "all other conditions of employment"—constitutes the kind of core data to which a union is presumptively entitled. E.g., *Union Oil Mill*, 280 NLRB No. 143, slip op. at 3, 4 (July 31, 1986) (not published in Board volumes).

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, the information it requested on 30 May 1986.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, the initial period of the certification shall commence as 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).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Adair Standish Corporation, Standish, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Flint Local 282-C, Graphic Communications International Union, AFL-CIO (the Union), as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its facility at 4334 Airpark Drive, Standish, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Refusing to supply the Union with requested information necessary for, and relevant to, the Union's function as the exclusive bargaining representative of the unit employees.

(c) 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:

(b) Furnish the Union with information requested by it on 30 May 1986 in current form.

(c) Post at its facility in Standish, Michigan, copies of the attached notice marked "Appendix B."⁴ Copies of

the notice, on forms provided by the Regional Director for Region 7, 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.

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

APPENDIX A

ORDER GRANTING MOTION TO SEVER

On 4 October 1985, the Charging Party filed a charge (Case 7-CA-25059) with Region 7, alleging that Respondent had violated Sections 8(a)(1), (3), and (5) of the Act by, about "13 Setpember 1983 [sic]," unilaterally changing conditions of employment and retaliating against employees by promulgating a new discipline policy, and, about 15 and 17 September discriminating against four named employees. On 16 October 1985, an amended charge alleging two more violations of Section 8(a)(1) and "(2)(3)" was filed, referring to unlawful solicitation of employees to revoke membership cards since 3 October and unlawful surveillance, threats, and promises of benefits since June.¹

On 15 November, the Region issued a complaint based on these charges. The complaint included allegations that the Charging Party had been selected as the exclusive bargaining representative of employees in an identified bargaining unit on 11 September and, by virtue of a unilateral change in certain policies and by laying off employees, Respondent had violated Section 8(a)(5). The complaint also contained several allegations of Section 8(a)(3) and (1), including alleged discrimination against four employees.

The record shows that a representation election was held among the employees in the appropriate unit on 11 September 1985; that the tally of ballots disclosed that the Charing Party had won the election; that the Respondent filed objections to the election that were overruled by a hearing officer and thereafter by the Board, which, on 27 May 1986, issued a Certification of Representative; and that the Respondent then filed with the Board a motion for reconsideration about 6 June 1986. The motion for reconsideraton was denied by the Board on 24 September.

On 26 June 1986, the Charging Party filed a new charge (Case 7-CA-25973), in which it alleged that since about 28 May 1986, the Respondent had violated Section 8(a)(5) in that it had "refused to bargain in good faith with the Union." On 16 July 1986, the Region consolidated the two cases and amended the existing complaint to allege that about 30 May 1986, the Union had requested the Respdnent to "commence bargaining collectively"

¹ A second amended charge, making minor changes in the amended charge, was filed on 14 November.

³ If no exceptions are filed as provided by Sec 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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."

with it and to furnish it with information concerning the number of employees, their hire dates, classifications, benefits, and other conditions of employment, all of which, since 6 June 1986, the Respondent, by letter, has refused to do.

At the instant hearing, on 8 August 1986, Charging Party moved that the two cases be severed and that separate decisions be issued for purposes of each complaint. Respondent opposed the motion; the General Counsel stated that I should exercise my discretion in the matter. I took the motion under advisement and authorized the parties to file briefs on the issue by 12 September.²

Briefs were thereafter filed by the Respondent and the Charging Party. After consideration, however, I concluded that the circumstances of the case were such that a ruling on the motion for severance was not ripe; at the time that we resumed (and completed) the case on 22 September, Respondent had not finished presenting its evidence, and I thought it possible that Respondent might raise an issue or issues in doing so that would make severance inappropriate. Consequently, I deferred ruling on the motion until completion of the hearing. I have further deferred ruling on the motion prior to the filing of briefs in these cases, on the theories (1) that Respondent is entitled to file a brief in a completed case; and (2) that Respondent's brief might contribute some contention or insight that would affect the decision regarding severance. Briefs were received from the parties about 3 November.

Sections 102.33 (d) and 102.35 (h) of the Board's Rules and Regulations, Series 8, as amended, authorize administrative law judges to order the severance of proceedings prior to issuance of their decisions. This seems a proper situation in which to exercise that authority. Compare *Quaker Tool & Die, Inc.*, 169 NLRB 1148 (1968), in which the Board did not deny the authority of an administrative law judge to sever and decide after hearing, but, rather, only disagreed with his decision to do so, given the facts before him.

