

Millard Processing Services, Inc. and UFCW Local No. 271, affiliated with United Food and Commercial Workers International Union. Case 17-CA-15923

September 22, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On July 21, 1992, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Millard Processing Services, Inc., Omaha, Nebraska, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER RAUDABAUGH, dissenting.

For the reasons stated in my dissent in the underlying representation case,¹ I would reverse the judge's decision and find that the Union was improperly certified.

¹ Member Oviatt did not participate in the underlying representation proceeding. 304 NLRB 770 (1991).

¹ *Millard Processing Services*, supra.

Constance N. Traylor, Esq., for the General Counsel.
Patrick J. Barrett, Esq. (McGrath, North, Mullin & Kratz, P.C.), of Omaha, Nebraska, for the Respondent.
Thomas F. Dowd, Esq. (Thomas F. Dowd & Associates), of Omaha, Nebraska, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Omaha, Nebraska, on February 27, 1992. The Union, UFCW Local No. 271, affiliated with United Food and Commercial Workers International Union, filed the unfair labor practice charge in this case on November 27, 1991,¹ against Millard Processing Services (Millard). On December 10, the Regional Director for Region 17 issued a

¹ All dates are in 1991, unless otherwise indicated.

consolidated complaint, which included the instant case with Cases 17-CA-15133, 17-CA-25375, and 17-CA-15843.

The consolidated complaint, to the extent pertinent to the instant case, alleged that Millard had violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to recognize and bargain with the Union, the certified collective-bargaining representative of Millard's employees, and by failing and refusing to furnish the Union with necessary information required by it for purposes of collective bargaining. In its timely answer to the consolidated complaint, Millard denies these allegations. Thereafter, on February 27, 1992, on the motion of the Union, and on determining that the pleadings in this case did not raise issues of fact warranting a hearing before me, I ordered this case severed to expedite resolution of the issues regarding the Union's certification, which Millard has raised in its pleadings.

On the entire record before me in this proceeding, including the briefs filed by the General Counsel and Millard, I make the following

FINDINGS OF FACT

I. JURISDICTION

Millard, a corporation engaged in the processing and slicing of bacon, has an office and place of business in Omaha, Nebraska, where, in the course of its business, it annually purchases and receives products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Nebraska. Millard admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Millard also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

In its answer to the consolidated complaint issued on December 10, Millard admits the alleged refusal to recognize and bargain with the Union. However, Millard challenges the Union's certification following a secret-ballot election conducted by the National Labor Relations Board in Case 7-RC-10493. In its posthearing brief, Millard contends that the Board erred in reversing a hearing officer's recommendation that the representation election held on June 29, 1990, in a unit of Millard's employees, be set aside, and that a second election be held.

The issues regarding the Union's certification were previously litigated and determined by the Board, in the representation proceeding in Case 17-RC-10493. Well-settled Board policy precludes me from permitting the relitigation of those issues in the instant proceeding. *Rutters Linen Service*, 256 NLRB 1171 (1981).

Millard admits, and I find, that its employees in the following unit constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time maintenance, production, and sanitation employees employed by Millard, at its facility located at 13076 Renfro Circle, Omaha, Nebraska, but excluding all office clerical employees,

guards, foremen and supervisors as defined in the Act, and all other employees.

On June 9, 1990, a majority of Millard's employees, in the unit described above, designated and selected the Union as their representative for collective-bargaining purposes, in a secret-ballot election conducted by the Board in Case 17-RC-10493. Thereafter on August 27, the Board certified the Union as the exclusive representative of the employees in the unit described above, for the purpose of collective bargaining with Millard. The Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

By its letter dated September 6, the Union requested that Millard recognize it and bargain with the Union as the exclusive collective-bargaining representative of the unit described above. Since about September 6, Millard has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit described above.

I find that Millard has, since about September 6, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that by such refusal, Millard has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

In further answer to the consolidated complaint of December 10, Millard admits that it refused to furnish the Union with the following requested information listed in the Union's letter of September 6:

1. A list of all employees in the bargaining unit, including their name, address, telephone number, date of hire, job classification, department assignment, present rate of pay, date and amount of any and all wage increases, and the average number of hours worked per week by each such employee for the past twelve (12) months.
2. A copy of any and all group insurance covering bargaining unit employees, and cost to each employee, if any.
3. The number of holidays and qualifications to receive holiday pay for each employee.
4. Number of weeks of vacation pay and qualifications for such pay for each employee.
5. Method used in calculation of overtime pay.
6. Number of paid rest periods for employees and duration of each rest period.
7. Amount of funeral leave pay for employees, if any.
8. A list of all gear furnished to bargaining unit employees, namely, boots, gloves, coats, hats, aprons, safety gear, and any other working apparel furnished to the employees; and if any of this gear is sold to employees, we request the amount charged to the employees for such gear.
9. Report in pay, and the amount of such pay, if any.
10. Premium pay, if any, for work performed on holidays, Saturdays, Sundays, and night shift pay as well.
11. Leave of absence policy and any time off work paid for by the company.

