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White Motor Sales d/b/a Fairfield Toyota and Fairfield Imports d/b/a Fairfield Toyota *and* Automotive Machinists Lodge No. 1173. Case 20–CA–35310

June 9, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND HAYES

This is a refusal-to-bargain case in which the Respondents are contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 21, 2010, the Acting General Counsel issued the second amended complaint on March 11, 2011, alleging that the Respondents have violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to furnish relevant and necessary information following the Union's certification in Case 20–RC–18287. (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 Respondents filed an answer, admitting in part and denying in part the allegations in the complaint.

On March 23, 2011, the Acting General Counsel filed a Motion for Summary Judgment. On March 25, 2011, 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 Respondents filed a response, stating that they do not oppose the Acting General Counsel's motion.

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

Ruling on Motion for Summary Judgment

The Respondents admit their refusals to bargain and to furnish information, but contest the validity of the certification based on objections to the election in the representation proceeding.

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondents have 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.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Respondent White Motor Sales, a corporation with an office and place of business in Fairfield, California (the car dealership), has been engaged in the selling and servicing of automobiles.

During the 12-month period preceding issuance of the complaint, Respondent White Motor Sales, in conducting its business operations described above, derived gross revenues in excess of $500,000 and purchased and received at its Fairfield, California facility goods valued in excess of $5000 which originated from points outside the State of California.

At all material times Respondent Fairfield Imports, a corporation with an office and place of business in Fairfield, California (the car dealership), has been engaged in the selling and servicing of automobiles.

Based on a projection of its operations since about June 22, 2010, at which time Respondent Fairfield Imports commenced its operations, Respondent Fairfield Imports, in conducting its business operations described above, will annually derive gross revenues in excess of $500,000, and has purchased and received at its Fairfield, California, facility, goods valued in excess of $5,000 which originated from points outside the State of California.

We find that at all material times, Respondent White Motor Sales and Respondent Fairfield Imports have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that Automotive Machinists Lodge No. 1173, 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 a representation election held March 11, 2010, the Union was certified on October 6, 2010, as the exclusive collective-bargaining representative of the employees in the following appropriate units:

White Motor Sales:

[1] The Respondents' request that the second amended complaint be dismissed in its entirety is therefore denied.

> All full-time and regular part-time Automotive Technicians employed by the Employer at its facility located at 2575 Automall Parkway, Fairfield, California, excluding all other employees, guards, and supervisors as defined in the Act.
>
> Fairfield Imports:
>
> All full-time and regular part-time Automotive Technicians employed by the Employer at its facility located at 2575 Automall Parkway, Fairfield, California, excluding all other employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

Since about March 11, 2010, and continuing to date, the Union has been the designated exclusive collective-bargaining representative of the unit.

From about March 11, 2010 to June 22, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employed by Respondent White Motor Sales.

On about June 22, 2010, Respondent Fairfield Imports acquired the car dealership from Respondent White Motor Sales in a buy/sell agreement between these parties.

On about June 22, 2010, Respondent Fairfield Imports assumed operation of the car dealership and continued to operate the business of the car dealership in basically unchanged form, and at the time of assuming operations, it employed as a majority of its unit employees those employees previously employed by Respondent White Motor Sales.

Based on the operations described above, Respondent Fairfield Imports has continued the employing entity, and, since about June 22, 2010, has been a successor to Respondent White Motor Sales.

At all times since about June 22, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employed by Respondent Fairfield Imports.

B. Refusal to Bargain

Since about March 12, 2010, orally, and on about May 13, 2010, by letter, the Union requested that Respondent White Motor Sales recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees. Since about March 12, 2010, and continuing to June 22, 2010, and through a letter dated June 7, 2010, Respondent White Motor Sales has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

On about June 23, 2010, the Union, by letter, requested that Respondent Fairfield Imports recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit employees. Since about June 28, 2010, and continuing to date, Respondent Fairfield Imports has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

Since about June 3, 2010, the Union, by letter, has requested that Respondent White Motor Sales furnish it with the following information:

