

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIRST LADY BEAUTY SALONS, INC.

and

Case 6--CA--16727

UNITED FOOD AND COMMERCIAL WORKERS LOCAL  
UNION NO. 23, AFL--CIC--CLC

DECISION AND ORDER

Upon a charge filed by the Union 15 September 1983, the General Counsel of the National Labor Relations Board issued a complaint 7 October 1983 and an amended complaint 22 December 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The amended complaint alleges that on 12 May 1983, following a Board election in Case 6--RC--9302, 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 13 September 1983 the Company has refused to bargain with the Union. On 30 December 1983 the Company filed its answer admitting in part and denying in part the allegations in the amended complaint.

On 16 January 1984 the General Counsel filed a Motion for Summary Judgment. On 19 January 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 answer admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding. 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 6--RC--9302, reveals that an election was held 28 January 1983 pursuant to a Decision and Direction of Election issued by the Regional Director for Region 6. The tally of ballots shows that of approximately eight eligible voters five cast valid ballots for and three against the Union; there were no challenged ballots. After conducting a hearing on the Company's objections the hearing officer on 18 March 1983 issued his report recommending that the objections be overruled. The Company filed exceptions to the recommendation. On 12 May 1983 the Regional Director adopted the hearing officer's recommendations and certified the Union as the exclusive bargaining representative of the employees in the appropriate unit. On 24 May 1983 the Company filed with the Board a request for review of the Regional Director's Second Supplemental Decision on Objections and Certification of Representative. On 18 August 1983 the Board denied the Company's request for review.

By letters dated 23 August 1983 and 9 September 1983 the Union requested the Company to bargain. By a letter dated 13 September 1983 the Company acknowledged receipt of the bargaining demand and stated that: "It continues to be the Company's position that your Union does not represent an uncoerced

majority of employees in an appropriate bargaining unit, and consequently, the Company declines to commence negotiations at this time.''

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.<sup>1</sup>

On the entire record, the Board makes the following

#### Findings of Fact

##### I. Jurisdiction

The Company, an Ohio corporation, operates 79 beauty salons throughout the United States with a facility in Monaca, Pennsylvania. It annually purchases and receives goods and materials valued in excess of \$50,000 directly from points outside the States in which its salons are located and derives

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<sup>1</sup> Member Hunter did not participate in the underlying representation hearing.

from the operations described above gross revenues in excess of \$500,000. 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 28 January 1983 the Union was certified 12 May 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by First Lady Beauty Salons, Inc. at its Monaca, Pennsylvania facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

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

### B. Refusal to Bargain

Since on or about 23 August 1983 the Union has requested the Company to bargain and since 13 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 13 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, First Lady Beauty Salons, Inc., Monaca, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Local Union No. 23, AFL--CIO--CLC, 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 full-time and regular part-time employees employed by First Lady Beauty Salons, Inc. at its Monaca, Pennsylvania facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Post at its facility in Monaca, Pennsylvania, copies of the attached notice marked "'Appendix.'"<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, 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>2</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.'"

(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.

10 August 1984

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Donald L. Dotson, Chairman

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Don A. Zimmerman, Member

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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 United Food and Commercial Workers Local Union No. 23, AFL--CIO--CLC, 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 full-time and regular part-time employees employed by First Lady Beauty Salons, Inc. at its Monaca, Pennsylvania facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

FIRST LADY BEAUTY SALONS, INC.

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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, 1501 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 412--644--2969.