

**Overnite Transportation Company and Teamsters
“General” Local Union No. 200, affiliated with
the International Brotherhood of Teamsters,
AFL-CIO. Case 30-CA-13034**

November 8, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed on September 1, 1995, the General Counsel of the National Labor Relations Board issued a complaint on September 19, 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 relevant and necessary information following the Union’s certification in Case 30-RC-5660. (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 and asserting affirmative defenses.

On October 10, 1995, the General Counsel filed a Motion for Summary Judgment. On October 12, 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 October 26, 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 the Respondent admits that it has refused to bargain with the Union, but attacks the validity of the Union’s certification on the basis of its objections to conduct affecting the results of the election 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).

We also find that there are no issues requiring a hearing with respect to the Union’s request for information. By letter dated August 21, 1995, the Union requested the following information from the Respondent in order to prepare for negotiations: a list of the names

and addresses of all unit employees, including each employee’s current wage rate and date of hire and classification, and a copy of all company policies and work rules, available insurance plans, and any pension or retirement benefit plans offered. The Respondent’s answer admits that the Union sent the letter requesting the foregoing information, and that it subsequently refused to bargain with the Union.¹ Although the Respondent’s answer effectively denies that the information requested by the Union is relevant and necessary, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request.² Finally, the General Counsel’s Motion for Summary Judgment specifically requests that we order the Respondent to furnish the relevant and necessary information requested by the Union, and the Respondent has not contested the propriety of such an order in its response to the Notice to Show Cause.

Accordingly, we grant the General Counsel’s Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information to the Union.

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 Milwaukee, Wisconsin (the Respondent’s facility), has been an interstate freight carrier.

During the past calendar year ending December 31, 1994, the Respondent, in conducting its business operations, derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Wisconsin directly to locations outside the State of Wisconsin.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6),

¹ See pars. 8 and 9 of the complaint and the corresponding paragraphs in the Respondent’s answer. On October 26, 1995, the Respondent filed a motion to amend par. 9 of its answer in order to clarify that its refusal to bargain with the Union was technical, for the sole purpose of testing the Union’s certification, and that the Respondent does not admit, and denies to the extent the complaint may allege, that it refused to bargain with the Union over any interim changes in employment terms, the subject of a prior letter from the Union dated October 18, 1995. See also the Respondent’s opposition to the Motion for Summary Judgment at 4, fn. 2. We grant the Respondent’s motion to amend its answer. As noted by the Respondent, the complaint does not specifically allege that the Respondent has refused to bargain over any interim changes in employment terms, and the General Counsel has not requested any such remedy in the Motion for Summary Judgment. Thus, we find that the amendment does not raise any issue warranting denial of the Motion for Summary Judgment.

² See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

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 March 6, 1995, the Union was certified on August 14, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time dock workers, city drivers, road drivers, yard jockeys and mechanics employed by the Employer; but excluding office clerical employees, managers, 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*

By letter dated August 21, 1995, the Union requested the Respondent to provide it with relevant and necessary information to prepare for negotiations. By letter dated August 28, 1995, the Respondent acknowledged receipt of the Union's August 21, 1995 letter requesting information, and advised the Union that the Respondent was refusing to bargain with the Union. We find that the Respondent's 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 August 28, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested 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 also 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 Hotel*, 140 NLRB 226, 229 (1962), enfd. 328

F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *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, Overnite Transportation Company, Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, 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 dock workers, city drivers, road drivers, yard jockeys and mechanics employed by the Employer; but excluding office clerical employees, managers, guards and supervisors as defined in the Act.

(b) On request, furnish the Union with the information it requested on August 21, 1995.

(c) Post at its facility in Milwaukee, Wisconsin, copies of the attached notice marked "Appendix."³ 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.

³If 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 Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

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 dock workers, city drivers, road drivers, yard jockeys and mechanics employed by us; but excluding office clerical employees, managers, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union with the information that it requested on August 21, 1995.

OVERNITE TRANSPORTATION COMPANY