Krafcor Corporation *and* Teamsters Local Union No. 245, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 17-CA-10871

June 22, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

Upon a charge filed on March 4, 1982, by Teamsters Local Union No. 245, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Krafcor Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued a complaint on March 16, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on February 5, 1982, following a Board election in Case 17-RC-9276, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about March 1, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 24, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 8, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on April 13, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent admits its refusal to bargain with the Union. Respondent denies, however, that it thereby violated Section 8(a)(5) and (1) of the Act, arguing that the Board improperly certified the Union. Respondent asserts that the Union engaged in conduct which improperly influenced the outcome of the election, and requests that the complaint be dismissed in its entirety and that Respondent be permitted to recover its attorney's fees and other costs under the provisions of the Equal Access Justice Act of 1980, 5 U.S.C. Sections 500 and 504. The General Counsel contends that Respondent is attempting to relitigate the issues it raised in the related representation proceeding. We agree with the General Counsel.

Review of the record herein, including the record in Case 17-RC-9276, shows that pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director on July 27, 1981, an election was conducted August 13, 1981. The tally was 37 ballots for, and 33 against, the Union, with no challenged ballots. Thereafter, Respondent filed timely objections to the conduct of the election alleging that (1) the Union made misrepresentations of material facts, (2) the Union by and through its agents and representatives created an atmosphere of fear by threats of physical violence, reprisals, restraint, and coercion of employees which prevented the employees from exercising a free and untrammeled choice in the election, and (3) the secrecy of at least four ballots was not maintained, as it was possible during the counting of the ballots to determine the identity of these voters.

On October 1, 1981, the Regional Director issued his Report on Objections recommending that Respondent's objections be overruled and that a Certification of Representative issue in favor of the Union. On October 23, 1981, Respondent filed exceptions to the Regional Director's report contending that the Regional Director should have sustained its Objections 1, 2, and 3, and issued an order directing a new election. On February 5, 1982, the Board issued its Decision and Certifica-

[1] Official notice is taken of the record in the representation proceeding, Case 17-RC-9276, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

tion of Representative[2] adopting the Regional Director's findings and recommendations and certifying the Union as the exclusive representative of Respondent's employees in the appropriate unit. It thus appears that Respondent is attempting to raise herein issues which were raised and determined in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.[4]

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a Missouri corporation engaged in the manufacture and distribution of corrugated paper containers at its facility located at 2741 South Scenic, Springfield, Missouri. Respondent, in the course and conduct of its business, annually purchases goods and services valued in excess of $50,000 directly from sources located outside the State of Missouri.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters Local Union No. 245, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

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

> All full-time and regular part-time hourly paid production, maintenance and warehouse employees, including over-the-road truck drivers, but excluding office clerical employees, managerial persons, sales persons, quality control employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

2. The certification

On August 13, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 17, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on February 5, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about February 19, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about March 1, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since March 1, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appro-

[2] Not reported in volumes of Board Decisions.

[3] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[4] Respondent also filed a motion to (1) rescind the certification, (2) reconsider and order a hearing in the representation case on disputed issues of fact, and (3) postpone proceedings in Case 17-CA-10871. Inasmuch as we have granted the General Counsel's Motion for Summary Judgment, we hereby deny Respondent's motion described above. We also deny its request for attorney's fees.

priate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Krafcor Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Local Union No. 245, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time hourly paid production, maintenance and warehouse employees, including over-the-road truckdrivers, but excluding office clerical employees, managerial persons, sales persons, quality control employees, professional employees, guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 5, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 1, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Krafcor Corporation, Springfield, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Teamsters Local Union No. 245, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time hourly paid production, maintenance and warehouse employees, including over-the-road truck drivers, but excluding office clerical employees, managerial persons, sales persons, quality control employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility at 2741 South Scenic, Springfield, Missouri, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event that 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."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Teamsters Local Union No. 245, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time hourly paid production, maintenance and warehouse employees, including over-the-road truck drivers, but excluding office clerical employees, managerial persons, sales persons, quality control employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

KRAFCOR CORPORATION