

Polymers, Inc. and Amalgamated Clothing and Textile Workers Union, New England Regional Joint Board, AFL-CIO. Case 1-CA-32992

September 20, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge filed on May 26, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on June 15, 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 necessary and relevant information following the Union's election and certification in Case 1-RC-20210. (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 27, 1995, the General Counsel filed a Motion for Summary Judgment. On July 31, 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. On September 5, 1995, 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 and response to the Notice to Show Cause, the Respondent admits that it has refused to bargain and to furnish information to the Union, but attacks the validity of the Union's certification based on its contentions in the underlying representation proceeding that the Regional Director improperly denied its request for a postponement of the preelection hearing, that the unit includes employees who perform part-time guard duties, and that the Union committed objectionable conduct affecting the results of the election. In addition, the Respondent in its answer 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. 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).

We also find that the Respondent has not raised any issue requiring a hearing in this proceeding with respect to the Union's request for information. The Union requested the following information from the Respondent:

1. The name and mailing address of all employees in the bargaining unit.
2. A list of bargaining unit employees which contains for each employee their department, job title or job classification, hiring date, and their weekly earning by week for the period January 1, 1995 through March 17, 1995.
3. A list of job classifications and the wage rate for each. If the job is paid on a piece or incentive rate, we request the base rate, the individual piece rate and the average hourly earnings for these jobs for the period January 1, 1995 through March 17, 1995 and the method used by the Company in determining the piece rate.
4. A copy of the Company's pension and/or profit sharing plan as well as copies of the Company's most recent required federal filings.
5. A copy of the Company's vacation plan;
6. A copy of the Company's sick leave policy;
7. A copy of the Company's overtime policy;
8. A copy of the Company's leave of absence policy;
9. A copy of the Company's policy on plant, job or department seniority and how it is used for layoff, recall, promotion, vacation or other Company benefits;
10. A copy of the Company's policy on job promotions and job bidding;
11. A copy of the Company's insurance program—including hospital, medical and sickness and accident benefits and copies of the Company's most recent required federal filings;
12. A copy of all plant rules;
13. A list of all fringe benefits supplied to the employees by the Company;
14. Copies of any Affirmation Action Programs which effect the bargaining unit employees if the Company has filed one with the Federal Government in relation to its government contractor work. If the Company's Workforce Analysis (such as an EEO-1 form) is not included we request a copy."
15. Copies of or a list of all complaints and charges filed against the Company by any employee under the Equal Pay Act, Title VII, Executive Order 11246 or other state or local fair employment practice laws or regulations;

16. The OSHA No. 200 Log and Summary of Occupational Injuries and Illnesses, for the calendar year 1992 to the present;

17. Copies of records of results of all industrial hygiene monitoring that the Company, their insurance carrier or any other party may have conducted, in the past three years;

18. Total inventory of dye stuffs and chemicals used in the plant and the Material Safety Data sheets of any substance purchased by the company;

19. Please provide any available information or copies of records derived from the Company's Insurance Company health insurance program which describes the nature of employee health insurance claims. This includes any analysis. In particular, provide any analysis of health insurance claims which describes either the costs or the incidence of any specific health disorders (such as cancer, pulmonary diseases, back injuries or other muscular-skeletal disorders, etc.);

20. Finally, if the insurance carrier conducts any other analysis of health insurance claims experience, such as length of hospital stays or disability, for specific health disorders, please provide a copy of such analyses, including a list of all specific health disorders or diagnosis codes;

The purpose of this request is to allow the union to determine whether there are any suspicious patterns of injury or disease among active bargaining unit members, in order to see whether such diseases or injuries might be occupational in origin.

21. Notification of and the names of any bargaining unit employees who are laid off by the Company, the reason and anticipated length of the layoff;

22. Notification of and the names of any bargaining unit employee who receives an oral or written warning or discharge, the date of the warning or discharge and the reason or Company rule applied;

23. Notification of any workload, machine or job rate changes, the date of the change, a copy of the study upon which the change is based and the reason for the change; and

24. Notification of the creation of new job classifications or the introduction of new machinery or the combining of jobs, the date of such action, the names of the employees placed on these jobs and their rates of pay.

