

**BPS Guard Services, Inc., d/b/a Burns International Security Services and United Steelworkers of America, AFL-CIO. Case 25-CA-19472**

August 15, 1989

**DECISION AND ORDER**

**BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND HIGGINS**

On September 7, 1988, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 25-RC-8557. (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).) On May 18, 1989, the General Counsel filed an amendment to the complaint. The Respondent filed its answer admitting in part and denying in part the allegations in the amended complaint.

On June 23, 1989, the Acting General Counsel filed a motion to strike portions of the Respondent's answer and a Motion for Summary Judgment. On June 27, 1989, 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.

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 Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.<sup>1</sup>

<sup>1</sup> Specifically, the Respondent contends, as it did in the representation proceeding, that the unit is inappropriate because it includes individuals who are guards within the meaning of Sec 9(b)(3). The Board, however, has affirmed the Regional Director's determination that the employees in question are not guards. The Regional Director relied on *McDonnell Aircraft*, 279 NLRB 357 (1986), enf. denied 827 F 2d 324 (8th Cir 1987). The Respondent urges, as it has before, that the court's decision denying enforcement in *McDonnell Aircraft* requires a different result. With all due respect to the court of appeals, we rejected that contention in the representation case. Member Cracraft did not participate in the underlying representation proceeding. She agrees with her colleagues' finding *infra* that the Respondent is now barred from relitigating the same issues litigated in the representation case.

The Respondent also asserts as an affirmative defense that the Union has declined to represent any unit of employees excluding firefighters who are guards. Because we have found that the Respondent's firefighters are not guards and have included them in the unit, the Respondent in advancing this contention has not raised any genuine issue of material fact requiring a hearing.

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.<sup>2</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Delaware corporation with its principal office and place of business at Parsippany, New Jersey, provides security and fire protection services to several customer facilities in the United States, including Bethlehem Steel Corporation's Burns Harbor plant in Chesterton, Indiana. During the 12-month period ending August 21, 1988, the Respondent, in the course and conduct of its operations, provided services in excess of \$50,000 directly to customers located outside of New Jersey, including Bethlehem Steel's Burns Harbor, Indiana plant, and derived gross revenues in excess of \$100,000. 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 3, 1988, the Union was certified on July 11, 1988, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time fire protection employees employed by the Employer at the Burns Harbor facility of Bethlehem Steel Corporation, including all firefighters, all drivers, all paramedics, and all mechanics; but excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

<sup>2</sup> We deny the Acting General Counsel's motion to strike portions of the Respondent's answer.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

Since about July 25, 1988, the Union has requested the Respondent to bargain and, since about August 12, 1988, the Respondent 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 August 12, 1988, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, 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 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, BPS Guard Services, Inc., d/b/a Burns International Security Services, Chesterton, Indiana, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL-CIO 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 regular part-time fire protection employees employed by the Employer at the Burns Harbor, Indiana facility of Bethlehem Steel Corporation, including all firefighters, all drivers, all paramedics, and all mechanics; but excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

(b) Post at its facility in Chesterton, Indiana, copies of the attached notice marked "Appendix."<sup>3</sup> 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.

<sup>3</sup> 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 United Steelworkers of America, AFL-CIO 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 regular part-time fire protection employees employed by us at the Burns Harbor facility of Bethlehem Steel Corporation, including all firefighters, all drivers, all paramedics, and all mechanics, but excluding

all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

**BPS GUARD SERVICES, INC., D/B/A  
BURNS INTERNATIONAL SECURITY  
SERVICES**