

Sea-Jet Trucking Corporation, A.P.A. Warehouses, Inc., Affiliated Terminals, Inc., Sea-Jet Industries, Inc., and Sea-Jet Trucking & A.P.A. Warehouses, Inc., a Single Employer and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO. Case 29-CA-14680

August 14, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On April 30, 1990, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondents, as a single employer, violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to supply relevant and necessary information following the Union's certification in Cases 29-RC-6841 and 29-RC-6844. (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 Respondents filed an answer admitting in part and denying in part the allegations in the complaint and submitting certain affirmative defenses.

On September 4, 1990, the General Counsel filed a Motion for Summary Judgment. On September 6, 1990, 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 Respondents 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 their answer the Respondents admit that the Union was certified in the representation proceeding and that the Union subsequently requested the Respondents to bargain and to provide information, but deny that they constitute a single employer, that they have refused to bargain with or provide the requested information to the Union, and that the requested information is relevant and necessary to the Union's performance as exclusive bargaining representative. In addition, the Respondents submit as an affirmative defense that another union, Local 348, Warehouse Production Sales and Service Employees, has also filed an 8(a)(5) charge against the Respondents alleging a refusal to bargain.

All representation issues raised by the Respondents, including the single-employer issue, were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hear-

ing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondents have 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).

Nor do we find that any of the other issues raised by the Respondents warrant denial of the Motion for Summary Judgment. Thus, although the Respondents in their answer deny that they have refused to bargain or provide the requested information to the Union,¹ they have not challenged or disputed the Union Sub-regional Director's affidavit to the contrary in response to the Notice to Show Cause. Although the Respondents in their answer also deny that the requested information is relevant and necessary, we do not find this denial sufficient to withhold summary judgment. We agree that one of the items requested by the Union—employee social security numbers—is not presumptively relevant and thus need not be furnished absent a showing of the numbers' potential or probable relevance. Such information does not have a sufficient direct relationship on its face either to employees' terms and conditions of employment or to the administration and enforcement of the parties' collective-bargaining agreement.² However, this does not excuse the Respondents' failure to supply any of the other information requested by the Union—all of which clearly is presumptively relevant.³ Finally, uncontroverted evi-

¹ The complaint alleges that the Union requested the following information from the Respondents: (1) A current list of bargaining unit employees containing name and address and telephone numbers, age, seniority date, salary and job classifications, job description, sex, marital status, social security number, regular work hours, and number of employees on layoff; (2) different labor grades and steps of each grade, number of people in each grade/step and where merit increases are involved, the number of people in each labor grade with the corresponding incremental steps; (3) formula or process used in determining progress through each labor grade and its corresponding steps, how promoted into next step, etc. (4) per employee promotional record, such as date of hire, starting salary, incremental and/or merit raises, annual reviews, any form of monetary acceleration, present salary, promotions, transfers, demotions-lateral moves; (5) number of single employees, number of singles with families, number of married and number of married with families, any dependent riders other than children, i.e. mother, father, etc., (not taken from W-2 form); (6) job bidding and promotion system to include employee requests for jobs, acceptance/denial and respective dates; (7) departments and employees in each department; (8) certain specified insurance information regarding active employees; and (9) certain specified pension information.

² See generally *Cowles Communications*, 172 NLRB 1909 (1968); *Westinghouse Electric Corp.*, 239 NLRB 106 (1978), aff'd. in pertinent part 648 F.2d 18 (D.C. Cir. 1980). To the extent prior Board decisions hold to the contrary, they are overruled.

Member Cracraft would adhere to Board precedent holding that employee social security numbers are presumptively relevant. See, e.g., *American Commercial Lines*, 291 NLRB 1066, 1083-1084 (1988); *Bickerstaff Clay Products Co.*, 286 NLRB 295, 297, 300 (1987), enf. denied on other grounds 871 F.2d 980 (11th Cir. 1989); *Yet Wah Restaurant*, 251 NLRB 47, 52 (1980). Accordingly, she would order the Respondent to provide the Union with this information.

³ See, e.g., *Trustees of Masonic Hall*, 261 NLRB 436 (1982); *Verona Dye-stuff Division*, 233 NLRB 109 (1977); *Valley Programs, Inc.*, 300 NLRB 423 (1990), enf'd. per curiam 930 F.2d 907 (1st Cir. 1991). As the Respondent is

Continued

dence submitted by the General Counsel indicates that Local 348's 8(a)(5) charge has been withdrawn pursuant to a non-Board settlement, and that the settlement does not in any way conflict with the Union's rights and obligations as the exclusive bargaining representative of the certified unit. Accordingly, the Motion for Summary Judgment is granted.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondents are Delaware corporations with their principal office and place of business located at 140 43rd Street, Brooklyn, New York. Respondent Sea-Jet Trucking Corporation is engaged in interstate and intrastate transportation of freight and commodities. Respondent A.P.A. Warehouses, Inc. is engaged in warehouse and storage operations. Respondent Affiliated Terminals Incorporated is engaged in providing consolidation and distribution of freight and commodities. Respondent Sea-Jet Industries, Incorporated is engaged as purchasing agent in providing financial services, including the purchase of materials, supplies, and equipment, for Respondents A.P.A. Warehouses, Inc. and Sea-Jet Trucking Corporation. Respondent Sea-Jet Trucking & A.P.A. Warehouses, Inc. is engaged as purchasing agent in providing financial services, including the purchase of materials, supplies, and equipment, for Respondents A.P.A. Warehouses, Inc., Sea-Jet Trucking Corporation, and Affiliated Terminals, Incorporated. Together, the Respondent companies constitute a single integrated business enterprise and a single employer within the meaning of the Act.

