

Pallet Companies, Inc., a Subsidiary of IFCO Systems, N.A., Inc. and United Food & Commercial Workers Union, Local 1360. Cases 04–CA–128224 and 04–CA–128228

August 27, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND SCHIFFER

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 charges filed by United Food and Commercial Workers Union, Local 1360 (the Union) on May 6, 2014, the General Counsel issued the consolidated complaint on May 14, 2014, alleging that the Respondent has 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 04–RC–093398. (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 and an amended answer, admitting in part and denying in part the allegations in the consolidated complaint, and asserting affirmative defenses.

On June 2, 2014, the General Counsel filed a Motion for Summary Judgment and memorandum in support. On June 5, 2014, 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 a supplemental response. In addition, the Respondent filed a Motion for Summary Judgment.

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

Ruling on Motions for Summary Judgment

The Respondent argues for the first time in its motion for summary judgment and its amended answer to the consolidated complaint that the Board lacked a quorum at the time it approved the appointment of Dennis Walsh as Regional Director for Region 4 on March 10, 2013. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). The Respondent argues that therefore Regional Director Walsh was without authority to issue the consolidated complaint in this proceeding, and that it is entitled to summary judgment as a matter of law. We find no merit in this contention.

Under the Act, the General Counsel is an independent officer appointed by the President and confirmed by the Senate. The authority of the General Counsel to investi-

gate unfair labor practice charges, and to issue and prosecute unfair labor practice complaints, is derived directly from the language of the NLRA, not from any “power delegated” by the Board.¹ Accordingly, the presence or absence of a valid Board quorum has no bearing on the General Counsel’s prosecutorial authority in this matter.

Agency staff engaged in the investigation and prosecution of unfair labor practices are directly accountable to the General Counsel. 29 U.S.C. § 153(d); See *NLRB v. Food & Commercial Workers Local 23*, 484 U.S. 112, 127–128 (1987); *NLRB v. FLRA*, 613 F.3d 275, 278 (D.C. Cir. 2010). When a Regional Director or other designated Board agent issues a complaint, he acts for, and with authority delegated by, the General Counsel. *Postal Service*, 347 NLRB 885, 886 (2006); *Roadway Express, Inc.*, 355 NLRB 197, 206 (2010). In the instant matter, the Respondent does not dispute that the consolidated complaint was issued in the name of the General Counsel and with the General Counsel’s authority. Under these circumstances, we find that the consolidated complaint was validly issued and not subject to attack based on the argument that the Board lacked a quorum at the time it approved the appointment of Dennis Walsh as Regional Director for Region 4.

Moreover, to the extent that the Respondent questions the technical aspects of Regional Director Walsh’s appointment at a time when the Board lacked a quorum, it should be noted that the Board previously issued an order contingently delegating certain authorities to other NLRB officials.² Thus, in the absence of a Board quorum, the General Counsel was authorized to appoint Walsh as Regional Director consistent with the contingent delegation.

Finally, on July 18, 2014, in an abundance of caution and with a full complement of five Members, the Board ratified nunc pro tunc and expressly authorized the selection of Dennis Walsh as Regional Director for Region 4. In a further abundance of caution, on July 30, 2014, Regional Director Walsh affirmed and ratified any and all actions taken by him or on his behalf during the period of

¹ Section 3(d) of the Act gives the General Counsel “final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under Section 10 [of the Act]”, and Section 10(b) provides that any Board agent may be designated to issue complaints. 29 U.S.C. §§ 153(d) & 160(b); See *Richardson Chemical Co.*, 222 NLRB 5, 6 (1976) (complaint issued by “Acting” Regional Director not *ultra vires*; Assistant to the Regional Director properly designated to issue complaint pursuant to authority delegated by General Counsel).

² See Order Contingently Delegating Authority to the Chairman, the General Counsel, and the Chief Administrative Law Judge, 76 Fed. Reg. 73719 (Nov. 29, 2011).

March 10, 2013, to July 18, 2014. Accordingly, the Respondent's motion is denied.

With respect to the General Counsel's motion, the Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of the issues raised in the representation proceeding.³ The Respondent asserts that the representation election was tainted by the Union's objectionable and coercive conduct and, as a result, employees were not able to freely express their views concerning representation.

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).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The consolidated complaint alleges that by letter dated April 4, 2014, the Union requested the following information, but excluding social security numbers:

1. Name, address, social security number, sex, date of birth, marital status and hire date.
2. Current wage rate and wage history during period of employment with Respondent.
3. Job classification, job description and part-time or full-time status.
4. All fringe benefits including but not limited to insurance, pension benefits and health insurance with cost and scope of coverage fully broken down and detailed.
5. All personnel policies or employee handbooks.

