

**Jaglan Garment Co., Inc. and Local 19, Distributive Workers of America, DWA. Case 26-CA-7161**

September 26, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND MURPHY

Upon a charge filed on April 21, 1978, by Local 19, Distributive Workers of America, DWA, herein called the Union, and duly served on Jaglan Garment Co., Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 26, issued a complaint and notice of hearing on April 27, 1978, against Respondent, alleging that Respondent had 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, 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 September 14, 1977, following a Board election in Case 26-RC-5558 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about March 23, 1978, 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 May 3, 1978, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On May 17, 1978, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 25, 1978, 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.

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 26-RC-5558, 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), enf'd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA, as amended.

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 response to the Notice To Show Cause, Respondent attacks the Union's representative status and certification, contending, *inter alia*, that its objections should not have been overruled and that it was deprived of due process by the denial of a hearing on the material issues raised by those objections. Respondent further asserts that the Union is now defunct.

Our review of the record herein, including the record in Case 26-RC-5558, discloses that, pursuant to a Decision and Direction of Election by the Acting Regional Director, an election was conducted on August 19, 1977, and that the tally of ballots furnished the parties after the election showed 100 votes for, and 35 against, the Union, with 46 challenged ballots. Respondent filed timely objections to the conduct of the election, alleging essentially that the employees' freedom of choice was interfered with by: (1) the Board agents' acceptance of numerous union challenges without requiring statements as to the reasons for the challenges; (2) threats of violence made to employees on the eve of the election; (3) the Board agents leaving the ballot box unattended; (4) defacement of official election materials and sample ballots; and (5) union agents misrepresenting themselves as Government agents.

Thereafter, on September 14, 1977, the Regional Director for Region 26 issued a Supplemental Decision and Certification of Representative in which he overruled Respondent's objections and certified the Union. Respondent's request for review of the Supplemental Decision and Certification of Representative was denied by the Board on October 14, 1977, on the ground that it raised no substantial issues warranting review. In so doing, the Board determined that there were no issues raised by Respondent's objections which required a hearing and, thus, it has not been denied due process in this regard.<sup>2</sup>

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.<sup>3</sup>

In this proceeding, Respondent has neither raised issues which were or could have been litigated in the prior representation proceeding and does not offer to

<sup>2</sup> *CSC Oil Company*, 220 NLRB 19, 20 (1975); *Allied Meat Company*, 220 NLRB 27 (1975).

<sup>3</sup> 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).

adduce at a hearing any newly discovered or previously unavailable evidence, nor does Respondent allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding.

However, in its response to the Notice To Show Cause, Respondent does raise issues which relate to matters allegedly occurring after litigation of the representation proceeding. Thus, Respondent contends, *inter alia*, that it has been denied the opportunity to be heard and to participate fully in a hearing with respect to its claim that the Union is now defunct and that the General Counsel had improperly introduced into evidence, through attachments to the Motion for Summary Judgment, the Union's March 23, 1978, letter and March 30, 1978, mailgram in which the Union requested Respondent to bargain with it. As to this last contention, Respondent has admitted in its answer receipt of these requests and further acknowledges such receipt in its letter to the Union, dated April 6, 1978, in which it states in pertinent part:

This is a response to your letter of March 23, 1978, and to the mailgram of March 30, 1978, relating to your request for information and your request to commence bargaining.

Thus, the Union's requests for bargaining stand uncontroverted and Respondent can neither contest the authenticity nor the receipt of such requests from the Union. Furthermore, by letter of April 26, 1978, Respondent advised the Union that Respondent was refusing to bargain with it in order to test the validity of the Union's certification. Accordingly, we conclude that Respondent has failed to raise any genuinely contested issues by this contention and thus a hearing regarding this issue is not warranted.

We also find no merit to Respondent's claim of union defunct. Respondent asserts only that the Union is "now defunct" but has failed to set forth any facts or evidence to support its conclusory statement. Respondent's contention is rebutted by the facts that the Union twice requested that Respondent meet and bargain and filed a subsequent unfair labor practice charge which is the basis for the present proceeding. Therefore, because Respondent has again failed to raise any genuinely contested issues, a hearing on this allegation is unwarranted,<sup>4</sup> and Respondent's belief that the Union is defunct is not a basis on which it can lawfully refuse to bargain.

In view of all the foregoing, we find that Respondent has not raised any issues which are properly litigable in this unfair labor practice proceeding. Ac-

cordingly, 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, a corporation doing business in the State of Mississippi, is engaged in the manufacture of jeans at its Sledge, Mississippi, location. During the 12 months preceding issuance of the complaint herein, a representative period, Respondent sold and shipped in interstate commerce products valued in excess of \$50,000 directly to points outside the State of Mississippi.

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

Local 19, Distributive Workers of America, DWA, is a labor organization within the meaning of Section 2(5) of the Act.

### 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 production and maintenance employees employed at the Employer's Sledge, Mississippi, location, including the employees in the parts section, the joined fronts section, the seat seaming back section, the side and inseam section, the inspect section, the packing and folding section, the receiving section, the shipping section, excluding all office clerical employees, guards and supervisors as defined in the Act.

##### 2. The certification

On August 19, 1977, 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 26, 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

<sup>4</sup> *Amalgamated Clothing Workers of America, AFL-CIO [Winfield Manufacturing Company, Inc.] v. N.L.R.B.*, 424 F.2d 818, 829-830 (C.A.D.C., 1970).

said unit on September 14, 1977, 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 March 23, 1978, and at all times thereafter, including March 30, 1978, the Union has requested Respondent 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 26, 1978, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, 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 26, 1978, 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 practices 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, 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), *enfd.* 328 F.2d 600 (C.A. 5, 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (C.A. 10, 1965).

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

#### CONCLUSIONS OF LAW

1. Jaglan Garment Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 19, Distributive Workers of America, DWA, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer's Sledge, Mississippi, location, including the employees in the parts section, the joined fronts section, the seat seaming back section, the side and inseam section, the inspect section, the packing and folding section, the receiving section, the shipping section, excluding all office clerical employees, guards, 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 September 14, 1977, 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 26, 1978, 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 the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. 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, Jag-

lan Garment Co., Inc., Sledge, Mississippi, 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 Local 19, Distributive Workers of America, DWA, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed at the Employer's Sledge, Mississippi, location, including the employees in the parts section, the joined fronts section, the seat seaming back section, the side and inseam section, the inspect section, the packing and folding section, the receiving section, the shipping section, excluding all office clerical employees, guards, and supervisors as defined in the Act.

(b) 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) Post at its Sledge, Mississippi, location copies of the attached notice marked "Appendix."<sup>5</sup> Copies of said notice, on forms provided by the Regional Director for Region 26, 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.

(c) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

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 Local 19, Distributive Workers of America, DWA, as the exclusive representative of the employees in the bargaining unit described below.

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

All production and maintenance employees employed at the Employer's Sledge, Mississippi, location, including the employees employed in the parts section, the joined fronts section, the seat seaming back section, the side and inseam section, the inspect section, the packing and folding section, the receiving section, the shipping section, excluding all office clerical employees, guards, and supervisors as defined in the Act.

JAGLAN GARMENT CO., INC.

<sup>5</sup> 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."