

Garage Employees Union Local 272, International Brotherhood of Teamsters, AFL-CIO and Metropolitan Garage Owners Association, Inc.
Case 2-CB-14031

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On July 7, 1992, Administrative Law Judge Joel P. Biblowitz issued the attached decision. Thereafter, the Respondent filed exceptions and a supporting brief, and both the General Counsel and the Charging Party filed reply briefs.

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 briefs and has decided to affirm the judge's rulings,¹ findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Garage Employees Union Local 272, International Brotherhood of Teamsters, AFL-CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ In adopting the judge's decision, we find no merit in the Respondent's exception that the judge "preclud[ed] Local 272 from presenting its defense," nor in the General Counsel's argument that the judge's decision to end a line of questioning was in any way based on a conclusion that the Respondent's witness could not be credited. The record clearly discloses that the Respondent entered evidence concerning the factual bases surrounding the allegations of the complaint as well as a legal rationale for its defense. At the point where the Respondent's testimonial evidence invoked potential anti-trust and price fixing liability in defense of its alleged unlawful refusal to provide information relevant to its contractual "Most Favored Nations" clause, however, the judge correctly stated that those contentions were not properly cognizable before the Board and they would not be further entertained. Thus, his ruling disallowing the Respondent from pursuing questions related to the merits of an anti-trust defense to a refusal to provide information allegation is entirely appropriate and is not suggestive of prejudgment of the merits of the case apart from that defense.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Nancy Schneider, Esq. and *Larry Singer, Esq.*, for the General Counsel.

Bruce S. Cooper, Esq. (Dubliner, Haydon, Straci & Victor), for the Respondent.

Fred S. Sommer, Esq. (Arent, Fox, Kintner, Plotkin & Kahn), for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on May 20, 1992,¹ in New York, New York. The complaint, which issued on February 25, and was based on an unfair labor practice charge filed on January 9 by Metropolitan Garage Owners Association, Inc. (the Association), alleges that Garage Employees Union Local 272, International Brotherhood of Teamsters (Respondent) violated Section 8(b)(3) of the Act by failing and refusing to furnish the Association with information it requested on about December 16, 1991, and January 2.

On the entire record, including the briefs received, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Association, with its office and place of business located in New York City, is an organization composed of various employer-members that own and operate parking facilities in New York, New York. Its purpose is to represent these employer-members in negotiating and administering contracts with Respondent. Annually, in the course and conduct of its business operations, the employer-members of the Association collectively derive gross revenue in excess of \$500,000 and collectively purchase and receive at their respective facilities goods and materials valued in excess of \$50,000 directly from points outside of the State of New York. Respondent admits, and I find, that the employer-members of the Association are now, and have been at all times material, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

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

III. FACTS AND ANALYSIS

The Association and Respondent have been parties to a series of collective-bargaining agreements, the most recent of which is for the period February 6, 1989, through February 5, covering, basically, all the employees at garages owned by employer-members of the Association. Article II, section 6 of this agreement contains what the complaint refers to as a "More Favorable Conditions" clause, but is more often referred to as a "Most Favored Nations" clause. This provision, basically, provides that if Respondent enters into a contract with a garage in New York City, or in the four boroughs and within six blocks of an employer-member of the

¹ Unless indicated otherwise, all dates referred to herein relate to the year 1992.

Association, and that contract contains a more favorable (for the employer) rate of pay, benefits, or working conditions than the Association's contract, or contains fewer job classifications than the Association's contract, the Association must be notified of these terms and they will become effective for the Association's contract 48 hours later.

By letter dated December 16, 1991, Allen Siegel, labor counsel for the Association, wrote to Eugene Bennett, secretary-treasurer of Respondent, inter alia:

Finally, in order that MGOA [the Association] may determine compliance with the current collective bargaining agreement and prepare for further negotiations towards a new agreement, we reiterate our request that Local 272 provide to us immediately copies of all collective bargaining agreements or other agreements or arrangements and describe any oral agreements or arrangements, entered into or in effect since February 1989, between Local 272 and any employer which operates or operated a parking establishment or location within the City of New York.

Having received no answer to this letter, Siegel again wrote to Bennett by letter dated January 2:

By letter dated December 16, 1991, we requested that you provide to us copies of all collective bargaining agreements and describe any oral agreements or arrangements, entered into or in effect since February 1989, between Local 272 and any employer which operates or operated a parking establishment or location within the City of New York. To date, however, we have received no response to this request.

Because we are currently in negotiations for a contract that expires slightly over a month from now, it is imperative that we receive the requested information immediately as we previously indicated. Should we not receive a response by the close of business on Monday, January 6, 1992, we will have no choice but to take whatever steps are necessary to enforce the Association's right to obtain this information.

Siegel testified that at the negotiation session held on January 16 he asked Charles Haydon, counsel for Respondent, if Respondent intended to supply the Association with the requested information. Haydon answered that they would not. Siegel said that the Association wanted the information in order to learn whether Respondent was giving the Association's competitors a better deal. Haydon responded that Respondent wouldn't supply the information because it would result in price fixing and would violate antitrust laws. Subsequently the Respondent asked that the request be narrowed and the Association agreed to narrow the request to a certain geographic area. Admittedly, Respondent never provided the Association with the requested information.

