

269 NLRB No. 17

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D--1472  
Macon, GA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

T. G. & Y. STORES CO.

and

Case 10--CA--19620

SOUTHEAST COUNCIL, RETAIL, WHOLESALE AND  
DEPARTMENT STORE UNION, AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union on 27 September 1983, the General Counsel of the National Labor Relations Board issued a complaint on 6 October 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 26 August 1983, following a Board election in Case 10--RC--12599, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (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(g), amended Sept. 9, 1981, 46 Fed. Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (Nov. 9, 1982).) The complaint further alleges that since 16 September 1983 the Company has refused to bargain with the Union. On 12

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October 1983 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 21 November 1983 the General Counsel filed a Motion for Summary Judgment. On 23 November 1983 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 Company did not file 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

In its answer to the complaint the Company contends that the Union's certification was invalid because the election did not take place in the laboratory conditions necessary for the employees' exercise of their free choice. The Company's objections to the election allege that union agents and employees acting on behalf of the Union threatened unit employees with physical harm and made numerous misrepresentations during the campaign. The Company also contends that the Board and its agents made errors of law and fact in the underlying representation case. The General Counsel argues that the Company is attempting to relitigate issues which it raised or could have raised in Case 10--RC--12599, that the Company does not contend that it has any newly discovered or previously unavailable evidence, and that there are no issues of fact or law requiring a hearing. We agree with the General Counsel.

Our review of the record herein, including the record in Case 10--RC--12599, discloses that pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted 24 June 1982. The tally showed that 18 votes were cast for the Union, and 11 against, with 1 challenged ballot. The Company filed timely objections, alleging essentially the same conduct as noted above.

On 5 August 1982 the Regional Director for Region 10 issued a report on the Company's objections. The report recommended that the Board overrule the objections in their entirety, and that a certification of representative be issued. The Company filed exceptions to the Regional Director's report with the Board. On 2 December 1982 the Board ordered that a hearing be conducted for the purpose of receiving evidence to resolve issues raised in the Company's Objections 1 and 2. On 24 January 1983 the Hearing Officer issued a report recommending that the Company's Objections 1 and 2 be overruled. The Company filed exceptions to the Hearing Officer's report. The Board adopted the Hearing Officer's findings and recommendations, and on 26 August 1983 issued a certification of representative.

It is well settled that in the absence of newly discovered and 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 that were or could have been litigated in a prior representation proceeding. See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company 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. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

## Findings of Fact

## I. Jurisdiction

The Company, a Delaware corporation, is engaged in the distribution of retail consumer goods at its facility in Macon, Georgia, where it annually receives goods valued in excess of \$50,000 directly from suppliers located outside the State of Georgia. We find that the Company is an employer engaged in commerce within the meaning of Section 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

Following the election held 24 June 1982 the Union was certified 26 August 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All employees employed by the Employer at its facility at 3220 Avondale Mill Road, Macon, Georgia, including warehouse employees, lead persons, clerical employees, and maintenance employees, but excluding confidential employees (the secretary to the warehouse manager), professional employees, guards, supervisors and over-the-road truck drivers.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since 8 September 1983 the Union has requested the Company to bargain, and since 16 September 1983 the Company has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## Conclusions of Law

By refusing on and after 16 September 1983 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company 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.

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); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, T. G. & Y. Stores Co., Macon, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Southeast Council, Retail, Wholesale and Department Store Union, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(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) On request, bargain with the Union as the exclusive 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:

All employees employed by the Employer at its facility at 3220 Avondale Mill Road, Macon, Georgia, including warehouse employees, lead persons, clerical employees, and maintenance employees, but excluding confidential employees (the secretary to the warehouse manager), professional employees, guards, supervisors and over-the-road truck drivers.

(b) Post at its facility in Macon, Georgia, copies of the attached notice marked "'Appendix.'"<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, 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.

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<sup>1</sup> 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.'"

(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) On request, bargain with the Union as the exclusive 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:

All employees employed by the Employer at its facility at 3220 Avondale Mill Road, Macon, Georgia, including warehouse employees, lead persons, clerical employees, and maintenance employees, but excluding confidential employees (the secretary to the warehouse manager), professional employees, guards, supervisors and over-the-road truck drivers.

(b) Post at its facility in Macon, Georgia, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, 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.

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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 the National Labor-Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Southeast Council, Retail, Wholesale and Department Store Union, AFL--CIO, as the exclusive representative of the employees in the bargaining unit.

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

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All employees employed by the Employer at its facility at 3220 Avondale Mill Road, Macon, Georgia, including warehouse employees, lead persons, clerical employees, and maintenance employees, but excluding confidential employees (the secretary to the warehouse manager), professional employees, guards, supervisors and over-the-road truck drivers.

T. G. & Y. STORES CO.

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(Employer)

Dated ----- By -----  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Marietta Tower, Suite 2400, 101 Marietta Street, NW, Atlanta, Georgia 30323, Telephone 404--242--2886.