

Season-All Industries, Inc. and District Lodge No. 63, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 6-CA-13393

August 1, 1980

DECISION AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND TRUESDALE**

Upon a charge filed on April 29, 1980, by District Lodge No. 63, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, and duly served on Season-All Industries, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 6, issued a complaint and notice of hearing on May 12, 1980, against Respondent, alleging that Respondent has engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on April 3, 1980, following a Board election in Case 6-RC-8450, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about April 24, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On or about May 22, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On June 6, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 12, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent

thereafter filed a response to Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and the response to the Notice To Show Cause, Respondent essentially contests the validity of the Union's certification. Although Respondent admits its refusal to bargain, Respondent denies that it thereby violated Section 8(a)(5) and (1) of the Act. Specifically, Respondent contends that the Union should not have been certified as the collective-bargaining representative of its employees because the Regional Director directed an election in an inappropriate unit. Respondent also contends that the Union should not have been certified because it engaged in objectionable conduct which affected the results of the June 29, 1980, election, and contends that newly discovered evidence that the employee engaged in the allegedly objectionable conduct was an agent of the Union creates an issue of fact requiring a hearing. Finally, Respondent claims that it was denied due process in that the Regional Director did not conduct a complete investigation of its objection.

In the Motion for Summary Judgment, the General Counsel argues that there are no issues requiring a hearing, and that Respondent is attempting to relitigate issues which were raised and determined by the Board in the underlying representation case. We agree with the General Counsel. Review of the record, including the record in Case 6-RC-8450, shows that on May 16, 1979, after a hearing and the submission of a brief by Respondent, the Regional Director issued a Decision and Direction of Election. On May 30, 1979, Respondent filed with the Regional Director a motion for reconsideration of the Decision and Direction of Election, which was denied by the Regional Director on June 1, 1979. On June 5, 1979, Respondent filed with the Board a request for review of the Decision and Direction of Election wherein it contended that the unit was inappropriate. On June 28, 1979, the Board denied the request for review.

On June 29, 1979, pursuant to the Decision and Direction of Election, an election by secret ballot was conducted. The tally of ballots shows that of approximately 79 eligible voters 75 cast ballots, of which 36 were cast for the Union, 9 were cast for the Intervenor, International Union of Electrical,

¹ Official notice is taken of the record in the representation proceeding, Case 6-RC-8450, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Radio and Machine Workers, AFL-CIO-CLC, and 25 were cast for neither labor organization. There were five challenged ballots, sufficient in number to affect the results of the election.

On July 5, 1979, Respondent filed timely objections to conduct affecting the results of the election. The objections alleged, *inter alia*, that, during a substantial part of the period designated for voting, Roy Sadler, an alleged agent of the Union, engaged in electioneering in a corridor within a few feet of the door to the conference room in which voting was taking place. On September 25, 1979, the Regional Director issued a Supplemental Decision on Objections and Challenges and Order Directing Hearing on Certain Challenges in which he found Respondent's objections without merit. On September 28, 1979, Respondent moved for reconsideration of its objections, which was denied by the Regional Director on October 1, 1979. On October 10, 1979, Respondent filed a request for review of the Regional Director's Supplemental Decision on Objections and Challenges and Order Directing Hearing on Certain Challenges, which was denied by the Board on November 13, 1979.

Pursuant to the aforementioned Order Directing Hearing on Certain Challenges, a hearing was held on December 4 and 5, 1979. On January 4, 1980, the Hearing Officer issued and served on the parties her Hearing Officer's Report on Challenged Ballots in which she recommended that the challenges to the ballots of two employees be opened and counted. On March 3, 1980, the two challenged ballots were counted and, thereafter, on April 3, 1980, the Regional Director certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit.

By letter dated April 24, 1980, Respondent expressly stated to the Union that it does not recognize the Union as the certified representative of its office and technical employees, because it believes that the certification issued by the Regional Director is invalid. As note above, Respondent refused, and continues to refuse, to recognize and bargain with the Union, and to provide requested information to the Union, because of its belief that the Regional Director directed an election in an inappropriate unit and failed adequately to consider its objections to the June 29, 1979, election. It thus appears that Respondent is attempting to raise, herein, issues which were raised and determined in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled

to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation, with an office and place of business located in Indiana, Pennsylvania, where it is engaged in the manufacture and nonretail sale and distribution of doors and windows. During the 12-month period ending April 30, 1980, which period is representative of all times material herein, Respondent sold and shipped from its Indiana, Pennsylvania, facility products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania. Additionally, during the same 12-month period, Respondent purchased and received at its Indiana, Pennsylvania, facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

District Lodge No. 63, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

² See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All office clerical and technical employees, including all data processing employees, employed at Respondent's Indiana, Pennsylvania, facility; excluding all production and maintenance employees, watchmen, transportation department employees, confidential employees and guards, professional employees and supervisors as defined in the Act.

2. The certification

On June 29, 1979, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 6, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on April 3, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about April 7, 1980, and at all times thereafter, the Union has requested Respondent to provide certain relevant and necessary information for the purpose of collective bargaining³ and to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about April 24, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to provide the requested information, and to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since April 24, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor prac-

³ The Union seeks information relating to the following subjects: names, addresses, seniority dates, current job classifications, and rates of pay of all unit employees; job descriptions; Respondent's merit rating program; and existing practices and policies relating to fringe benefits.

tices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, provide the Union with the requested relevant and necessary information for the purpose of collective bargaining and bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Season-All Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District Lodge No. 63, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All office clerical and technical employees, including all data processing employees, employed at Respondent's Indiana, Pennsylvania, facility, excluding all production and maintenance employees, watchmen, transportation department employees, confidential employees and guards, professional

employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since April 3, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 24, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about April 24, 1980, and at all times thereafter, to furnish the above-named labor organization with certain relevant and necessary information, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain and refusal to provide relevant and necessary information, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and therefore has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Season-All Industries, Inc., Indiana, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District Lodge No. 63, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All office clerical and technical employees, including all data processing employees, employed at Respondent's Indiana, Pennsylvania, facility; excluding all production and maintenance employees, watchmen, transportation

department employees, confidential employees and guards, professional employees and supervisors as defined in the Act.

(b) Refusing to furnish the above-named labor organization with the relevant and necessary information requested by it for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, provide the above-named labor organization with the relevant and necessary information requested by it for the purpose of collective bargaining.

(c) Post at its Indiana, Pennsylvania, facility copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ In the event that 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

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment

with District Lodge No. 63, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide information requested by the Union which is relevant to and necessary for the purpose of collective bargaining.

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

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and condi-

tions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All office clerical and technical employees, including all data processing employees, employed by us at our Indiana, Pennsylvania, facility; excluding all production and maintenance employees, watchmen, transportation department employees, confidential employees and guards, professional employees and supervisors as defined in the Act.

WE WILL, upon request, provide the above-named Union with information requested by it for the purpose of collective bargaining.

SEASON-ALL INDUSTRIES, INC.