

**Apex Paper Box Company and its subsidiaries
Boxit Corporation, Western Reserve Pack-
aging, Inc., North Coast Box & Container
Corp. and Color Tech Coating & Finishing
Company and Local 170, International Ladies'
Garment Workers' Union.** Case 8-CA-23574

July 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT, DEVANEY, OVIATT, AND
RAUDABAUGH

On May 28, 1991, 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 8-RC-14247. (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 July 5, 1991, the General Counsel filed a Motion Summary Judgment. On July 9, 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 July 23, 1991, the Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's disposition of certain challenged ballots in the representation proceeding. In addition, the Respondent in its answer asserts as affirmative defenses that the underlying charge filed by the Union in the instant proceeding is barred by the doctrine of laches and the applicable statute of limitations.

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. 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).

We also reject the Respondent's contention that the underlying charge in this proceeding is barred by the

doctrine of laches and/or the 10(b) 6-month limitations period. The Union's charge was filed on April 29, 1991, approximately 1 week after the Respondent admittedly refused to bargain. Although it is true that the Union had been certified by the Regional Director over 10 months prior thereto, and that the Union might have demanded recognition and bargaining immediately thereafter notwithstanding the Respondent's pending Request for Review,¹ it was under no obligation to do so. The Union made its demand within the initial certification year, and absent unusual circumstances not presented here, the Respondent was therefore required to honor that request and commence bargaining.² By failing to do so, the Respondent violated Section 8(a)(5) of the Act.

Accordingly, we grant the Motion for Summary Judgment. On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation, with an office and place of business in Cleveland, Ohio, has been engaged in the manufacture of retail packaging materials. The Respondent annually sells and ships from its Cleveland, Ohio facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Ohio. 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 March 30, 1990, the Union was certified by the Regional Director on June 22, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees at the Employer's facilities located at Apex Paper Company, 5601 Walworth Avenue, Cleveland, Ohio; 9801 Walford Avenue, Cleveland, Ohio; and 3301 Monroe Avenue, Cleveland, Ohio 44113; Boxit Corporation, 5555 Walworth Avenue, Cleveland, Ohio; Western Reserve Packaging, Inc., 3305 West 65th Street, Cleveland, Ohio; North Coast Box & Container Corporation, 8401 Almira Avenue, Cleveland, Ohio; and Color Tech Coating &

¹ See *Madison Detective Bureau*, 250 NLRB 398 (1980); and *Allstate Insurance Co.*, 234 NLRB 193 (1978).

² See *Ken's Building Supplies*, 142 NLRB 235, 237-238 (1963), enf'd. 333 F.2d 84 (6th Cir. 1964). See also *Sunnyland Refining Co.*, 250 NLRB 1180, 1181 (1980), enf'd. mem. 657 F.2d 1249 (5th Cir. 1981).

Finishing Company, 12500 Berea Road, Cleveland, Ohio, excluding all office clerical employees, all truck drivers and all professional employees, guards and supervisors as defined in the Act and all other employees.³

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

B. *Refusal to Bargain*

Since on or about April 18, 1991, the Union has requested the Respondent to bargain, and, since on or about April 23, 1991, 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.

CONCLUSION OF LAW

By refusing on and after April 23, 1991, 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, Apex Paper Box Company and its subsidiaries Boxit Corporation, Western Reserve Packaging, Inc., North Coast Box & Container Corp. and Color Tech Coating & Finishing Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 170, International Ladies' Garment Workers' Union, as the exclusive bar-

gaining 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 production and maintenance employees at the Employer's facilities located at Apex Paper Company, 5601 Walworth Avenue, Cleveland, Ohio; 9801 Walford Avenue, Cleveland, Ohio; and 3301 Monroe Avenue, Cleveland, Ohio 44113; Boxit Corporation, 5555 Walworth Avenue, Cleveland, Ohio; Western Reserve Packaging, Inc., 3305 West 65th Street, Cleveland, Ohio; North Coast Box & Container Corporation, 8401 Almira Avenue, Cleveland, Ohio; and Color Tech Coating & Finishing Company, 12500 Berea Road, Cleveland, Ohio, excluding all office clerical employees, all truck drivers and all professional employees, guards and supervisors as defined in the Act and all other employees.

(b) Post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 8, 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.

MEMBERS CRACRAFT and DEVANEY, dissenting.

For the reasons stated in our separate dissenting opinions in the underlying representation case (302 NLRB 67 (1991)), we disagree with the majority's disposition of the challenged ballots in that proceeding. Accordingly, contrary to the majority, we would not grant the General Counsel's Motion for Summary Judgment in the instant proceeding, and we dissent

³The Board (Members Cracraft and Devaney dissenting) affirmed the Regional Director's Supplemental Decision and Certification of Representative by Order dated March 15, 1991. See 302 NLRB 67.

⁴If 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."

from our colleagues' finding of a violation of Section 8(a)(5).

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 Local 170, International Ladies' Garment Workers' Union 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 production and maintenance employees at the Employer's facilities located at Apex Paper Company, 5601 Walworth Avenue, Cleveland, Ohio; 9801 Walford Avenue, Cleveland, Ohio; and 3301 Monroe Avenue, Cleveland, Ohio 44113; Boxit Corporation, 5555 Walworth Avenue, Cleveland, Ohio; Western Reserve Packaging, Inc., 3305 West 65th Street, Cleveland, Ohio; North Coast Box & Container Corporation, 8401 Almira Avenue, Cleveland, Ohio; and Color Tech Coating & Finishing Company, 12500 Berea Road, Cleveland, Ohio, excluding all office clerical employees, all truck drivers and all professional employees, guards and supervisors as defined in the Act and all other employees.

APEX PAPER BOX AND ITS SUBSIDIARIES
BOXIT CORPORATION, WESTERN RE-
SERVE PACKAGING, INC., NORTH COAST
BOX & CONTAINER CORP., AND COLOR
TECH COATING & FINISHING COMPANY