

**Serrot Corporation and United Electrical, Radio, and Machine Workers of America. Cases 21-CA-27946, 21-CA-28046, 21-CA-28074, 21-CA-28173, and 21-CA-28194**

April 26, 1993

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On December 19, 1991, the General Counsel of the National Labor Relations Board issued an amended 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 21-RC-18694. (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).)<sup>1</sup> The amended complaint also alleges that the Respondent violated Section 8(a)(5) and (1) by, without prior notice to or bargaining with the Union, implementing a new leave of absence policy for unit employees in or about December 1990, changing its leave of absence policy by releasing unit employees to another employer from on or about August 22 until on or about September 9, 1990, and by increasing the wages of unit employees on or about April 1, 1991, and further violated Section 8(a)(5) and (1) by refusing to provide the Union with necessary and relevant information,<sup>2</sup> and refusing to meet, on request, with the unit employees' duly elected union stewards for the purpose of adjusting grievances. The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On March 25, 1993, the General Counsel filed a Motion for Summary Judgment. On March 29, 1993, 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 Respondent filed a response on April 12, 1993.

<sup>1</sup> In Case 21-RC-18694, the Union was certified as the exclusive bargaining representative of the Respondent's employees in three separate bargaining units designated therein as units A, B, and C. This Motion for Summary Judgment involves alleged conduct in the amended complaint relating only to the Respondent's unit C employees. By order dated September 15, 1992, the Regional Director severed the allegations relating to the unit C employees from other allegations in the amended complaint as these latter allegations were the subject of an informal settlement agreement.

<sup>2</sup> By letters dated March 13 and July 8, 1991, the Union requested the Respondent furnish it with the following information: all policy changes since September 1, 1990, that affect the unit employees' terms and conditions of employment; the names of all unit employees including the dates of hire and termination dates and reasons therefor during the past year; their seniority dates; wage rates, including any and all increases since January 1990; company policies regarding terms and conditions of employment, and any changes therein within the past year; and a listing of all current installation projects, with addresses and telephone numbers where unit employees could be reached.

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 that it refused to bargain with the Union, that it has declined to furnish it with necessary and relevant information, that it has unilaterally made changes in the unit employees' wages and other terms and conditions of employment, and that it has refused to meet with the unit employees' duly elected union stewards for the purpose of adjusting grievances. However, it denies that its conduct in this regard is unlawful on the grounds that the Union is not the lawfully certified bargaining representative of the unit employees. Rather, in its response to the Notice to Show Cause, the Respondent contends that the Board erred in not setting aside the election in Case 21-RC-18694 on the basis of its objections to the election, that the Union's certification is therefore invalid, and that the allegations in the amended complaint consequently lack merit.

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, and indeed admits that it does not have, 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). There are no factual issues regarding the Union's request for information because the Respondent admitted that it refused to furnish the information. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a California corporation with a facility located at 5401 Argosy Drive, Huntington Beach, California, has been engaged in the fabrication and installation of plastic lining for concrete pipes. During the normal course and conduct of its business operations, the Respondent annually sells and ships goods and products valued in excess of \$50,000 directly to customers located outside the State of California. 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 on July 6, 1990, the Union was certified on July 3, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

All field installation employees employed by the Employer at its facility located at 5401 Argosy Drive, Huntington Beach, California and working at various locations throughout the United States; excluding all other employees, production and maintenance employees, test lab employees, truck drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

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

### B. *Refusals to Bargain*

The Respondent admits that since at least July 17, 1991,<sup>3</sup> it has failed and refused to recognize and bargain with the Union as the exclusive bargaining representative of its unit employees, and has, since on or about March 13 and July 15, 1991, failed and refused to comply with the Union's request for certain necessary and relevant information. It further admits that it has, without prior notice to or bargaining with the Union, implemented in or about December 1990, a new leave of absence policy for unit employees, changed its leave of absence policy from on or about August 20 until on or about September 9, 1990, by releasing unit employees to another employer, increased the wages of unit employees on or about April 1, 1991, and refused since on or about March 12, 1991, to meet, on request, with the unit employees' duly elected union stewards for the purpose of adjusting grievances. We find the Respondent's refusals and unilateral changes described above constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act, as alleged.

