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Shepard Convention Services, Inc. and International Alliance of Theatrical Stage Employees, AFL-CIO. Case 10-CA-28123

May 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

Upon a charge filed on December 20, 1994, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on January 11, 1995, 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 information following the Union's certification in Case 10-RC-14179. (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).) On January 26, 1995, the Respondent filed an amended answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

Thereafter, on April 28, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On May 2, 1995, 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 no 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 amended answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding. In addition, the Respondent denies that the information requested by the Union is necessary and relevant.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.¹ The Respondent does not offer to adduce at a hearing any newly discovered and pre-

¹ The Board's order granting the Union's request for a mail ballot election for the "on call" employees is published at 314 NLRB 689 (1994). Member Stephens adheres to his dissent from that order, but he concurs in the present grant of summary judgment because he agrees that all representation issues raised by the Respondent were, or could have been, resolved in the underlying proceeding.

viously 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).

We find that the Respondent has also not raised any issue warranting a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent: 1) the names of all current bargaining unit employees and their current wage rates and other working conditions; and 2) all company rules and insurance and benefit plan summary descriptions. It is well established that such employee wage and employment information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is, and has been at all times material herein, a Georgia corporation with an office and place of business located at Atlanta, Georgia, where it is engaged in performing contracting services, i.e., installing, maintaining, and dismantling displays and exhibits for trade shows and conventions.

The Respondent, during the calendar year ending 1994, which period is representative of all times material herein, performed services from its Atlanta, Georgia location valued in excess of \$50,000 directly for customers located outside the State of Georgia. 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 mail ballot election counted on October 18, 1994, the Union was certified on November 10, 1994, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer at its Atlanta, Georgia, facility, but excluding all employees performing I & D work, office clerical employees, sales rep-

representatives, customer service representatives, guards and supervisors as defined in the Act.²

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

B. *Refusal to Bargain*

Since November 14, 1994, the Union has requested the Respondent to bargain and to furnish relevant and necessary information, and, since the same day, the Respondent has refused.³ We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after November 14, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union relevant and necessary information, 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 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

²In its amended answer the Respondent denies that the unit certified by the Regional Director is an appropriate unit, and asserts as an affirmative defense that the Regional Director certified a unit not found to be appropriate by the Board. The Respondent, however, has failed to explain its contentions in this regard or why it could not have raised them in the representation proceeding. We find that the appropriate unit is as stated in the Regional Director's November 10, 1994 Supplemental Decision and Certification of Representative and in the complaint.

³Although the Respondent's amended answer denies that the Union requested bargaining on November 14, 1994, a copy of the Union's letter requesting bargaining is attached as an exhibit to the General Counsel's Motion for Summary Judgment, and the Respondent has not disputed the authenticity of that document in response to the Notice to Show Cause. Moreover, as indicated above, the Respondent admits that it has refused to bargain with the Union since November 14, 1994.

(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, Shepard Convention Services, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Alliance of Theatrical Stage Employees, 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.

(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 the Employer at its Atlanta, Georgia, facility, but excluding all employees performing I & D work, office clerical employees, sales representatives, customer service representatives, 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 Atlanta, Georgia, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 10, 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.

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."

(d) 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. May 31, 1995

William B. Gould IV,	Chairman
James M. Stephens,	Member
John C. Truesdale,	Member

(SEAL) 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 International Alliance of Theatrical Stage Employees, 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 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 Atlanta, Georgia, facility, but excluding all employees performing I & D work, office clerical employees, sales representatives, customer service representatives, guards and supervisors.

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

SHEPARD CONVENTION SERVICES, INC.