The General Counsel effectively concedes for purposes of this case that the Union's information request was overbroad to the extent it sought information on affirmative action programs (par. 14) and did not limit the request for information regarding charges and com-

plaints filed against the Company (par. 15) to charges and complaints filed by unit employees.¹ Further, we find that the information requested regarding charges and complaints filed against the Company would not be presumptively relevant under prevailing Board law even if expressly limited to charges and complaints filed by unit employees.² Nevertheless, this does not excuse the Respondent's failure to provide the Union with all of the other information requested concerning the unit employees, all of which clearly is presumptively relevant.³

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to provide it with the information requested, with the exception of the information in paragraphs 14 and 15 of the Union's request regarding affirmative action programs and charges and complaints filed against the Company.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Middlebury, Vermont, has been engaged in the manufacture of synthetic fibers. Annually, the Respondent, in conducting its business operations, sells and ships from its Middlebury facility goods valued in excess of \$50,000 directly to points outside the State of Vermont, and purchases and receives at its Middlebury facility goods valued in excess of \$50,000 directly from points outside the State of Vermont. 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

¹The complaint does not allege that the requested affirmative action information is necessary and relevant or that the Respondent's failure to provide that information was unlawful. Further, the complaint alleges that the information on charges and complaints is relevant and necessary only to the extent the request was limited to unit employees.

²Contrary to the General Counsel's contention, under prevailing Board law charges and complaints filed against a company by unit employees are not presumptively relevant and a union must therefore demonstrate the relevance of such information. See *Safeway Stores*, 252 NLRB 1323 (1980); *Bendix Corp.*, 242 NLRB 1005 (1979); *Kentile Floors, Inc.*, 242 NLRB 755, 757 (1979); *Westinghouse Electric Corp.*, 239 NLRB 106, 113 (1978). In the instant case, the Union did not specify in its request why it wanted a copy of such charges and complaints or otherwise demonstrate the relevance of such information.

³See, e.g., *Associated Ready Mixed Concrete*, 318 NLRB 318 (1995); *Holiday Inn Coliseum*, 303 NLRB 367 (1991); and *A-Plus Roofing*, 295 NLRB 967, 972 fn. 7 (1989). It is well established that the information requested by the Union in pars. 1-13 and 16-24 is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977) (employee, wage, and benefit information); and *Goodyear Atomic Corp.*, 266 NLRB 890 (1983) (health and safety information).

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 December 22 and 23, 1994, the Union was certified on May 2, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed by Respondent at its Middlebury, Vermont facility, but excluding office clerical employees, temporary 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*

About March 17, 1995, the Union requested the Respondent to bargain and to furnish necessary and relevant information, and, since about 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 since March 17, 1995, to bargain with the Union as the exclusive bargaining representative of employees in the appropriate unit and to furnish the Union requested information that is necessary and relevant to its duties as the exclusive bargaining representative of the 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 will order it to cease and desist, to recognize and bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also will order the Respondent to furnish the Union the information requested, with the exception of the information in paragraphs 14 and 15 of the Union's request regarding affirmative action programs and charges and complaints filed against the Company.

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, Polymers, Inc., Middlebury, Vermont, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Amalgamated Clothing and Textile Workers Union, New England Regional Joint Board, 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, recognize and 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 production and maintenance employees employed by Respondent at its Middlebury, Vermont facility, but excluding office clerical employees, temporary employees, guards and supervisors as defined in the Act.

(b) Furnish the Union with the information that it requested on March 17, 1995, with the exception of the information in paragraphs 14 and 15 of the Union's request regarding affirmative action programs and charges and complaints filed against the Company.

(c) Post at its facility in Middlebury, Vermont, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 1 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.

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 Amalgamated Clothing and Textile Workers Union, New England Regional Joint Board, 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, recognize and 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 production and maintenance employees employed by us at our Middlebury, Vermont facility, but excluding office clerical employees, temporary employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union with the information that it requested on March 17, 1995, with the exception of the information in paragraphs 14 and 15 of the Union's request regarding affirmative action programs and charges and complaints filed against the Company.

POLYMERS, INC.