

**Ore-Ida Foods, Inc. and United Food & Commercial Workers Union, Local 73A, AFL-CIO-CLC. Case 30-CA-12558**

August 29, 1994

**DECISION AND ORDER**

BY MEMBERS STEPHENS AND DEVANEY AND  
BROWNING

On June 27, 1994, the General Counsel of the National Labor Relations Board issued a 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 and to furnish relevant and necessary information following the Union's certification in Case 30-RC-5484. (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 July 28, 1994, the General Counsel filed a Motion for Summary Judgment. On August 1, 1994, 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.

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 its refusal to bargain and to furnish information, but attacks the validity of the Union's certification on the basis of the Board's unit determination in the representation proceeding.<sup>1</sup>

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).

Further, although the Respondent states in its answer that it is without sufficient information to form a belief as to whether the information requested by the Union is relevant and necessary, it is well established that wage and employment information of the type re-

quested is presumptively relevant for purposes of collective bargaining and must be furnished on request.<sup>2</sup> We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation has been engaged primarily in the processing and sale of potato products at various locations in the United States, including from a facility located at Plover, Wisconsin. During the past calendar year ending December 31, 1993, the Respondent, in conducting its operations, sold and shipped goods valued in excess of \$50,000 directly from its Plover, Wisconsin facility directly to points located outside the State of Wisconsin. 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 a mail ballot election counted on May 9, 1994, the Union was certified on May 17, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

All regular scheduled full-time and part-time maintenance employees at Ore-Ida Foods, Inc. at 1701 Highway 54 West, Plover, Wisconsin 54467; excluding all production, professional and office clerical employees, fieldmen and seasonal 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**

On May 17, 1994, the Union requested the Respondent to bargain and to furnish information, and

<sup>2</sup> See, e.g., *Masonic Hall*, 261 NLRB 436 (1982), and *Mobay Chemical Corp.*, 233 NLRB 109 (1977). By letter dated May 17, 1994, the Union requested the following information: (1) names; (2) current rates of pay and pay grades; (3) specific classification or department such as B & R, electrician, processing mechanic, packaging mechanic, etc.; (4) full time or part-time; (5) starting date with Ore-Ida and start date in maintenance department if different; (6) a copy of the current policy handbook; (7) a summary plan description of their health and welfare and current cost Employer and employee; (8) A summary plan description of their pension program and the amount of the Employer's contribution.

<sup>1</sup> 313 NLRB No. 178 (Mar. 31, 1994).

since the same date, the Respondent has 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 May 17, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish relevant and necessary information requested by the Union, 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. In addition, we shall order the Respondent to furnish the Union the information requested.

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 Hote*, 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, Ore-Ida Foods, Inc., Plover, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food & Commercial Workers Union, Local 73A, AFL-CIO-CLC, 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.

(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 regular scheduled full-time and part-time maintenance employees at Ore-Ida Foods, Inc. at 1701 Highway 54 West, Plover, Wisconsin 54467; excluding all production, professional and office clerical employees, fieldmen and seasonal 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 bargaining representative of the unit employees.

(c) Post at its facility in Plover, Wisconsin, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 30, 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.

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

<sup>3</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."

#### 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 Food & Commercial Workers Union, Local 73A, AFL-CIO-CLC, 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 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 regular scheduled full-time and part-time maintenance employees at Ore-Ida Foods, Inc. at

1701 Highway 54 West, Plover, Wisconsin 54467; excluding all production, professional and office clerical employees, fieldmen and seasonal 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.

ORE-IDA FOODS, INC.