

Confort and Company, Inc. and Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO. Case 29-CA-10116

25 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Upon a charge filed on 13 December 1982 by Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, herein called the Union, and duly served upon Confort and Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on 17 January 1983, 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 and 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 30 September 1982 following a Board election in Case 29-RC-5530,¹ the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about 26 October 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, and commencing on or about 26 October 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain with the Union by refusing to provide information requested by the Union. Thereafter, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On 21 March 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on 25 March 1983 the Board issued an

¹ Official notice is taken of the record in the representation proceeding, Case 29-RC-5530, 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*, 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.

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 statement in opposition to the Motion for Summary Judgment on 22 April 1983.

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 its opposition to the Motion for Summary Judgment, Respondent denies the allegations of paragraphs 10 and 11 of the complaint that it was requested, and that it subsequently refused, to bargain with the Union.² It also challenges the Union's certification, reiterating its contentions in the underlying representation proceeding that the Regional Director conducted the election in an inappropriate unit and improperly overruled its Objection 1.

Review of the record herein, including the record in Case 29-RC-5530, reveals that on 4 September 1981 the Union filed a representation petition under Section 9 of the National Labor Relations Act, as amended. On 15 January 1982, after a hearing, the Regional Director issued his Decision and Direction of Election in which he found that, under the criteria set forth in *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387 (1966), a unit comprised of all of Respondent's lithographic production employees, including all offset press employees, web press employees, letterpress employees, multilith employees, and platemaking and stripping employees, could be severed from the existing production and maintenance unit, if these employees so desired. Accordingly, he scheduled an election in the lithographic unit for 11 February

² In this regard, the General Counsel has submitted copies of letters dated 14 October and 2 December 1982 in which the Union referred to "our forthcoming collective-bargaining negotiations," requested certain information to help it prepare for the bargaining, and expressed a desire for a long and harmonious relationship. In addition, the 2 December letter requested that Respondent advise the Union of convenient bargaining dates. Respondent does not dispute the validity of the letters or that it received them. It contends merely that the letters do not request it to bargain. We find that by its letters of 14 October and 2 December 1982, the Union did request bargaining with Respondent. Further, Respondent has not at any material time herein expressed a willingness to bargain with the Union. Finally, it is clear from Respondent's opposition to the Motion for Summary Judgment that it contends that it is under no legal obligation to bargain with the Union on the ground that the certification of the Union is invalid. Accordingly, we find that Respondent's denials of the complaint allegations that the Union requested bargaining and that Respondent refused to bargain raise no substantial or material issue of fact warranting a hearing.

1982. Respondent and the Intervenor³ filed with the Board timely requests for review of the Regional Director's decision in which they contended that the *Mallinckrodt* criteria did not permit severance of the lithographic employees and that only an all-inclusive production and maintenance unit was appropriate. They also requested a stay of the election. On 11 February 1982 the Board granted Respondent's and the Intervenor's requests for review but declined to stay the election.⁴ The election was conducted as scheduled on 11 February 1982 and the ballots were impounded, pending the Board's decision on the Employer's and the Intervenor's requests for review.

On 18 August 1982 the Board issued a Decision on Review and Direction⁵ in which it found, relying on *Allen, Lane & Scott*, 137 NLRB 223, 226 (1962), that the lithographic production unit sought by the Union could, if the unit employees so desired, constitute a separate appropriate unit. The Board, therefore, directed that the impounded ballots be opened and counted and a tally of ballots prepared and served upon the parties. On 27 August 1982 the impounded ballots were opened and counted and the tally was 25 votes for the Union, 20 for the Intervenor, with 3 challenged ballots, a number insufficient to affect the results of the election. Thereafter, Respondent filed timely objections to the election, alleging, *inter alia*, that the Union, through its agents and representatives, threatened employees with reprisals if they voted in the election or did not support or vote for the Union (Objection 1).