12. A copy of any and all company rules and regulations and/or policies, including safety rules that affect bargaining unit employees.

13. Jury duty pay, if any, for bargaining unit employees, and the amount of such pay.

Millard also admits that since on or about October 8, it has not complied with the Union's request that Millard furnish it with employee Stephanie Caballero's personnel file. In its letter, the Union recited that it had recently learned that Millard had terminated Caballero, who was a bargaining unit employee. The Union's letter also included a request to meet and discuss Caballero's termination.

It is well settled that the items of information requested by the Union are presumptively relevant for purposes of collective bargaining and must be furnished on request. *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977). Millard denied that the requested information was necessary for, and relevant to the Union's performance of its role as the exclusive collective-bargaining representative of Millard's employees in the unit described above. However, Millard has not attempted to rebut the relevance of the information requested by the Union. Accordingly, I find that no material issues of fact have been raised regarding the bargaining information sought by the Union in its letters of September 6 and October 8, and that its refusal to do so violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Millard Processing Services, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. UFCW Local No. 27, affiliated with United Food and Commercial Workers International Union is a labor organization within the meaning of Section 2(5) of the Act.
3. All full-time and regular part-time maintenance, production, and sanitation employees employed by Respondent, Millard Processing Services, Inc., at its facility located at 13076 Renfro Circle, Omaha, Nebraska, but excluding all office clerical employees, guards, foremen and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.
4. Since August 27, 1991, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing since about September 6, 1991, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
6. By failing and refusing to furnish the Union with the information which it requested on September 6, 1991, concerning the unit employees' wages, hours, work assignments, job classifications, dates of hire, names, addresses, telephone numbers, benefits, company rules and regulations, and other conditions of employment, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By refusing on or about October 8, 1991, and at all times thereafter to furnish the Union with a copy of bargaining unit employee Stephanie Cabllero's personnel file, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

8. By the aforesaid unfair labor practices, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I find that it must be ordered to cease and desist, and take certain affirmative action designed to effectuate the policies of the Act. I shall also recommend that Respondent be ordered to bargain collectively on request with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. I shall also recommend that Respondent, on request, furnish the Union with the information it request by its letters of September 6 and October 8, 1991.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, I shall recommend that the Board construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1954), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Millard Processing Services, Inc., Omaha, Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with the Union, UFCW Local No. 271, affiliated with United Food and Commercial Workers International Union, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time maintenance, production, and sanitation employees employed by Respondent, at its facility located at 13076 Renfro Circle,

Omaha, Nebraska, but excluding all office clerical employees, guards, foremen and supervisors as defined in the Act, and all other employees.

(b) Refusing to bargain collectively with the Union by refusing to furnish it with the information sought in its letter of September 6, 1991, concerning the unit employees' wages, hours, work assignments, job classifications, dates of hire, names, addresses, telephone numbers, benefits, company rules and regulations, and other conditions of employment.

(c) Refusing to bargain collectively with the Union by refusing to furnish it with a copy of bargaining unit employee Stephanie Caballero's personnel file.

(d) 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 aforesaid appropriate unit concerning rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request, furnish the Union with the information sought in its letter of September 6, 1991, concerning the unit employees' wages, hours, work assignments, job classifications, dates of hire, names, addresses, telephone numbers, benefits, company rules and regulations, and other conditions of employment.

(c) On request, furnish the Union with with a copy of bargaining unit employee Stephanie Caballero's personnel file.

(d) Post at its facility in Omaha, Nebraska, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 17, 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.

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

²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³If 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with the Union, UFCW Local No. 71, affiliated with United Food and Commercial Workers International Union, as the exclusive bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time maintenance, production, and sanitation employees employed by Millard Processing Services, Inc., at its facility located at 13076 Renfro Circle, Omaha, Nebraska, but excluding all office clerical employees, guards, foremen and supervisors as defined in the Act, and all other employees.

WE WILL NOT refuse to bargain collectively with the Union by refusing to furnish it with the information sought in its letter of September 6, 1991, concerning the unit employees' wages, hours, work assignments, job classifications, dates of hire, names, addresses, telephone numbers, and benefits, company rules and regulations, and other conditions of employment.

WE WILL NOT refuse to bargain with the Union by refusing to furnish it with a copy of bargaining unit employee Stephanie Caballero's personnel file.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees in the bargaining unit described above, concerning rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, on request, furnish the Union with the information sought in the letter of September 6, 1991, concerning the unit employees' wages, hours, work assignments, job classifications, dates of hire, names, addresses, telephone numbers, and benefits, company rules and regulations, and other conditions of employment.

WE WILL, on request, furnish the Union with a copy of bargaining unit employee Stephanie Caballero's personnel file.

MILLARD PROCESSING SERVICES, INC.