

Arthur Sarnow Candy Co., Inc. and Lily Popcorn, Inc. and Local 719, International Brotherhood of Teamsters, AFL-CIO. Case 29-CA-16981

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

On December 24, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing 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 12-RC-7523 (formerly 29-RC-7973). (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 its answer admitting in part and denying in part the allegations in the complaint.

On August 31, 1993, the General Counsel filed a Motion for Summary Judgment and Issuance of Decision and Order and Petition in Support. On September 3, 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.

Ruling on Motion for Summary Judgment

In its answer the Respondent denies its refusal to bargain, and attacks the validity of the certification on the basis of its objection to the election and the Board's unit determination in the representation proceeding.¹

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).

¹The Respondent's answer denied a number of complaint allegations. None of these denials warrants a hearing as other record evidence establishes the General Counsel's allegations. Thus, the Respondent denied the complaint allegation concerning the issuance of the decision and direction of election, the actual conduct of the election and the issuance of the tally of ballots notwithstanding the request for review of the decision and other record evidence attesting to these events; the Respondent denied the issuance of the certification notwithstanding its request for review of that issuance and the Respondent denied the allegation that the Union requested bargaining notwithstanding the affidavit attached as an exhibit to the General Counsel's motion (see Exhs. I and J).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondents, Sarnow and Lily, New York corporations, with their principal office and place of business located at 280 West Merrick Road, West Hempstead, County of Naussau, State of New York, have been engaged in the warehouse and distribution of candy and related products.

At all times material, the Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise.

During the year preceding issuance of the complaint, the Respondents, in the course and conduct of their business operations, purchased and received at the West Hempstead facility, candy and other products, goods, and materials, valued in excess of \$50,000, directly from points located outside the State of New York. By virtue of their operations, we find that the Respondents constitute a single-integrated business enterprise and a single employer engaged in commerce within the meaning of Section 2(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 August 21, 1992, the Union was certified on September 25, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by Respondents at their facility located at 280 West Merrick Road, West Hempstead, New York, excluding all sales employees, office clerical 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. Refusal to Bargain

Since October 1, 1992, the Union has requested the Respondents to bargain and, since October 1, 1992, 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 on and after October 1, 1992, 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 Respondents, Arthur Sarnow Candy Co., Inc. and Lily Popcorn, Inc., Valley Stream, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 719, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining 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 employees employed by Respondents at their facility located at 280 West Merrick Road, West Hempstead, New York, excluding all sales employees, office clerical

employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Valley Stream, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, 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.

Dated, Washington, D.C. September 30, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² 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."

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 719, International Brotherhood of Teamsters, AFL-CIO, 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 employees employed by us at our facility located at 280 West

Merrick Road, West Hempstead, New York, excluding all sales employees, office clerical employees, guards and supervisors as defined in the Act.

ARTHUR SARNOW CANDY CO., INC.
AND LILY POPCORN, INC.