

DST Industries, Inc. and UAW Region 1A and Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO.¹ Case 7-CA-34717

February 9, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

On July 9, 1993, 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 Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO's (the Union) request to bargain following the Union's certification in Case 7-RC-19582. (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 an answer admitting in part and denying in part the allegations in the complaint.

On November 24, 1993, the General Counsel filed a Motion for Summary Judgment. On November 24, 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 admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of the Board's disposition of determinative challenged ballots in the representation proceeding.

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). There are no factual issues regarding the Union's request for information because the Respondent admits

¹As set forth in the General Counsel's Motion for Summary Judgment, the name of the Union has been changed to include UAW Region 1A, the other Charging Party involved in this proceeding.

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 corporation with an office and place of business in Romulus, Michigan, and a place of business in Clinton, Michigan, has been engaged in the design, display, and marketing of prototype and specialty automobiles for the automotive industry, including Ford Motor Company. The Respondent's facilities located in Romulus and Clinton, Michigan, are the only facilities involved in this proceeding.

During the calendar year ending December 31, 1992, the Respondent, in conducting its business operations, provided services within the State of Michigan valued in excess of \$50,000 to Ford Motor Company. During the same period of time, Ford Motor Company had gross revenues in excess of \$500,000, and purchased goods and materials valued in excess of \$50,000, which were shipped to its Michigan facilities directly from points located outside the State of Michigan.

We find that the Respondent is an 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 June 14, 1991, the Union was certified on March 31, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees, including truck drivers, non-supervisory leaders and field operations personnel, employed by the Employer at or out of its facilities located at 34364 Goddard Road, Romulus, Michigan and 11900 Tecumseh Road, Clinton, Michigan; but excluding office clerical employees, design department employees, confidential employees, managerial 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 June 9, 1993,² the Union has requested the Respondent to bargain and to furnish information and,

²In its answer, the Respondent denies the complaint allegation that the Union verbally requested bargaining. However, attached to the

Continued

since June 18, 1993, the Respondent has refused. We find that these refusals constitute unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.³ Additionally, the complaint alleges and the Respondent admits that on or about July 1, 1993, Respondent unilaterally changed its health care carrier and coverage for certain unit employees and their eligible dependents. We find that this conduct constitutes a failure to bargain about a mandatory subject of bargaining.⁴

CONCLUSION OF LAW

By refusing on and after June 18, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information and by unilaterally changing health care benefits, 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 also shall order the Respondent to furnish the Union the information requested.

Having found that the Respondent has violated Section 8(a)(5) and (1) by unilaterally changing insurance carrier and benefits, we shall order the Respondent to restore the employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful

General Counsel's motion is a letter from the Respondent to the Union dated June 18, 1993, specifically refusing to bargain in order to obtain a court ruling on the Board's certification of the Union. Further, it is clear from the Respondent's answer that the Respondent contends that it is under no legal obligation to bargain with the Union solely on the grounds that the certification is invalid. Accordingly, we find that the Respondent's denial raises no material issue of fact warranting a hearing.

³The Respondent contends that certain of the information requested by the Union is not presumptively relevant. Specifically, the Union's request set out at pars. 14 and 15 of the Union's letter of April 27, 1993. We agree. Information related to its competitors and its current operating plans is not presumptively relevant and, accordingly, the Union has the burden of making such a showing. See, e.g., *Blue Diamond Co.*, 295 NLRB 1007 (1989). We therefore deny the General Counsel's Motion for Summary Judgment as to the matters set out in pars. 14 and 15 of the Union's letter and remand those issues to the Regional Director for further appropriate proceedings.

⁴In its response to the Notice to Show Cause, the Respondent alleges that a change of carrier was required because its then-current carrier was discontinuing business in the State of Michigan. Assuming the accuracy of the Respondent's assertion, this does not absolve the Respondent of its bargaining obligation in which, as alleged, the change in carrier also resulted in a change in benefits. See *Keystone v. Wire*, 237 NLRB 763, 767 fn. 8 (1978).

conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the 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 Respondent, DST Industries, Inc., Romulus and Clinton, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with UAW Region 1A and Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO 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 and unilaterally changing insurance carriers and coverage for unit employees and dependents.

(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, including truck drivers, non-supervisory leaders and field operations personnel, employed by the Employer at or out of its facilities located at 34364 Goddard Road, Romulus, Michigan and 11900 Tecumseh Road, Clinton, Michigan; but excluding office clerical employees, design department employees, confidential employees, managerial 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) Restore health insurance coverage and reimburse the unit employees for any losses which occurred as a

result of the unilateral changes as provided by the remedy section of this decision.

(d) Post at its facilities in Romulus and Clinton, Michigan, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on 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.

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 UAW Region 1A and Local 174, International Union, United Auto-

⁵ 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."

mobile, Aerospace and Agricultural Implement Workers of America (UAW), 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 make unilateral changes in employee health insurance carriers or coverage.

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, including truck drivers, non-supervisory leaders and field operations personnel, employed by us at or out of our facilities located at 34364 Goddard Road, Romulus, Michigan and 11900 Tecumseh Road, Clinton, Michigan; but excluding office clerical employees, design department employees, confidential employees, managerial 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 bargaining representative of the unit employees.

WE WILL restore health insurance coverage for unit employees and their dependents and reimburse employees for any losses which occurred as a result of our unilateral changes.

DST INDUSTRIES, INC.