Oberthur Technologies of America Corporation *and* Local 14M, District Council 9, Graphic Communications Conference/International Brotherhood of Teamsters. Case 04–CA–160992

July 27, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

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 on September 29, 2015,[1] by Local 14M, District Council 9, Graphic Communications Conference/International Brotherhood of Teamsters (the Union), the General Counsel issued the complaint on October 9, alleging that Oberthur Technologies of America Corporation (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain and to furnish relevant and necessary information following the Union's certification in Case 04–RC–086261.[2] (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(d). *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 October 29, the General Counsel filed a Motion for Summary Judgment. On October 30, 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 and to provide information, but contests the validity of the certification on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the administrative law judge improperly found two voters to be professional employees, sustained the Union's challenges to their determinative ballots, and found the certified bargaining unit appropriate.[3]

The Respondent argues here, as in the underlying proceeding, that the challenged voters were included in the stipulated unit. And, as in the earlier proceeding, it further contends, in the alternative, that if the two employees are excluded as professional employees, then the stipulated unit impermissibly included professional and nonprofessional employees, without affording the professional employees an opportunity to decide by majority vote whether to be included, and that another professional employee voted without challenge. In the underlying proceeding, the Board adopted the judge's ruling sustaining the challenges to those ballots and found the Respondent's alternative argument was untimely.

All representation issues raised by the Respondent were or could have been litigated in the underlying 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.[4] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this un-

[1] All dates are 2015 unless otherwise indicated.

[2] 362 NLRB No. 198 (2015).

[3] In the underlying proceeding, Case 04–RC–086261 was consolidated for hearing with Cases 04–CA–086325 and 04–CA–087233. The judge was sitting as a hearing officer with respect to the representation issues. See Sec. 102.6 of the Board's Rules and Regulations; see also NLRB Casehandling Manual (Part 2) Representation Proceedings, Sec. 11424.1.

[4] In its answer to the instant complaint, the Respondent asserts the following affirmative defense:

> In addition, since the initial unfair labor practice complaint was initiated by the Board's former General Counsel, Lafe Solomon, in violation of the Federal Vacancies Reform Act, Solomon had no legal authority to issue such complaint. As a result, the NLRB incorrectly affirmed the allegations contained in that invalidly issued complaint.

The Respondent's answer does not elaborate further on this affirmative defense, and the Respondent does not address it in its response to the Notice to Show Cause. Thus, the Respondent does not clearly identify the complaint it alleges to be defective. We note that the complaint in this proceeding was issued under the authority of General Counsel Richard F. Griffin, Jr., on October 9, 2015. To the extent that the Respondent is referring to the consolidated complaint in Cases 04–CA–086325 and 04–CA–087233, we reject the affirmative defense as an improper collateral attack on the Board's unfair labor practice decision in those cases, and we reject as untimely the Respondent's assertion that Acting General Counsel Solomon lacked authority in those proceedings under the Federal Vacancies Reform Act, 5 U.S.C. §§ 3345 et seq. (FVRA). See *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) (voidable judgment based upon an erroneous view of the law not open to collateral attack); *SW General v. NLRB*, 796 F.3d 67, 82–83 (D.C. Cir. 2015) (FVRA objection addressed only because timely raised); *St. Francis Regional Medical Center*, 363 NLRB No. 69, slip op. at 2 (2015) (FVRA argument rejected as "untimely effort to file additional exceptions"). Finally, we find that the Respondent's FVRA argument has no bearing on the underlying representation proceeding, in which the Regional Director was acting pursuant to a 1961 delegation of authority from the Board. 26 Fed. Reg. 3911 (May 4, 1961); see, e.g., *Durham School Services, LP*, 361 NLRB No. 66, slip op. at 1 (2014).

fair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent admits, that on about September 24, by letter, the Union requested the following information:

> [A]ll names and addresses for all full-time employees currently working in the Bargaining Unit to include classifications and hourly rates. Any Company policies related to employment at Oberthur to include: job descriptions, hours of work, overtime, holidays, vacation, attendance, discipline, benefit plans, leave of absence and any other workplace policy that is a mandatory subject of bargaining.

It is well established that the foregoing type of 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. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of this 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.