Haydon testified that Siegel first requested this information at a bargaining session in November 1991; he said that he wanted to be certain that the rates don't hurt the Association's members. Haydon responded that because the Association was asking them to fix prices the Respondent would not give them the information to further this activity. At the meeting on January 16 Siegel asked him if the Respondent was going to give them the information they asked for.

Haydon responded that the Association was asking them to participate in a violation of antitrust laws and, for that reason, they would not supply the information.

The issue is clear: did Respondent violate Section 8(b)(3) of the Act by refusing to supply the Association with the information requested by it on December 16, 1991, January 2 and, apparently, in November 1991. The information requested by the Association is clearly relevant and necessary to the Association as the bargaining representative of its employer-members. *Oakland Press Co.*, 233 NLRB 994 (1977). In fact, it is difficult to imagine information that is more relevant. Pursuant to the agreement between the Association and Respondent, 48 hours after learning of a covered employer to whom Respondent has granted more favorable conditions, these more favorable conditions attach to the employees of the employer-members of the Association. The nature of the information requested makes it most likely that it be obtained from the Respondent, voluntarily or through a demand from the Association. Because Respondent did not provide the information voluntarily, it was left to the Association to demand it, as it did here on December 16, 1991, and January 2.

Respondent defends that by supplying this information it would be participating in an anti-trust, price fixing violation of some sort. In its brief, counsel for Respondent states that "to comply with the Association's request would involve the Respondent in an anti-trust conspiracy with the Association to drive out of business and otherwise competitive disadvantage the employers who are not members of the Association." I find no merit in this defense, and for that reason I cut off Respondent's attempt to continue further with this defense at the hearing herein.² First, the Board has previously rejected this defense in *Hotel & Restaurant Employees Local 355 (Doral Beach Hotel)*, 245 NLRB 774 (1979), where it stated at fn.1:

Absent a determination by a tribunal of competent jurisdiction that the relevant MFN [Most Favored Nations] clause is unlawful under the antitrust laws, we will not find that Respondent was privileged under the antitrust laws to ignore its contractual obligation to provide information necessary to administer the MFN clause.

Further, the evidence establishes that in New York City, where the employer-members of the Association operate their parking garages, there is a law requiring all garages to post their parking rates conspicuously at the entrance to the garage. If these employers wanted to fix prices, all they would have to do is walk over to their competitor's facility to see what his rates were. What the Association was requesting was wage rates and other terms and conditions of employ-

²The sole support for this defense is Haydon's testimony about the Association's oral request for the information. This testimony is contradictory and confusing. He testified that the Association representative said that they wanted to be sure that there is no competition and that prices were fixed. He also testified that they wanted the information in order to be competitive and "that the prices that are obtained in this industry do not hurt our people." Further, he testified that when he said that the Association wanted the information in order to fix prices, they responded: "No, that's not so." Based on this, I would discredit Haydon's testimony that they said that they wanted the information in order to fix prices.

ment. I fail to see how providing this information could result in price fixing or antitrust violations. As was stated by counsel for the Charging Party in its brief: "MGOA lawfully sought information that would enable it not to fix prices but to eliminate any competitive cost disadvantage that would result to its members from more favorable agreements entered into by the Union with non-MGOA members."

I therefore find that by failing and refusing to provide the Association with the information it requested on December 16, 1991, and January 2, Respondent violated Section 8(b)(3) of the Act. *Electrical Workers IBEW Local 1186 (Pacific Electrical)*, 264 NLRB 712 (1982); *Laborers (Heavy Contractors)*, 285 NLRB 688 (1987).

CONCLUSIONS OF LAW

1. The employer-members of the Association are now, and have been at all material times, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(b)(3) of the Act by failing and refusing to supply the Association with the information it requested on December 16, 1991, and January 2, 1992.

REMEDY

It having been found that Respondent violated the Act by failing and refusing to provide the Association with the information it requested on December 16, 1991, and January 2, 1992, it is recommended that Respondent be ordered to cease and desist therefrom and to promptly supply said information to the Association.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Garage Employees Union Local 272, International Brotherhood of Teamsters, AFL-CIO, New York, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to provide the Association with information it requested by letters dated December 16, 1991, and January 2, 1992, the information being relevant and necessary to the Association as the bargaining representative of its employer-members.

(b) Engaging in like or related conduct in derogation of its statutory duty to bargain.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

³If 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.

(a) Supply the Association with copies of all collective-bargaining agreements or other agreements or arrangements and describe any oral agreements or arrangements entered into or in effect since February 1989, between Respondent and any employer which operates or operated a parking establishment or location within the City of New York.

(b) Post at its business office and meeting places copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 2, 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 and members 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) Forward to the Association, for posting at its premises and the premises of its employer-members, if they wish, copies of such notices duly signed by Respondent's representative.

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

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."

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 collectively with Metropolitan Garage Owners Association, Inc. (Association) by refusing to supply information relevant and necessary for the bargaining process.

WE WILL NOT engage in any like or related conduct in derogation of our statutory duty to bargain.

WE WILL furnish the Association with the following information: copies of all collective bargaining agreements or other agreements or arrangements, entered into or in effect since February 1989 between Local 272, and any employer which operates or operated a parking establishment or location within the City of New York.

GARAGE EMPLOYEES UNION LOCAL 272,
INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, AFL-CIO