On 30 September 1982 the Regional Director issued a Supplemental Decision and Certification of Representative in which he overruled the Employer's objections in their entirety and certified the Union as the bargaining representative of the employees in the lithographic unit. Thereafter, Respondent filed a request for review of the Regional Director's Supplemental Decision and Certification of Representative. The request for review was denied by the Board on 24 November 1982.⁶ It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding. It is well settled that in the absence of newly dis-

covered 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.⁷

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding. Respondent, however, proffers what it claims to be "newly discovered" evidence which assertedly bolsters its earlier contention in support of its Objection 1 that employee Ianuzzi was an agent of the Union. It also contends that the Board's reliance, in its 18 August 1982 denial of Respondent's request for review, upon a different case than that relied upon by the Regional Director, constitutes a "special circumstance" which requires the Board to reexamine its decision in the representation proceeding. In this regard, Respondent asserts that the instant case is distinguishable from *Allen, Lane & Scott, supra*, because here the letterpress operator is included in the lithographic unit while in *Allen, Lane & Scott*, the letterpressmen were excluded. In addition, Respondent contends that it should have an opportunity to present evidence with respect to the "state of the art" of lithography, an issue discussed in *Allen, Lane & Scott* but not raised in *Mallinckrodt Chemical Works, supra*.

We find no merit in Respondent's contentions. The evidence proffered by Respondent with regard to the union agent status of employee Ianuzzi merely adds more detail to what was already known about Ianuzzi's relationship with the Union. Thus, at the time of our underlying decision, the record indicated that Ianuzzi was a member of the Union's in-house organizing committee. Respondent now proffers admissions by Ianuzzi at a subsequent unfair labor practice hearing that employees were told that if they had questions regarding the Union they should come to Ianuzzi. Thus, the proffered evidence adds nothing of material substance to the facts already contained in the record of the representation proceeding. Further, we reject Respondent's contention that the presence of a letterpressman in the instant unit or that evidence concerning the "state of the art" in lithography would affect our determination that the unit is appropriate under *Allen Lane & Scott*. We, therefore, find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

In its answer to the complaint and statement in opposition to the Motion for Summary Judgment,

³ The Confort Employees Association had intervened on the basis of a contractual interest.

⁴ The Petitioner filed a request for review of the Regional Director's refusal to accept evidence pertaining to alleged unlawful assistance by the Employer to the Intervenor during their bargaining history. The Board, Member Zimmerman dissenting, denied Petitioner's request for review on 11 February 1982.

⁵ Not reported in volumes of Board Decisions.

⁶ Member Hunter dissented on the telegraphic order denying Respondent's request for review, indicating that he would have granted review with respect to Objection 1.

⁷ See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

Respondent denies that the Union requested information relevant and necessary for the purpose of collective bargaining and, therefore, that it has not refused to furnish such information. As noted above, however, the Union sent Respondent letters, dated 14 October and 2 December 1982, in which it requested a list of unit employees, wage rates, benefits, and related information.⁸ Based on these letters, we find that the Union did request that Respondent furnish it with information relevant and necessary for the purpose of collective bargaining and that Respondent has refused to provide such information. It is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished upon request.⁹ Furthermore, Respondent has not attempted to rebut the relevance of the requested information. Accordingly, we find no material issues of fact exist with regard to Respondent's refusal to furnish information sought by the Union in its letters of 14 October and 2 December 1982. Therefore, we grant the motion for summary judgment in all respects.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Confort and Company, Inc., has maintained its principal office and place of business at 47-47 Austell Place, Long Island City, New York, at all times material herein and is engaged in the printing of commercial items such as booklets, manuals, forms, and related products. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its operations, sold and shipped from its Long Island City, New York, facility, books, manuals, forms, and other products, goods, and materials valued in excess of \$50,000, directly to points outside the State of New York.

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.

⁸ More specifically, the Union requested the name, classification, and wage rate of each employee; the wage rates applicable to each classification; the name of each employee who had received a merit or incentive increase within the last year, the amount of such increase, and the standards utilized in the determination of such increases; the hours of the regular workday and the regular workweek; overtime rates; a description of any fringe benefits to which any employee within the collective-bargaining unit is entitled including pension, welfare, or related benefits, holiday and vacation benefits, and sick benefits.

