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National Hot Rod Association (NHRA) and International Alliance of Theatrical Stage Employees, AFL-CIO. Case 29–CA–254760

June 23, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks summary judgment in this case on the grounds that there are no genuine issues of material fact as to the allegations in the complaint, and that the Board should find, as a matter of law, that National Hot Rod Association (NHRA) (the Respondent) violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish information necessary for and relevant to the Union’s performance of its duties as the exclusive collective-bargaining representative of a unit of the Respondent’s employees.

Pursuant to a charge filed on January 17, 2020,¹ by International Alliance of Theatrical Stage Employees, AFL-CIO (the Union), the General Counsel issued a complaint on March 13, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information. The Respondent filed an answer admitting in part and denying in part the allegations of the complaint and asserting affirmative defenses.

On April 17, the Board issued a Decision and Order granting the General Counsel’s Motion for Summary Judgment in a related refusal-to-bargain case in which the Respondent contested the Union’s certification in Case 22–RC–186622 as the bargaining representative of the employee unit also at issue in this proceeding. *National Hot Rod Association (NHRA)*, 369 NLRB No. 60 (2020) (*National Hot Rod Association I*). In that case, the Board found that since September 13, 2019, the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union. *Id.*, slip op. at 2.²

On April 3, the General Counsel filed a Motion for Summary Judgment on Test of Certification 8(a)(5), Request to Consolidate and Request for Issuance of Decision

and Order.³ On April 20, 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 the General Counsel filed a reply to the Respondent’s response.

Ruling on Motion for Summary Judgment

At paragraph 8(a) of the complaint, the General Counsel alleges that about August 23, 2019, the Union requested in writing the following information from the Respondent:

- i. A list of current employees by name and their respective date(s) of hire, rate(s) of pay, job classification(s), last address(es), phone number(s), last date of work, and any record(s) of discipline;
- ii. A copy of all current company personnel policies, practices or procedures applicable to the bargaining unit;
- iii. A statement and description of all company personnel policies, practices or procedures other than those mentioned in item number (2) above;
- iv. A copy of all company fringe benefit plans (including the plan document and summary plan description—e.g., pension, profit-sharing, severance, stock incentive, any other) which relate to the employees;
- v. Copies of all disciplinary notices, warnings or records of disciplinary actions (if not otherwise provided in response to any item(s) above);
- vi. A statement or description of all wage plans, wage tables, wage bands, wage ranges, and similar guidelines applicable to bargaining unit employees if not otherwise provided under number any enumerated item above.

The complaint also alleges that the information described above is necessary for and relevant to the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit (par. 8(b)), and that since about September 13, 2019, the Respondent has failed and refused to furnish the Union with the requested information (par. 8(c)). The complaint further alleges that by the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act, and that this unfair labor practice affects commerce within the meaning of Sec. 2(6) and (7) of the Act (pars. 9 and 10, respectively).

¹ All subsequent dates are in 2020, unless otherwise indicated.

² On May 13, the Respondent filed a Petition for Review of the Board’s April 17 Order with the United States Court of Appeals for the District of Columbia Circuit, and on May 29, the General Counsel filed a cross-application for enforcement of that Order.

³ The General Counsel, having filed the instant motion prior to the issuance of *National Hot Rod Association I*, requested in his motion that the Board consolidate the instant proceeding with the related refusal-to-bargain proceeding in *National Hot Rod Association I*. However, as that case was already in the issuance process when the Board learned of the General Counsel’s request to consolidate, the request is denied.

In its answer, the Respondent denies complaint paragraphs 8(b) and (c)—that the requested information was relevant and necessary to the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit, and that the Respondent has failed and refused to furnish the information to the Union—but does so based on its contention that it has no duty to provide the Union with the requested information because the certification in the underlying representation proceeding was improper. Thus, the Respondent does not assert that the requested information is not relevant and necessary to the Union, and it does not deny that it failed to provide the requested information.⁴ Rather, the Respondent continues to contest the validity of the certification based on the issues raised and decided by the Board in the underlying representation proceeding.⁵ Further, given the Respondent’s denial of complaint paragraphs 8(b) and (c), it also denies paragraphs 9 and 10.

Regarding the Respondent’s arguments contesting the Union’s certification, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not suggest that there is 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).⁶

We further find that there are no factual issues warranting a hearing with respect to the Union’s information request. It is well established that the type of information the Union requested, 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., *CVS Albany, LLC d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), *enfd. mem.* 709 F. App’x 10 (D.C. Cir. 2017) (*per curiam*), and *Metro Health Foundations, Inc.*, 338 NLRB 802, 803 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of this information.