### CONCLUSION OF LAW

By refusing on and after July 17, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, refusing since about March 13 and July 15, 1991, to furnish the Union requested information, unilaterally implementing a new leave of absence policy and changing its leave of absence policy by releasing unit employees to another employer, unilaterally increasing the

<sup>3</sup> Although the General Counsel's motion states that the Respondent has failed and refused to bargain since at least "July 17, 1990," the charge and the amended complaint allege, the Respondent admits, and we find that such conduct occurred since at least "July 17, 1991."

unit employees' wages, and refusing to meet with the unit employees' duly elected union stewards for the purpose of adjusting grievances, 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. We shall also order the Respondent to furnish the Union the information requested, to rescind, on the Union's request, any unilateral changes made to the unit employees' terms and conditions of employment,<sup>4</sup> and to make whole unit employees for any losses or expenses they may have incurred as a result of the Respondent's unlawful unilateral change in the unit employees' terms and conditions of employment, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), and *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), with interest on such amounts to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall further order the Respondent to meet, upon request, with the unit employees' duly elected union stewards for the purpose of adjusting grievances.

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), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, Serrot Corporation, Huntington Beach, California, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with United Electrical, Radio, and Machine Workers of America, as the exclusive bargaining representative of the employees in the bargaining 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.

<sup>4</sup> Nothing in our order, however, is to be construed as requiring the rescission of any wage increases or benefits that have previously been granted to unit employees.

(b) Unilaterally changing the unit employees' terms and conditions of employment by implementing a new leave of absence policy, changing its leave of absence policy by releasing unit employees to another employer, and by increasing the unit employees' wages.

(c) Refusing to meet with the unit employees' duly elected union stewards for the purpose of adjusting grievances.

(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 following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All field installation employees employed by the Employer at its facility located at 5401 Argosy Drive, Huntington Beach, California and working at various locations throughout the United States; excluding all other employees, production and maintenance employees, test lab employees, truck drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) On request, reinstate the leave of absence policy that existed before the Respondent implemented its new policy in or about December 1990, rescind any changes made in that policy that resulted in the release of unit employees to another employer, and make whole unit employees for any losses or expenses incurred as a result of the unlawful unilateral changes made in the leave of absence policy, with interest as described in the remedy section of this decision.

(d) On request, meet with the unit employees' duly elected union stewards for the purpose of adjusting grievances.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facility in Huntington, California, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Re-

<sup>5</sup> 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."

spondent'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.

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

## 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 United Electrical, Radio, and Machine Workers of America, 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, without giving the Union prior notice or an opportunity to bargain, unilaterally change the unit employees' terms and conditions of employment by implementing a new leave of absence policy, changing the leave of absence policy for unit employees by releasing unit employees to another employer, and by increasing the unit employees' wages, and WE WILL NOT refuse to meet with the unit employees' duly elected union stewards for the purpose of adjusting grievances.

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 field installation employees employed by us at our facility located at 5401 Argosy Drive, Huntington Beach, California and working at various locations throughout the United States; excluding all other employees, production and maintenance employees, test lab employees, truck drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

WE WILL, on request, reinstate the leave of absence policy that was in effect before we implemented our new policy in or about December 1990, and rescind any changes made in that policy which resulted in the release of unit employees to another employer, and WE WILL make whole unit employees for any losses or expenses they may have incurred as a result of the un-

lawful unilateral change made by us in the leave of absence policy, with interest.

WE WILL, on request, meet with the unit employees' duly elected union stewards for the purpose of adjusting grievances.

SERROT CORPORATION