³ In its amended answer to the consolidated complaint, the Respondent denies the allegations that the Union requested information from the Respondent and that the Respondent was refusing to furnish the information to the Union. However, the Respondent admits that by letter dated April 25, 2014, attached to the consolidated complaint as app. C, it refused to bargain with the Union. The April 25, 2014 letter states: "Accordingly, we are refusing to bargain and will not supply any of the requested information." Therefore, we find there are no factual issues warranting a hearing with respect to whether the Respondent refused to furnish the information sought by the Union.

The Respondent also raises in its amended answer and supplemental response to the Notice to Show Cause the same argument regarding the authority of the Regional Director to issue the consolidated complaint that we have found to be without merit.

It is well established that information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request, except for social security numbers. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003); *St. Clair Die Casting, LLC*, 341 NLRB No. 144 (2004) (not reported in Board volumes), *enfd.* 423 F.3d 843 (8th Cir. 2005), and cited cases. The Respondent has not asserted any basis for rebutting the presumptive relevance of the information. Rather, the Respondent raises as an affirmative defense its contention, rejected above, that the Union was improperly certified. We find that the Respondent unlawfully refused to furnish the information sought by the Union.⁴

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 Delaware corporation with a facility in Burlington, New Jersey, the Plant, has been engaged in the repair, retrieval and modification of pallets.⁵

During the 12-month period preceding issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, purchased and received at the Plant goods valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey.

We find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(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 representation election held on December 20, 2012, the Union was certified on April 2, 2014, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

⁴ The Board has held that employee social security numbers are not presumptively relevant and that the union, therefore, must demonstrate the relevance of such information. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996). Here, the Union did not specify in its April 4 letter why it wanted this information nor has it otherwise demonstrated its relevance. This does not, however, excuse the Respondent's failure to provide the Union with all the other information it requested in this letter. *Id.*

⁵ In its amended answer, the Respondent admits that it has been engaged in providing a complete range of pallet management options to businesses including retrieving, reconditioning, and resupplying wood pallets.

All full-time and regular part-time truck drivers and production employees, including nailers, saw room operators, and fork lift drivers employed by the Employer at its facility currently located at 320 Dulty's Lane, Site 265, Burlington, New Jersey 08016; but excluding all other employees, 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

By letter dated April 4, 2014, the Union requested that the Respondent meet and bargain with it as the exclusive collective-bargaining representative of the unit. By letter dated April 4, 2014, the Union requested that the Respondent furnish it with the information set forth above that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. By letter dated April 25, 2014, the Respondent refused to recognize the Union as the exclusive collective-bargaining representative of the unit, bargain with the Union in good faith, and provide information requested by the Union regarding the unit's terms and conditions of employment.

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 April 25, 2014, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, and by failing to provide the Union with requested information regarding the terms and conditions of employees in the 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. We also shall order the Respondent to furnish the Union the information requested, with the exception of employee social security numbers.

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).

ORDER

The National Labor Relations Board orders that the Respondent, Pallet Companies, Inc. a Subsidiary of IFCO Systems N.A., Inc., Burlington, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Food and Commercial Workers Union, Local 1360 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to provide the Union with requested information that is 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 truck drivers and production employees, including nailers, saw room operators, and fork lift drivers employed by the Employer at its facility currently located at 320 Dulty's Lane, Site 265, Burlington, New Jersey 08016; but excluding all other employees, managers, guards and supervisors as defined in the Act.

(b) Provide the Union with the information requested in its letter of April 4, 2014, with the exception of employee social security numbers.

(c) Within 14 days after service by the Region, post at its facility in Burlington, New Jersey, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized

⁶ 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."

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. If 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 about April 25, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 4 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.

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 United Food and Commercial Workers Union, Local 1360 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the 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 listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning 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 truck drivers and production employees, including nailers, saw room operators, and fork lift drivers employed by the Employer at its facility currently located at 320 Duly's Lane, Site 265, Burlington, New Jersey 08016; but excluding all other employees, managers, guards and supervisors as defined in the Act.

WE WILL furnish to the Union in a timely manner the information requested by it on April 4, 2014, with the exception of employee social security numbers.

PALLET COMPANIES, INC., A SUBSIDIARY OF
IFCO SYSTEMS, N.A., INC.

The Board's decision can be found at www.nlr.gov/case/04-CA-128224 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

