

302 NLRB No. 124

SCD

D--1956
Honolulu, HI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KANO TRUCKING SERVICE, LTD.

and

Case 37--CA--2844

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, LOCAL 142,
AFL--CIO

April 30, 1991

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Alvarney
On June 12, 1990,¹ the General Counsel of the National Labor Relations

Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 37--RC--2943. (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); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and submitting certain affirmative defenses.

On March 25, 1991, the General Counsel filed a Motion for Summary Judgment. On March 29, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 12, 1991, the Respondent filed a response.

¹ The date of the complaint was corrected by erratum dated June 14, 1990.

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 the Respondent 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. In addition, in its response to the notice to show cause the Respondent contends that there is a factual issue regarding "whether the current operating entity which is not the same entity petitioned for by the Union is a successor to or otherwise bound by the events in" the underlying representation case.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent 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.² We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

² Contrary to the Respondent's contention, we find that the successorship issue raised in its response may appropriately be left to the compliance stage. See generally Hopkins Hardware, 271 NLRB 175 (1984), and cases cited.

Findings of Fact

I. Jurisdiction

The Respondent, a Hawaii corporation, with an office and place of business located in Honolulu, Hawaii, has been engaged in the business of trucking and warehousing. During the 12 months preceding issuance of the complaint, the Respondent purchased and received at its Honolulu, Hawaii facility, products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Hawaii. We find that the Respondent 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 September 16, 1988, the Union was certified on March 26, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All truck drivers, helpers, mechanics and working foremen; excluding office clerical employees, dispatchers, supervisors, managerial employees, guards and/or watchmen 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 April 16 and 23, 1990, the Union has requested the Respondent to bargain and, since on or about April 24, 1990, the Respondent 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 April 24, 1990, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent 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, Kano Trucking Service, Ltd., Honolulu, Hawaii, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Longshoremen's and Warehousemen's Union, Local 142, 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 truck drivers, helpers, mechanics and working foremen; excluding office clerical employees, dispatchers, supervisors, managerial employees, guards and/or watchmen as defined in the Act.

(b) Post at its facility in Honolulu, Hawaii, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 20, 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.

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.'"

(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. April 30, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Dennis M. Devaney, 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 International Longshoremen's and Warehousemen's Union, Local 142, 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 truck drivers, helpers, mechanics and working foremen; excluding office clerical employees, dispatchers, supervisors, managerial employees, guards and/or watchmen as defined in the Act.

KANO TRUCKING SERVICE,
LTD.

(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, 300 Ala Moana Boulevard, Room 7318, Honolulu, Hawaii 96850-4980, Telephone 808--541--2814.