The Respondents deny the complaint allegations that each of them individually derived gross revenues in excess of \$50,000 from the transportation of freight and commodities directly to points outside the State of New York, and/or that they purchased and received goods and materials in excess of \$50,000 directly from points outside the State of New York, during the year preceding issuance of the complaint. However, the Regional Director in his Decision and Direction of Election in the representation case specifically found that two of the Respondent companies (APA Warehouse, Inc. and Sea-Jet Trucking Corporation) annually derived over \$50,000 in gross revenues from their interstate operations, and concluded that the Board therefore had jurisdiction over all the companies as a single employer. The Respondents did not seek review of this finding by the Regional Director. Moreover, the Respondents in their answer to the instant unfair labor

therefore clearly obligated to provide this other information to the Union, we will order it to do so. However, inasmuch as we find that the social security numbers requested by the Union are not presumptively relevant, we will not at this time order the Respondent to provide the numbers to the Union, and will instead remand this aspect of the case.

practice complaint admit to the ultimate allegation that they, both individually and cumulatively, are engaged in commerce within the meaning of the Act.

Accordingly, we find that the Respondents are 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 28, 1988, the Union was certified on December 19, 1989, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time warehouse employees employed by Sea-Jet Trucking Corporation, A.P.A. Warehouse, Inc., Affiliated Terminals, Incorporated, Sea-Jet Industries, Incorporated, and Sea-Jet Trucking & A.P.A. Warehouse, Inc., at its 140 43rd Street, Brooklyn, New York location, excluding all office clerical employees, trailer drivers, truckdrivers, drivers' helpers, building maintenance employees, truck maintenance employees, 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 January 17, 1990, the Union has requested the Respondents to bargain and to furnish information, and, since on or about the same day, the Respondents have 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 since on or about January 17, 1990, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondents have 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 Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them 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. We also shall

order the Respondents to furnish the requested information to the Union.⁴

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 Respondents begin 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 Respondents, Sea-Jet Trucking Corporation, A.P.A. Warehouses, Inc., Affiliated Terminals, Inc., Sea-Jet Industries, Inc., and Sea-Jet Trucking & A.P.A. Warehouses, Inc., a single employer, Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO as the exclusive bargaining representative of the employees in the unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(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 warehouse employees employed by Sea-Jet Trucking Corporation, A.P.A. Warehouse, Inc., Affiliated Terminals, Incorporated, Sea-Jet Industries, Incorporated, and Sea-Jet Trucking & A.P.A. Warehouse, Inc., at its 140 43rd Street, Brooklyn, New York location, excluding all office clerical employees, trailer drivers, truckdrivers, drivers' helpers, building maintenance employees, truck main-

⁴As noted earlier, however, we shall not order the Respondents to provide the employees' social security numbers to the Union. Nor will we grant the General Counsel's request to include a visitatorial clause in the Order. In *Cherokee Marine Terminal*, 287 NLRB 1080 (1988), the Board held that it would grant visitatorial clauses "on a case by case basis, when the equities demonstrate a likelihood that a respondent will fail to cooperate or otherwise attempt to evade compliance." Here, as neither the complaint nor the Motion for Summary Judgment alleges any facts in this regard, we find such a clause unwarranted.

tenance employees, professional employees and supervisors as defined in the Act.

(b) On request, furnish the Union the information it requested on January 17, 1990, with the exception of the employees' social security numbers.

(c) Post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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 Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

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

⁵If 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."

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 Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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 warehouse employees employed by Sea-Jet Trucking Corporation, A.P.A. Warehouse, Inc., Affiliated Terminals, Incorporated, Sea-Jet Industries, Incorporated, and Sea-Jet Trucking & A.P.A. Warehouse, Inc., at its 140 43rd Street, Brooklyn, New York location, excluding all office clerical em-

ployees, trailer drivers, truckdrivers, drivers' helpers, building maintenance employees, truck maintenance employees, professional employees and supervisors as defined in the Act.

WE WILL, on request, provide the Union with the information it requested on January 17, 1990, except for the employees' social security numbers.

SEA-JET TRUCKING CORPORATION,
A.P.A. WAREHOUSES, INC., AFFILIATED
TERMINALS, INC., SEA-JET INDUSTRIES,
INC., AND SEA-JET TRUCKING & A.P.A.
WAREHOUSES, INC., A SINGLE EM-
PLOYER