⁹ *Verona Dyestuff Division Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977).

II. THE LABOR ORGANIZATION INVOLVED

Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, 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 offset press employees, web press employees, letterpress employees, multilith employees, and platemaking and stripping employees of Respondent, employed at its Long Island City, New York, plant, exclusive of all other employees, office clerical employees, professional employees, guards, and all supervisors as defined in Section 2(11) of the Act.

2. The certification

On 11 February 1982 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 29, 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 30 September 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 14 October and 2 December 1982, the Union 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 26 October 1982,¹⁰ 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.

¹⁰ Although the Union's first letter was dated 14 October 1982, the complaint alleges that Respondent commenced its refusals to bargain on or about 26 October 1982. As there is no evidence that Respondent engaged in unlawful acts prior to 26 October, we have dated the commencement of Respondent's refusal to bargain in accordance with the date alleged in the complaint.

Accordingly, we find that Respondent has, since on or about 26 October 1982, and at all times thereafter, refused to bargain collectively with all employees in said 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.

C. The Request for Information and Respondent's Refusal to Furnish it

On or about 14 October and 2 December 1982 the Union requested Respondent to provide it with a list of the unit employees, wage rates, benefits, and related information. Commencing on or about 26 October 1982, Respondent has refused, and continues to refuse, to provide the Union with the requested information.

Accordingly, we find that Respondent has, since on or about 26 October 1982, and at all times thereafter, refused to furnish the Union with information relating to the employment conditions and wages of the employees in the appropriate 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. We also shall order that Respondent, upon request, furnish the Union with the information it previously requested.

In order to ensure 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 ap-

propriate unit. See *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Co.*, 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. Confort and Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All offset press employees, web press employees, letterpress employees, multilith employees, and platemaking and stripping employees of Respondent, employed at its Long Island City, New York, plant, exclusive of all other employees, office clerical employees, professional employees, guards, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 30 September 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 26 October 1982 and on or about 2 December 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 refusing on or about 26 October 1982 and on or about 2 December 1982, and all times thereafter, to furnish the Union with a list of the unit employees, wage rates, benefits, and related information as requested by the Union in its letters of 14 October and 2 December 1982, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. 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.

8. 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, Confort and Company, Inc., Long Island City, New York, 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 Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All offset press employees, web press employees, letterpress employees, multilith employees, and platemaking and stripping employees of Respondent, employed at its Long Island City, New York, plant, exclusive of all other employees, office clerical employees, professional employees, guards, and all supervisors as defined in Section 2(11) of the Act.

(b) Refusing to bargain collectively with the above-named labor organization by refusing to furnish said labor organization with the information requested by it in the Union's letters of 14 October and 2 December 1982, including a list of the unit employees, wage rates, benefits, and related information.

(c) 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) Upon request, furnish the above-named labor organization with the information requested in its letters of 14 October and 2 December 1982, including a list of the unit employees, wage rates, benefits, and related information.

(c) Post at its Long Island City, New York, offices copies of the attached notice marked "Appen-

dix."¹¹ Copies of said notice, on forms provided by the Regional Director for Region 29, 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.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

MEMBER HUNTER, dissenting:

As noted above, in the underlying representation case I would have granted Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative with respect to the Regional Director's overruling therein of Respondent's Objection 1. Accordingly, I find that the Union was certified improperly and therefore I dissent from my colleagues' finding that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union.

¹¹ 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 Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to bargain collectively with the above-named labor organization by refusing to furnish it with the information it requested in its letters of 14 October and 2 December 1982, including a list of unit employees, wage rates, benefits, and related information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employ-

ees 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 offset press employees, web press employees, letterpress employees, multilith employees, and platemaking and stripping employees of Respondent, employed at its

Long Island City, New York, plant, exclusive of all other employees, office clerical employees, professional employees, guards, and all supervisors as defined in Section 2(11) of the Act.

WE WILL, upon request, furnish the above-named labor organization with the information requested by it in its letters of 14 October and 2 December 1982, including a list of unit employees, wage rates, benefits, and related information.

CONFORT AND COMPANY, INC.