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270 NLRB No. 127

D--1806
Seattle, WA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

INDUSTRIAL GASKET, INC.

and

Case 19--CA--16455

DISTRICT LODGE 160, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS, AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 20 January 1984, the General Counsel of the National Labor Relations Board issued a complaint 16 February 1984 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 15 December 1983, following a Board election in Case 19--RC--10825, 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 29 December 1983 the Company has refused to bargain with the Union.

On 2 March 1984 the Company filed an amended answer admitting in part and denying in part the allegations in the complaint.[1]

On 12 March 1984 the General Counsel filed a Motion for Summary Judgment. On 16 March 1984 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 filed 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

The Company's amended answer admits its refusal to recognize and bargain with the Union, but attacks the validity of the certification in the representation proceeding on the basis of its contention that employee Jennifer Stimak should not be included in the unit. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

The record, including the record in Case 19--RC--10825, reveals that a hearing was held on 26 October 1983 on the Union's petition for Certification of Representative. On 8 November 1983 the Regional Director issued his Decision and Direction of Election, finding that the unit of employees was an appropriate unit for purposes of collective bargaining. He specifically found that employee Jennifer Stimak was a plant clerical and included in the bargaining unit, contrary to the Company's assertion that she was an office clerical.

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[1] The Company filed its original answer on 21 February 1984.

The Company filed with the Board a request for review of the Regional Director's decision, arguing that he erred in finding Stimak to be a plant clerical employee. The Board denied the Company's request on 2 December 1983. An election was then held on 6 December 1983. The tally of ballots shows that, of approximately 10 eligible voters, 5 cast ballots for and 4 against the Union. The Company objected to the election on the ground that a challenge to Stimak's vote was not allowed. On 15 December 1983 the Regional Director issued a Supplemental Decision overruling the Company's objection and certified the Union as the exclusive representative of the unit. The Company did not file a request for review of the Supplemental Decision and Certification of Representative.

By letter dated 29 December 1983 the Union requested the Company to bargain. Since that date the Company has refused to recognize and bargain with the Union.

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, an Oregon corporation, manufactures gaskets at its facility in Seattle, Washington, where it annually purchases goods and services in excess of $50,000 directly from sources outside the State. 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 6 December 1983, the Union was certified 15 December 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

> All production employees employed by the Employer at its Seattle, Washington facility, including shipping and receiving employees, handcutter, press operators, scheduler, helper and plant clerical, but excluding all other employees, office clerical employees, salespersons, guards, and supervisors as defined by the Act.

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

B. Refusal to Bargain

Since 29 December 1983 the Union has requested the Company to bargain, and since that date 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 29 December 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, Industrial Gasket, Inc., Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with District Lodge 160, International Association of Machinists and Aerospace Workers, 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 production employees employed by the Employer at its Seattle, Washington facility, including shipping and receiving employees, handcutter, press operators, scheduler, helper and plant clerical, but excluding all other employees, office clerical employees, salespersons, guards, and supervisors as defined by the Act.

(b) Post at its facility in Seattle, Washington, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 19, 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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[2] 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.''

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

Dated, Washington, D.C. 25 May 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with District Lodge 160, International Association of Machinists and Aerospace Workers, 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 production employees employed by the Employer at its Seattle, Washington facility, including shipping and receiving employees, handcutter, press operators, scheduler, helper and plant clerical, but excluding all other employees, office clerical employees, salespersons, guards and supervisors as defined by the Act.

INDUSTRIAL GASKET, INC.

(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, 2948 Federal Building, 915 Second Avenue, Seattle, Washington 98174, Telephone 206--442--7472.