Accordingly, we grant the Motion for Summary Judgment.[5]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation with facilities in Chantilly, Virginia, Exton, Pennsylvania (the Exton facility), and Los Angeles, California, is engaged in the manufacture of plastic credit and identification cards.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent sold and shipped goods valued in excess of $50,000 directly to points outside the Commonwealths of Virginia and Pennsylvania and the State of California.

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

On August 27, the Board certified the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit (the unit):

> Included: All full-time employees employed by the Employer in litho printing, finishing card and sheet, ink, facilities janitorial, card auditing plastics, pre-press composition, QC [quality control], smart card embedding, screen making, screen printing, production expeditor, quality systems analyst, warehouse plastic, customer service manufacturing, and maintenance departments at its facility located at 523 James Hance Court, Exton, Pennsylvania.
>
> Excluded: All other employees, temporary and seasonal employees, confidential employees, 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 September 1, the Union requested the Respondent to recognize it as the exclusive collective-bargaining representative of the unit and bargain with it concerning the wages, hours, and other terms and conditions of employment of the unit. About September 22, the Respondent notified the Union that the Respondent was testing the certification that the Board issued on August 27, and that the Respondent would not bargain with the Union. About September 24, by letter, 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. Since about September 24, and continuing to date, the Respondent has failed to provide the requested information. We find that the Respondent's failure and refusal to bargain and provide the requested information constitutes an unlawful refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing since September 22 to recognize and bargain with the Union as the exclusive collective-

[5] Member Miscimarra dissented with respect to the Board's disposition of the representation case. He stated, among other things, that it would have best effectuated the purposes of the Act "to set aside the election, vacate the stipulation, and remand [the] proceeding to the Regional Director to resume processing of the petition by either assisting the parties to reach agreement on a new stipulation or, in the absence of a new stipulation, conducting a hearing on the unit issue." *Oberthur Technologies of America Corp.*, 362 NLRB No. 198, slip op. at 6–7 (internal citation and quotation omitted). While Member Miscimarra remains of that view, he agrees that the Respondent has not presented any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass Co. v. NLRB*, supra. In light of this, Member Miscimarra agrees with the decision to grant the motion for summary judgment.

bargaining representative of the employees in the appropriate unit and by failing and refusing since September 24 to furnish the Union with requested information, 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 shall also order the Respondent to furnish the Union the information it requested.

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, Oberthur Technologies of America Corporation, Exton, Pennsylvania its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 14M, District Council 9, Graphic Communications Conference/International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information that is relevant and necessary to its performance of its functions 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:

> Included: All full-time employees employed by the Employer in litho printing, finishing card and sheet, ink, facilities janitorial, card auditing plastics, pre-press composition, QC [quality control], smart card embedding, screen making, screen printing, production expeditor, quality systems analyst, warehouse plastic, customer service manufacturing, and maintenance departments at its facility located at 523 James Hance Court, Exton, Pennsylvania.
>
> Excluded: All other employees, temporary and seasonal employees, confidential employees, guards and supervisors as defined in the Act.

(b) Furnish to the Union in a timely manner the information requested by it on September 24, 2015.

(c) Within 14 days after service by the Region, post at its facility in Exton, Pennsylvania, 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 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 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 September 22, 2015.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 19 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. July 27, 2016

Mark Gaston Pearce, Chairman

[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."

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 Local 14M, District Council 9, Graphic Communications Conference/International Brotherhood of Teamsters as the exclusive collective-bargaining representative of our 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 exclusive 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 and put in in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate unit:

Included: All full-time employees employed by the Employer in litho printing, finishing card and sheet, ink, facilities janitorial, card auditing plastics, pre-press composition, QC [quality control], smart card embedding, screen making, screen printing, production expeditor, quality systems analyst, warehouse plastic, customer service manufacturing, and maintenance departments at its facility located at 523 James Hance Court, Exton, Pennsylvania.

Excluded: All other employees, temporary and seasonal employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL furnish to the Union in a timely manner the information it requested on September 24, 2015.

OBERTHUR TECHNOLOGIES OF AMERICA CORPORATION

The Board's decision can be found at www.nlrb.gov/case/04-CA-160992 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.