In refusing to recognize and bargain with the Union and to furnish information to it, Respondent appears to be engaging in what is usually referred to as a "technical" refusal to bargain, based on the claim, already twice rejected by the Board, that the Union should not have been certified as the collective-bargaining representative in the first place. Respondent thus apparently intends to "test" the certification in a circuit court of appeals by refusing to acknowledge the validity of the Board's certification. E.g., *NLRB v. San Jose Care & Guidance Center*, 652 F.2d 856, 858 (9th Cir. 1981).³

² The hearing was scheduled to adjourn until 22 September.

³ Respondent has not, in so many words, stated that it was generally refusing to extend recognition and supply information solely for the reason that it was testing the validity of the certification, but that conclusion is inescapable. In its answer to paragraph 10 of the original complaint, which alleged that the Union has been the exclusive collective-bargaining agent of the employees since the 11 September 1985 election, Respondent "deme[n]e[d] that the Charging Union was selected by an uncoerced majority of its employees" in the election, that the Union had not been certified, and "hence has not since September 11, 1985, been the exclusive representative" of the employees. In answer to paragraph 16 of the complaint, which alleges that since 13 September 1985, Respondent has refused to bargain by unilaterally changing personnel practices and

Routinely, in a technical 8(a)(5) case free of other controverted issues, the General Counsel will file motion for summary judgment with the Board; the Board will issue a decision and order finding the employer guilty of a refusal to bargain (or of various refusals); the employer will not comply with the Board's cease-and-desist order; and the General Counsel will petition a court of appeals for enforcement of the Board's order. In what may be anticipated to be a reasonably brief period, the court of appeals will decide whether the Board's certification was faulty or valid. In the first event, there may be required a new hearing, further consideration by the Board, or a nullification of the whole proceeding. In the second case, the employer must (short of a petition for certiorari to the Supreme Court) bargain with the union. In the great majority of cases, the issue is joined and conclusively settled relatively quickly, and the union will either capitulate and decamp, mount another organizing effort, or exercise the court-affirmed right to represent the employees. This same likelihood of a quick disposition is, of course, even greater if it should eventuate that Respondent chooses not to seek judicial review, but merely to exhaust its avenues of relief solely before the Board.

The possibility of a fairly prompt resolution of the representation issue becomes much more problematical if it is, as here, joined together with disputed allegations of violations of other sections of the Act. It is a fair wager that a determination of the separable and fundamental refusal-to-bargain question will be delayed by its inclusion in the overall complaint. My own schedule suggests that I might not issue a decision on the entire matter until well into the first part of 1987;⁴ it seems probable that exceptions and briefs will then be filed with the Board; the Board's busy docket, and unforeseeable internal disputes about the disposition of any one of the several issues presented by the case, may delay the Board's own

laying off employees. Respondent replied that it "is under no legal duty to bargain with the Charging Union and therefore denies that it has refused to bargain. . . ." These responses were substantially repeated in the answer filed to the consolidated complaint, and Respondent simply filed denials to the new paragraphs regarding the refusal of the May 1986 requests for bargaining and for information (other than to admit that the requests were made). However, in G.C. Exh. 20, Respondent's letter of 6 June 1986 replying to the Union's earlier requests to negotiate a contract and to receive information, counsel for Respondent, noting its pending motion for reconsideration before the Board in the representation case, stated, "Accordingly, we see no need to engage in negotiations with your organization or provide the information requested until this matter has been finally adjudicated and resolved."

Furthermore, in its interim brief on this point, Respondent, treating with the Charging Party's statement at the hearing that "there are no factual disputes and it [the validity of the certification] is clearly a legal conclusion," did not take issue with these assertions, but simply replied that it "remains unclear how such action [severance] will conserve the resources of the Board. It is also unclear exactly how such 'legal conclusion' is different from any of the other portions of the consolidated complaint from [sic] which these are no factual disputes . ." (emphasis added).

Finally, at no point in the hearing did Respondent make any claim or present any evidence (such as testimony that might tend to show that the Union already had the information requested) that would signify that it was raising any issues other than its contention that the election was subject to meritorious objections, and its most recent brief simply fails to refer to the May 1986 requests altogether.

⁴ As noted above, briefs were not received until 3 November.

decision for an unpredictable length of time; and the same may be true of any judicial review to follow.

