

Safeway Stores, Incorporated and Retail Clerks Union, Local 73 affiliated with United Food and Commercial Workers International Union, AFL-CIO-CLC. Cases 16-CA-9565 and 16-CA-9637

23 November 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

Upon charges duly filed by Retail Clerks Union, Local 73 affiliated with United Food and Commercial Workers International Union, AFL-CIO-CLC (the Union) against Safeway Stores, Incorporated (the Respondent) the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 16, on 4 March 1981, issued and served on the parties an order consolidating cases and consolidated complaint and notice of hearing.

The complaint alleges that the Respondent refused to provide information to the Union which is necessary and relevant for the performance of its function as the collective-bargaining representative of the Respondent's employees, in violation of Section 8(a)(5) and (1) of the Act.

The Respondent, in its answer, denies the allegation contained in the consolidated complaint. Thereafter the parties entered into a stipulation and moved to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and the issuance of a decision and order. The parties waived a hearing before an administrative law judge and the issuance of an administrative law judge's decision. The parties also agreed that the charges, consolidated complaint and notice of hearing, and answer constitute the entire record in this proceeding.

By order dated 28 January 1982, the Board approved the stipulation and transferred the proceeding to the Board. Thereafter, the General Counsel and the Respondent filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the stipulation, the briefs, and the entire record in this proceeding and hereby makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Safeway Stores, Incorporated is a Maryland corporation with its principal office located in Oakland, California. It also has a lawful permit to do business within the State of Oklahoma, where it is

engaged in the operation of a chain of retail food stores. The Respondent's principal place of business in Oklahoma is located at Southeast Plaza, Suite 121, 4528 South Sheridan, Tulsa, Oklahoma. During the past 12 months, in the operation of its business in Oklahoma, the Respondent has purchased and received food products valued in excess of \$50,000 directly from suppliers located outside the State of Oklahoma. During that same period, the Respondent in the course of operating its business, has received gross revenues in excess of \$500,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material, 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

Retail Clerks Union, Local 73 affiliated with United Food and Commercial Workers International Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Case 16-CA-9565

This case involves the failure of the Respondent to furnish the Union with information concerning the demotion and transfer of unit employee James Hart.

The parties have stipulated that on 29 September 1980¹ the Union filed a grievance regarding the demotion and transfer of Hart. Included in the grievance was a request for the "specific reason and/or reasons for the demotion." The Respondent replied by letter dated 9 October stating that the reason was "unsatisfactory job performance." On 13 October the Union requested the specific meaning, with examples, of "unsatisfactory job performance." The Respondent replied on 7 November that after repeated oral counseling Hart failed to follow through as instructed. The Union, on 10 November, reiterated its request for examples and requested the dates and specific subject matter of the counseling. The Respondent responded that Hart's performance would speak for itself and that it had discussed "produce operations" with him and gave the three latest dates of the counseling. Thereafter the Union filed the charge in this case.

The General Counsel contends that the duty to bargain in good faith includes the duty to provide information to the Union which is relevant and

¹ All dates are in 1980.

necessary to administer the collective-bargaining agreement, which includes the processing of grievances. The Respondent does not quarrel with this. It does, however, submit that in this case to provide the Union with the information requested would permit the Union to obtain a "subjective analysis" from Hart's supervisors of the manner in which they felt his job performance was unsatisfactory. The Respondent also contends that this request is nothing more than a form of prearbitration discovery.

Analysis and Findings

We find, based on the record as a whole, that the Respondent violated Section 8(a)(5) and (1) when it failed to provide the Union with information relevant and necessary to the processing of the grievance.

It has long been settled that an employer who refuses to provide relevant and necessary information that allows a union to decide whether to process a grievance violates Section 8(a)(5).² It is beyond question that the information sought here is relevant and necessary to the processing of the grievance. Equally as clear is that the Respondent's replies fall far short of providing all the relevant information. The Respondent's arguments are without merit. The information requested herein goes to the very basis of the grievance, thus it is not an attempt at broad discovery. The Union merely wants to know, with specificity, what Hart did or failed to do that resulted in his demotion and transfer. The Respondent's refusal to provide this basic information violates Section 8(a)(5) and (1) of the Act.

B. Case 16-CA-9637

This case also involves a request for information. The collective-bargaining agreement requires that every 2 weeks the Respondent provide the Union with a list of all new hires in the Tulsa area. The record establishes that the Union engaged in a lawful work stoppage between 24 November and 7 December. During that period the Respondent hired temporary replacements. The replacements were informed that they would be employed only for the duration of the work stoppage. On 26 December the Union requested a list of all employees hired from 16 November through 29 November. The Respondent did not respond to this request.

The General Counsel contends that in accordance with the collective-bargaining agreement the Respondent had a duty to furnish the Union with a list of the employees hired between 16 November through 24 November, the day the work stoppage

began. Additionally, the General Counsel argues that even after the work stoppage began it was necessary to provide a list of the newly hired employees in order that the Union could ensure that the Respondent was complying with the terms of the collective-bargaining agreement. The General Counsel also argues that the Respondent's unexplained failure to respond to the Union's request violates Section 8(a)(5) and (1).

The Respondent contends that the collective-bargaining agreement is inapplicable in that it only pertains to permanent, not temporary, employees. The Respondent submits that the only reason that the Union wants a list of the temporary strike replacements is to harass them for having crossed the picket line.

Analysis and Findings

For the reasons set forth below we find that the Respondent did not violate Section 8(a)(5) and (1) when it failed to provide a list of the temporary strike replacements to the Union.

At the outset we observe that the request was not made until 26 December. The work stoppage was discontinued and all the temporary replacements discharged on 7 December. Hence the request was made well after the last temporary replacement was discharged. Additionally, the collective-bargaining agreement states that the Union is the recognized bargaining agent for all *regular* employees. Accordingly, the agreement does not apply to temporary employees. The fact that the Respondent made it clear to all strike replacements that they would only be employed for the duration of the work stoppage distinguishes this case from those cited by the General Counsel. In those cases the strike replacements were permanent and thus became part of the bargaining unit. We also note that during the period before the work stoppage (16-24 November) the General Counsel has not alleged that any permanent employees were hired. Indeed, a careful reading of the record indicates that the only information requested relates to the temporary replacements. It follows that if no new permanent employees were hired during that period no list is required by the collective-bargaining agreement.

As we have found that the Respondent was under no duty to provide the information requested, in that it was not necessary or relevant to the Union in its capacity as bargaining representative, we also find that the Respondent did not violate Section 8(a)(5) by failing to respond to the Union's request in a timely fashion.

Accordingly, the complaint allegation relating to this charge is dismissed in its entirety.

² *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967).

IV. REMEDY

Having found that the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and that it provide the Union with the specific reasons why it demoted and transferred employee Hart and that it post an appropriate notice.

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

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to provide the Union with the specific reasons why it demoted and transferred employee Hart, Respondent has engaged in, and is engaging in, an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Safeway Stores, Incorporated, Tulsa, Sand Springs, Sapulpa, McAlester, and Stillwater, Oklahoma, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Union by refusing to provide the Union with the specific reasons why it demoted and transferred employee Hart.

(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) Provide the Union with the specific reasons why it demoted and transferred employee Hart.

(b) Post at its location in Tulsa, Sand Springs, Sapulpa, McAlester, and Stillwater, Oklahoma, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ 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."

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 provide the Union with the specific reasons why we demoted and transferred employee Hart.

WE WILL NOT in any like or related manner refuse to bargain in good faith with the Union or interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide the Union with the specific reasons why we demoted and transferred employee Hart.

SAFeway STORES, INCORPORATED