

Alimenta Processing Corporation and Industrial Union Dept., AFL-CIO on Behalf of United Rubber, Cork, Linoleum and Plastic Workers, AFL-CIO. Case 10-CA-22714

April 29, 1988

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND BABSON

Upon a charge filed by Industrial Union Dept. (IUD) on behalf of Rubber Workers, the General Counsel of the National Labor Relations Board issued a complaint September 4, 1987, 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 June 3, 1987, following a Board election in Case 10-RC-13229, United Rubber, Cork, Linoleum and Plastic Workers, AFL-CIO, 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); *Frontier Hotel*, 265 NLRB 343 (1982).) The complaint further alleges that since June 8, 1987, the Company has refused to furnish the Union with requested information. On September 21, 1987, the Company filed its answer admitting in part and denying in part the allegations in the complaint, and raising certain affirmative defenses.

On October 20, 1987, the General Counsel filed a Motion for Summary Judgment. On October 26, 1987, 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.¹

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 the Company admits its refusal to bargain and to furnish requested information, but attacks the validity of the Union's certification. Specifically, the Company argues (1) that, on the basis of the Company's objections to the election, neither the IUD nor the Union has been certified in accordance with the Act; (2) that the charge should be dismissed in light of supervisory participation in and taint of the election proceedings; (3)

that the certification fails to comply with Section 9(a) and (c) of the Act; (4) that the unit certified is inappropriate for certification as employees were not permitted to vote on that unit in the election; and (5) that the election should be set aside due to the injection of inflammatory racial issues. The Company further contends that this proceeding is inappropriate for resolution by summary judgment because the Board should reconsider and overrule *O & T Warehousing Co.*, 240 NLRB 386 (1979), and because the law pertinent to the case has changed, as shown by the Board's Order in *Gardendale Nursing Home*, Case 10-RC-13514 (Aug. 19, 1987). The Company seeks, therefore, to transfer the case to the Board for a hearing under 29 CFR 102.50. The General Counsel contends that the Company seeks to relitigate issues which were raised and decided in the prior representation case. We agree with the General Counsel.

The record, including the record in Case 10-RC-13229, reveals that an election was held on May 22, 1986, following issuance of a Board Order dated April 30, 1986, which remanded the case to the Regional Director. The tally of ballots shows that of approximately 82 eligible voters, 61 cast valid ballots for and 14 against the Union; there were 20 challenged ballots, a number insufficient to affect the results of the election. After conducting an investigation of the Company's objections, the Acting Regional Director on July 2, 1986, issued his report recommending that the objections be overruled. The Company filed exceptions to his recommendations. On November 3, 1986, the Board remanded the proceeding to the Regional Director to conduct a hearing on all issues not previously litigated, and to transfer the case back to the Board for decision. The hearing was reopened on December 4, 1986. On June 3, 1987, the Board, having considered the testimony at the reopened hearing, certified the Union as the exclusive bargaining representative of the employees in the unit.

By letter dated June 8, 1987, the Union requested the Company to bargain and to furnish certain information for its use in collective bargaining.² Since June 8, 1987, the Company has refused to bargain or to provide the requested information.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding

² The General Counsel has submitted copies of a letter from the Union to the Company, dated June 8, 1987, in which the Union requested the Company to furnish information concerning the unit employees' names; addresses; number of dependents, dates of hire; layoff status; job titles; salaries; dates, amounts, and reasons for salary increases over the previous 3 years; job classifications; work rules and regulations; vacation and holiday benefits, benefit plans; and other plans constituting terms and conditions of employment.

¹ The Company has requested oral argument. This request is denied as the record and the Company's brief adequately present the issues in the case.

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 Plate 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.³ There are no factual issues regarding the Union's request for information because the Company, by its answer, admitted that it refused to furnish the information.⁴ 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 Respondent, a Georgia corporation, is engaged in the business of processing peanuts at its facility in Camilla, Georgia. During the calendar year preceding the complaint, a representative period, it sold and shipped from its Camilla, Georgia location products valued in excess of \$50,000 directly to customers located outside the State of Georgia. We find that the Respondent 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 May 22, 1986, the Union was certified as the collective-bargaining

³ The Company's motion to transfer the case to the Board for a hearing is therefore denied.

⁴ To the extent that the Company defends its refusal to furnish the requested information on the grounds that the underlying certification is invalid, we find such a defense without merit for the reasons stated above. Further, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be provided on request to the employees' collective-bargaining representative *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977), and cases cited therein at fn. 5. In addition, it is also well settled that a union is not required to show the precise relevance of such information unless the employer has submitted evidence sufficient to rebut the presumption of relevance. The Company has not attempted to rebut the relevance of the information sought by the Union.

representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Respondent at its Camilla, Georgia facility, including quality control, shipping and receiving, plant clericals, and warehouse-yard employees, but excluding office clerical employees, non-Camilla buying point 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*

Since June 8, 1987, the Union has requested the Company to bargain, and since June 8, 1987, 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. On June 8, 1987, the Union, by letter, requested the Company to furnish it with information to enable it to bargain collectively with the Company with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the unit described above. Since June 8, 1987, the Company has refused to provide this information. 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 June 8, 1987, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to provide the Union with information requested to enable it to bargain collectively, 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 shall also order the Respondent to provide the Union with the information requested.

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).⁵

ORDER

The National Labor Relations Board orders that the Respondent, Alimenta Processing Corporation, Camilla, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Refusing to provide information to the Union, on request, to enable it to bargain collectively with the Respondent with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the unit.

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

All full-time and regular part-time production and maintenance employees employed by the Respondent at its Camilla, Georgia facility, including quality control, shipping and receiving, plant clericals, and warehouse-yard employees, but excluding office clerical employees, non-Camilla buying point employees, guards and supervisors as defined in the Act.

(b) On request, provide the Union with information it requests to enable it to bargain collectively with respect to rates of pay, wages, and terms and conditions of employment of employees in the appropriate unit.

(c) Post at its facility in Camilla, Georgia, copies of the attached notice marked "Appendix."⁶

Copies of the notice, on forms provided by the Regional Director for Region 10, 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.

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 United Rubber, Cork, Linoleum and Plastic Workers, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to provide the Union, on request, with requested information to enable it to engage in collective bargaining over the terms and conditions of employment of the employees in the appropriate 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 regular part-time production and maintenance employees employed by us at our Camilla, Georgia, facility, including quality control, shipping and receiving, plant clericals, and warehouse-yard employees, but excluding office clerical employees, non-Camilla buying point employees, guards and supervisors as defined in the Act.

⁵ The General Counsel has requested the inclusion of a visitatorial clause in the Order. Under the circumstances of this case, we find it unnecessary to include such a clause. See *Cherokee Marine Terminal*, 287 NLRB 1080 (1988).

⁶ 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

WE WILL, on request, provide the Union with information it requests to enable it to engage in collective bargaining over the wages, rates of pay, and

terms and conditions of employment of employees in the appropriate unit.

ALIMENTA PROCESSING CORPORATION