

**UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT**

PAC TELL GROUP, INC. d/b/a U.S. FIBERS,)
)
 Petitioner,)
)
 and)
)
 UNITED STEEL, PAPER AND FORESTRY,)
 RUBBER, MANUFACTURING, ENERGY,)
 ALLIED-INDUSTRIAL AND SERVICE)
 WORKERS INTERNATIONAL UNION,)
 LOCAL 7898)
)
 Respondent.)

**PETITION FOR REVIEW OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

Notice is hereby given, this 30th day of January 2015, that Petitioner Pac Tell Group, Inc. d/b/a U.S. Fibers, hereby petitions the United States Court of Appeals for the Fourth Circuit for review of the Decision and Order of Respondent National Labor Relations Board entered on January 29, 2015 (“Order”). A copy of the Order is attached hereto and is reported at 362 NLRB No. 4.

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 ATTORNEYS FOR PETITIONER

Dated this 30th day of January, 2015

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Pac Tell Group, Inc. d/b/a U.S. Fibers and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7898. Case 10-CA-139779

January 29, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

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 United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7898 (the Union), on October 29, 2014, the General Counsel issued the complaint on November 12, 2014, alleging that Pac Tell Group, Inc. d/b/a U.S. Fibers (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 10-RC-101166. (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 3, 2014, the General Counsel filed a Motion for Summary Judgment. On December 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.

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 Union's certification on the basis of its arguments, raised and rejected in the representation proceeding, that four individuals included in the unit are supervisors under Section 2(11) of the Act and that they engaged in conduct that was objectionable even if they are not supervisors.

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). 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 has been a corporation with an office and place of business in Trenton, South Carolina, and has been engaged in the manufacture and nonretail sale of recycled polyester fiber.

In conducting its operations described above, the Respondent annually purchased and received at its Trenton, South Carolina facility goods valued in excess of \$50,000 directly from points outside the State of South Carolina.

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 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 and 30, 2013, the Union was certified on September 23, 2014, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production, janitorial, warehousemen, shipping and maintenance employees, employed by Respondent at its Trenton, South Carolina facility, excluding all other employees, including office clerical employees, professional and confidential employees, guards and supervisors as defined in the Act.

The Union continues to be the collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

By letter dated October 7, 2014, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about October 7, 2014, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful failure and refusal to rec-

ognize 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 7, 2014, to recognize and bargain with the Union as the exclusive collective-bargaining representative of 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 recognize and 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).

ORDER

The National Labor Relations Board orders that the Respondent, Pac Tell Group, Inc. d/b/a U.S. Fibers, Trenton, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7898 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:

All full-time and regular part-time production, janitorial, warehousemen, shipping and maintenance employ-

ees, employed by Respondent at its Trenton, South Carolina facility, excluding all other employees, including office clerical employees, professional and confidential employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Trenton, South Carolina, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 10, 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 7, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 10 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.

Dated, Washington, D.C. January 29, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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."

U.S. FIBERS

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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 Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7898 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:

All full-time and regular part-time production, janitorial, warehousemen, shipping and maintenance employees, employed by us at our Trenton, South Carolina facility, excluding all other employees, including office clerical employees, professional and confidential employees, guards and supervisors as defined in the Act.

PAC TELL GROUP, INC. D/B/A U.S. FIBERS

The Board's decision can be found at www.nlr.gov/case/10-CA-139779 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.



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2015, I filed *Petition for Review of an Order of the National Labor Relations Board* and served a copy on the following individuals via email and by U.S. Mail.

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s/Jonathan P. Pearson

 Jonathan P. Pearson
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