The Respondent argues—indeed, it is basically Respondent's only argument—that severance of the cases would be at the expense of judicial economy. That is true, although the economics involved do not seem very large. But it appears to me that a more important value is implicated here. If one of the purposes of creating this administrative agency was to provide for a prompt resolution of questions of employees desire for representation, then it would stand to reason that severance of the two cases clearly seems to be the more certain way of achieving that goal, without prejudicing any other significant interest that comes to mind. The issue of the right to representation would quite likely be put to rest more quickly; the due process rights of the employer would be fully safeguarded; and the disposition of the remaining allegations would not be affected. See *Jessie Beck's Riverside Hotel*, 231 NLRB 907 (1977), 909 (“[A]s the alleged 8(a)(1) and (3) violations involved conduct occurring after the election and certification herein, which are the underpinnings of the 8(a)(5) and (1) violations alleged herein, we find that there was not abuse of discretion in the refusal to consolidate and that the *Peyton Packing*, [129 NLRB 1358 (1961)] and *Jefferson Chemical* [200 NLRB 992 (1972) precedents cited by the Respondent are distinguishable and inapposite.”)

Despite the foregoing, however, this case may seem, at first glance, to present special problems. As noted earlier, the original complaint issued in Case 7-CA-25059 alleged that Respondent had refused to bargain collectively, in violation of Section 8(a)(5), “by unilaterally and without giving the Charging Party notice and affording it a meaningful opportunity to bargain” with respect to changes in enforcement of its personnel policies and laying off employees since 13 September. The Charging Party has not moved to sever this allegation as well. One of the issues underlying it is the basic duty of the Respondent to bargain, which, of course, implicates the validity of the election. If these allegations remain in the original complaint, and the other Case 7-CA-25973 8(a)(5) allegations are severed and treated as a separate proceeding, then, it may be argued, the validity of the election might be subject to testing in two different forums.

I do not see this as a real problem, however. If the motion for severance is granted and the Board and the Court of Appeals for the Sixth Circuit⁵ should agree that Respondent has violated Section 8(a)(5) by generally refusing to bargain and by specifically refusing to provide information, it is difficult to conceive that Respondent might later petition for review of any other 8(a)(5) allegations found against it by the Board by searching out another circuit in which to file its petition and there attempt to raise again the propriety of the certification—not only would few courts tolerate such naked forum-shopping, but they would probably also hold that, on the underlying question of the validity of the representation election, the matter was *res judicata*.

⁵ The court in which the Board would seek to enforce its decision, see Section 10(e).

It is, in short, my view that the motion for severance makes good sense and is a rational and healthy exercise of the flexibility intended to be a major characteristic of the administrative process. Accordingly, the motion is granted.

The record in this case shall consist of the official record in Case 7-RC-17730,⁶ the charge in Case 7-CA-25059 dated 4 October 1985, and the amended and second amended charges in that case (received in evidence in the consolidated unfair labor practice hearing as the General Counsel Exhibits 1(a), 1(c), and 1(e)); the complaint and notice of hearing and Respondent's Answer thereto in Case 7-CA-25059 (received in evidence in the consolidated unfair labor practice hearing as the General Counsel Exhibits 1(g) and 1(i)); the charge in Case 7-CA-25973 dated 26 June 1986 and the “Order Consolidating Cases, Amended Complaint and Notice of Hearing” in Cases 7-CA-25059 and 7-CA-25973, and Respondent's answer thereto (received as G.C. Exhs. 1(u), 1(aa), and 1(cc)); General Counsel Exhibit 19, a letter from the Union to the Respondent dated 30 May 1986; and General Counsel Exhibit 20, a letter from the Respondent to the Union dated 6 June 1986.⁷

It is hereby ordered that the motion to sever Case 7-CA-25973 from Case 7-CA-25059 is granted; that the two cases shall henceforth be regarded as separate proceedings; and that separate recommended Decisions shall be rendered by the administrative law judge in each such proceeding.

⁶ Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations and Statements of Procedure.

⁷ Although this letter might be read as simply a refusal to recognize and bargain until the Board had decided Respondent's motion for reconsideration filed that day, it also states that Respondent would not negotiate or provide information “until this matter has been finally adjudicated and resolved.” If, by this, Respondent were only to mean that it did not intend to pursue its remedies beyond the level of the Board, that would be all the more reason to grant the Charging Party's motion

APPENDIX B

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 Flint Local 282-C, Graphic Communications International Union, AFL-CIO (Union), as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its facility at 4334 Airpark Drive, Standish, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to provide the Union with requested information necessary for, and relevant to, the Union's performance of its duties as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached regarding

terms and conditions of employment for our employees in the aforesaid bargaining unit.

WE WILL furnish the Union, as requested in its 30 May 1986 letter, the information necessary for, and relevant to, the performance of its duties as the exclusive bargaining representative of the employees in the bargaining unit.

ADAIR STANDISH CORPORATION