> (i) Each technician's date of hire, rate of pay, job classification, last known address, phone number, and date of completion of any probationary period.
>
> (ii) A copy of the current company personnel policies, practices or procedure that affect the employment of the bargaining unit, such as a Company Handbook.
>
> (iii) A copy of the Company fringe benefit plans including pension, profit sharing, 401(k), stock incentives, medical, dental, vision, life insurance, orthodontics, sick leave, funeral leave, jury duty, vacation accrual, holidays, legal services, apprenticeship or training, child care, or any other plans provided as part of the employee's compensation package. This information should include the Company's cost to provide the specific benefit plan or coverage and any employee cost to maintain premiums.
>
> (iv) Summary Plan Descriptions for all benefit plans including all attachments and supplements.
>
> (v) Copies of the technician's job descriptions by classification.
>
> (vi) Copies of any company wage or salary plans for the technicians including bonuses and overtime compensation.
>
> (vii) Hiring requirements and copy of application for employment for a technician position.
>
> (viii) Workweek, start times, and break and meal periods for each technician.
>
> (ix) Copies of any disciplinary notices, warning or disciplinary actions for the last eighteen (18) months.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about June 7, 2010, Respondent White Motor Sales, in writing, has failed and refused to furnish the Union with the requested information.

Since about October 12, 2010, the Union, by letter, has requested that Respondent Fairfield Imports furnish the Union with the information described above.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about October 26, 2010, Respondent Fairfield Imports, in writing, has failed and refused to furnish the Union with the requested information.

CONCLUSIONS OF LAW

1. By failing and refusing since about March 12, 2010, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, and by failing and refusing to provide the Union with the information it requested about June 3, 2010, Respondent White Motor Sales 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.

2. By failing and refusing since about June 28, 2010, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, and by failing and refusing to provide the Union with the information it requested about October 12, 2010, Respondent Fairfield Imports 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 Respondent White Motor Sales and Respondent Fairfield Imports have violated Section 8(a)(5) and (1) of the Act, we shall order them to cease and desist from such conduct. In addition, we shall order Respondent Fairfield Imports to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.[2] We shall also order the Respondents to furnish the Union the information it 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 Respondents begin 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); and *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

Finally, in view of the fact that Respondent White Motor Sales is no longer the employing entity of the unit employees, we shall order it to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees who were employed at any time from March 12 through June 22, 2010, in order to inform them of the outcome of this proceeding.

ORDER

A. The National Labor Relations Board orders that the Respondent, White Motor Sales d/b/a Fairfield Toyota, Fairfield, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Automotive Machinists Lodge No. 1173 as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:

> All full-time and regular part-time Automotive Technicians employed by the Employer at its facility located at 2575 Automall Parkway, Fairfield, California, excluding all other employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-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) Furnish the Union the information it requested about June 3, 2010.

(b) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix A" to the Union and to all unit employees who were employed by the Respondent at any time since March 12, 2010.[3] In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an

[2] As noted above, the second amended complaint alleges, and the Respondents admit, that Respondent Fairfield Imports is a successor to Respondent White Motor Sales. There is no assertion that Respondent White Motor Sales continues to employ the unit employees. Accordingly, we shall issue an affirmative bargaining order only with respect to Respondent Fairfield Imports, the current employing entity.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[4]

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondent, Fairfield Imports d/b/a Fairfield Toyota, Fairfield, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Automotive Machinists Lodge No. 1173 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-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 collective-bargaining 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 Automotive Technicians employed by the Employer at its facility located at 2575 Automall Parkway, Fairfield, California, excluding all other employees, guards, and supervisors as defined in the Act.

(b) Furnish the Union the information it requested about October 12, 2010.

(c) Within 14 days after service by the Region, post at its facility in Fairfield, California, copies of the attached notice marked "Appendix B."[5] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[6] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 12, 2010.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 9, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
MAILED 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 Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

[4] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

[5] 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."

[6] As noted above, for the reasons stated in his dissenting opinion in *J. Picini Flooring*, supra, Member Hayes would not require electronic distribution of the notice.

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Automotive Machinists Lodge No. 1173 as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

> All full-time and regular part-time Automotive Technicians employed by us at our facility located at 2575 Automall Parkway, Fairfield, California, excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT refuse to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of our unit employees.

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 furnish the Union the information it requested about June 3, 2010.

WHITE MOTOR SALES D/B/A FAIRFIELD TOYOTA

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 Federal labor law and has ordered us to mail and obey this notice.

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Form, join or assist a union

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Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Automotive Machinists Lodge No. 1173 as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of our unit employees.

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 following bargaining unit:

> All full-time and regular part-time Automotive Technicians employed by us at our facility located at 2575 Automall Parkway, Fairfield, California, excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested about October 12, 2010.

FAIRFIELD IMPORTS D/B/A FAIRFIELD TOYOTA