⁴ We note that the Respondent, in its response to the Notice to Show Cause, acknowledges that the procedural history of this proceeding is accurately set forth in pars. 1 through 18 of the General Counsel’s Motion for Summary Judgment. Par. 12 of the General Counsel’s motion states that “On or about September 13, 2019, Respondent, verbally, by its attorney Daniel Murphy, refused to furnish the Union with the requested information.”

⁵ Similarly, the Respondent admits complaint par. 6, which alleges that the Board certified the Union as the exclusive bargaining representative of the unit on July 29, 2019, but contends that the certification was improper; and denies complaint par. 7, which alleges that since July 29,

Based on the foregoing, we find that there are no material issues of fact regarding the complaint’s allegations that warrant a hearing. Accordingly, we grant the Motion for Summary Judgment.⁷

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a California corporation with an office and place of business located at 2035 Financial Way, Glendora, California, the only facility involved here, and is engaged in the business of sanctioning drag racing and producing the Mello Yello Drag Racing Series for telecast.

During the 12-month period preceding issuance of the complaint, which period is representative of its operations in general, the Respondent derived gross revenues in excess of \$500,000 and performed services valued in excess of \$50,000 for entities in States other than 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*

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All broadcast technicians employed by the National Hot Rod Association including technical directors (TD Technical Director), associate directors (AD Associate Director, AD Satellite Feed), assistant producers (PRD Pit Producer, PRD Video Board), camera operators (HC Hard Camera, HH Handheld Camera), audio technicians (A1 Audio Lead), audio assists/assistants (A2 Audio Assist, SUB Mixer), replay producers, videotape operators, digital recording device operators (EVS Replay Operator), video technicians (V1 Senior Video, V2 Video Operator), video technician assistants (Video Assist), graphics operators (VIZ Graphics Operator), graphics

2019, the Union has been the exclusive collective-bargaining representative of the unit, on the basis that the certification was improper.

⁶ In its response to the Notice to Show Cause, the Respondent argues, *inter alia*, that the Board should reconsider its mail ballot election standards and that the facts underlying this case are an appropriate vehicle for that reconsideration. Having reviewed the facts and arguments presented by the Respondent in its response, we find no basis for disturbing our Decision and Certification of Representative in the underlying representation case (368 NLRB No. 26 (2019)).

⁷ The Respondent’s request that the complaint be dismissed is therefore denied.

coordinators (GPSC Graphics Coordinator), bug operators (Bug Operator), runners (RNR Runner), and utility technicians (UTE Utility) performing work in connection with telecasting of live or recorded racing events at remote locations; but excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

On July 29, 2019, the Board certified the Union as the exclusive collective-bargaining representative of the unit. At all times since July 29, 2019, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About August 23, 2019, the Union requested in writing that the Respondent furnish information to the Union that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about September 13, 2019, the Respondent has failed and refused to furnish the Union with the requested information. We find that the Respondent's conduct constitutes an unlawful refusal to bargain collectively with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since September 13, 2019, 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 the Respondent's unit employees, 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 engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1)

of the Act by failing and refusing to furnish the Union with information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees, we shall order the Respondent to furnish the Union with the information requested on August 23, 2019.⁸

ORDER

The National Labor Relations Board orders that the Respondent, National Hot Rod Association (NHRA), Glendora, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Alliance of Theatrical Stage Employees, AFL-CIO (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 exclusive collective-bargaining representative of the Respondent's unit employees.

(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) Furnish to the Union in a timely manner the information requested by the Union on August 23, 2019.

(b) Post at its facility in Glendora, California, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 29, 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

⁸ The General Counsel has requested that the initial certification year be extended to begin on the date that the Respondent commences to bargain in good faith with the Union. Because this same remedy was requested and granted in our previous decision, it is unnecessary to order it here again. *National Hot Rod Association I*, 369 NLRB No. 60, slip op. at 2 (2020).

In addition to the customary notice posting remedies, the General Counsel requests the additional remedy that the Respondent mail a copy of the notice to each unit employee. We deny this request because the General Counsel has not shown that this additional measure is needed to remedy the effects of the Respondent's unfair labor practices. See *Environmental Contractors, Inc.*, 366 NLRB No. 41, slip op. at 4 fn. 6 (2018); *On Target Security, Inc.*, 362 NLRB No. 31, slip op. at 2 (2015) (not reported in Board volumes); *First Legal Support Services, LLC*, 342 NLRB 350, 350 fn. 6 (2004).

⁹ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

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 13, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 29 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. June 23, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, 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 refuse to bargain collectively with International Alliance of Theatrical Stage Employees, AFL-CIO (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 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 furnish to the Union in a timely manner the information requested by the Union on August 23, 2019.

NATIONAL HOT ROD ASSN.

The Board's decision can be found at www.nlr.gov/case/29-CA-254760 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.

