Bud Antle, Inc. *and* Teamsters Local Union No. 890, International Brotherhood of Teamsters. Case 32–CA–078166

October 30, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND SCHIFFER

On June 26, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB 1257. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Decision and Order, and retained this case on its docket for further action as appropriate.

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

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein.[1] Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB 1257, which is incorporated herein by reference.[2] The judge's recommended Order, as further modified herein, is set forth in full below.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Bud Antle, Inc., Salinas Valley, Oxnard, Huron, and Imperial Valley, California, and Yuma, Arizona, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with Teamsters Local Union No. 890 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) Failing and refusing to provide the Union with the information described in the Union's February 17 and March 12, 26, and 29, 2012 written requests.

(c) In any like or related manner interfering with, restraining, or coercing its 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 to the Union in a timely manner the information requested by the Union on February 17 and March 12, 26, and 29, 2012.

(b) Within 14 days after service by the Region, post at its facilities in Salinas Valley, Oxnard, and Huron, California, in California's Imperial Valley, and in Yuma, Arizona, copies of the attached notice marked "Appendix" in both English and Spanish.[4] Copies of the notice, on forms provided by the Regional Director for Region 32, 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 internet site, and/or other electronic means, if the Respondent customarily communicates with 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.

[1] We shall substitute a new notice in accordance with our decision in *Durham School Services*, 360 NLRB 694 (2014).

In adopting the judge's recommendation that the notice be mailed to employees, we rely on *Technology Service Solutions*, 334 NLRB 116 (2001), rather than *Chino Valley Medical Center*, 359 NLRB 992 (2013), which was cited in the vacated Decision and Order.

[2] In finding that the Respondent violated Sec. 8(a)(5) and (1) by failing to provide the Union with information it requested, we additionally rely on *Sho-Me Power Electric Cooperative*, 360 NLRB 349 (2014).

[3] On July 8, 2013, the Union filed a motion for reconsideration, requesting that (i) the Board's decision be mailed to the employees; (ii) the notice omit any reference to the employees' right to refrain from engaging in activities protected under Sec. 7; and (iii) the notice advise employees where on the Board's website the decision may be found. The Respondent filed a brief in opposition to the motion for reconsideration. Insofar as the motion requests that the notice refer employees to the Board's decision, we deny it as moot. See *Durham School Services*, supra. In all other respects, the motion is denied because the Union has not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Sec. 102.48(d)(1) of the Board's Rules and Regulations.

On August 1, 2013, the Union filed a motion to recall this case from the Court of Appeals for the District of Columbia Circuit and for the Board to issue a new decision and order. We deny the motion as moot.

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

(c) Within 14 days after service by the Region, duplicate and mail, at its own expense, after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix" in both English and Spanish to all current and former employees employed by the Respondent at any time from February 23, 2012, until the date the notices are mailed.

(d) At the next scheduled reading of the seniority list at the Respondent's harvesting locations in Salinas Valley, Oxnard, and Huron, California, in California's Imperial Valley, and in Yuma, Arizona, read aloud, in English and Spanish, the attached notice to the unit employees. The notice shall be read by a responsible management official or by a Board agent in the presence of a responsible management official.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 32 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.

MEMBER MISCIMARRA, concurring.

This is a case in which the Union made numerous requests for information related to grievances alleging various contract violations, and the Respondent essentially disregarded the requests based on an assessment, for example, that it "didn't see any relevance" to them. The judge found that the Respondent's failures to respond adequately violated Section 8(a)(5). I agree. Where requested information is not presumptively relevant, I would apply *Hertz Corp. v. NLRB*, 105 F.3d 868 (3d Cir. 1997), in which the Third Circuit held that the employer's duty to furnish information that is not presumptively relevant is conditioned on the union's disclosure to the employer of facts sufficient to demonstrate relevance, unless the factual basis is readily apparent from the surrounding circumstances. Here, the factual basis for the Union's requests was provided, in part, in grievances filed by the Union, and the factual basis otherwise was readily apparent. In a bare, unsupported exception, the Respondent contends that some requests implicated third-party privacy concerns or encompassed confidential or privileged information. I do not find merit in that exception because, as the judge found, "[n]o evidence was offered in support of [Respondent's] confidentiality or privilege claims." Even assuming the Respondent had legitimate and substantial concerns about confidentiality, it failed to engage the Union in discussions aimed at accommodating the parties' respective interests. See, e.g., *Pennsylvania Power Co*., 301 NLRB 1104, 1105–1106 (1991).

Turning to the remedy, in the circumstances presented here, where the unit employees move from place to place harvesting various crops throughout the year, I agree with my colleagues' decision to adopt the judge's recommended order requiring the Respondent to mail the notice to employees in addition to the Board's traditional notice-posting remedy. I also agree with the decision to require the Respondent to read the notice aloud under the unusual circumstances presented here: a migratory work force and the fact that the Respondent has a practice of communicating with employees at predetermined gatherings for the reading of the seniority list. As a final matter, I concur with my colleagues' denial of the Union's motions for reconsideration and to recall this case from the court of appeals, for the reasons stated in the majority opinion.

Accordingly, for the reasons described above, I concur.

APPENDIX

NOTICE TO EMPLOYEES
POSTED 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 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 bargain collectively with Teamsters Local Union No. 890 (the Union) by failing and refusing to furnish it 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 fail and refuse to provide the Union with the information described in the Union's February 17 and March 12, 26, and 29, 2012 written requests.

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 furnish to the Union in a timely manner the information requested by the Union on February 17 and March 12, 26, and 29, 2012.

BUD ANTLE, INC.

The Board's decision can be found at www.nlrb.gov/case/32–CA–078166 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.