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NY-FV, Inc. d/b/a Hassel Volvo of Glen Cove and International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 447. Case 29-CA-116941

January 31, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the Union on November 12, 2013, the General Counsel issued the complaint on December 10, 2013, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 29-RC-102996. (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 Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On December 24, 2013, the General Counsel filed a Motion for Summary Judgment. On December 27, 2013, 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, and the General Counsel filed a reply to the Respondent's response.

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

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its objections to the election in the underlying representation proceeding.

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 un-

fair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic corporation, with its principal office and place of business located at 79 Cedar Swamp Road, Glen Cove, New York (its Cedar Swamp Road facility), and a facility located at 24 Garvey's Point Road, Glen Cove, New York (its Garvey's Point Road facility), has been engaged in the business of selling and servicing automobiles and automobile parts.

During the 12-month period preceding the issuance of the complaint (a representative period), the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000, and has purchased and received at its Cedar Swamp Road facility goods and materials valued in excess of \$5000 directly from points located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 447, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on May 29, 2013, the Union was certified on September 13, 2013, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time technicians, service advisors, parts department countermen and parts department drivers employed by the Respondent at its 79 Cedar Swamp Road and 24 Garvey's Point Road locations.

Excluded: All sales employees, office clericals, porters, lot attendants, car washers, parts department managers, service department assistant managers, 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.

B. Refusal to Bargain

Since October 2, 2013, the Union has requested the Respondent to meet and bargain, and, since October 2, 2013, the Respondent has refused to do so.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about October 2, 2013, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the 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); accord: *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

In addition to the customary notice posting remedies, the General Counsel requests the additional remedy that the Respondent mail a notice to each unit employee's residence. In the absence of any explanation why the notice mailing remedy is warranted here, we deny the General Counsel's request.

ORDER

The National Labor Relations Board orders that the Respondent, NY-FV, Inc. d/b/a Hassel Volvo of Glen Cove, Glen Cove, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 447, as the exclusive collective-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 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:

Included: All full-time and regular part-time technicians, service advisors, parts department countermen and parts department drivers employed by the Respondent at its 79 Cedar Swamp Road and 24 Garvey's Point Road locations.

Excluded: All sales employees, office clericals, porters, lot attendants, car washers, parts department managers, service department assistant managers, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its Cedar Swamp Road and Garvey's Point Road facilities in Glen Cove, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, 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. 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 October 2, 2013.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the

¹ 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."

NY-FV, INC.

Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 31, 2014

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) 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 Federal labor law and has ordered us to post 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

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 International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 447, as the exclusive collective-bargaining 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 listed above.

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:

Included: All full-time and regular part-time technicians, service advisors, parts department countermen and parts department drivers employed by us at our 79 Cedar Swamp Road and 24 Garvey's Point Road locations.

Excluded: All sales employees, office clericals, porters, lot attendants, car washers, parts department managers, service department assistant managers, guards and supervisors as defined in the Act.

NY-FV, INC. D/B/A HASSEL VOLVO OF GLEN COVE