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Deffenbaugh Industries, Inc. and General Drivers & Helpers Union, Local No. 554, affiliated with International Brotherhood of Teamsters, AFL-CIO. Case 17-CA-18809

October 31, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on September 3, 1996, the General Counsel of the National Labor Relations Board issued a complaint and amendment to complaint on September 12 and 17, 1996, respectively, 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 following the Union's certification in Case 17-RC-11294. (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 answers admitting in part and denying in part the allegations in the complaint and amendment to complaint.

On October 7, 1996, the General Counsel filed a Motion for Summary Judgment. On October 9, 1996, 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 certification on the basis of its objections to conduct alleged to have affected the results of 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. 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 warranting a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

1. Current list of employees' names, addresses, home phone, date of birth, classification of work and status as either full time or part time and wage rate.
2. Any and all company policies, rules and/or regulations pertaining to the bargaining unit employees.
3. Any and all employee benefits with the description of each benefit and eligibility requirements, i.e., health and welfare, sick leave, vacation pay, holiday, funeral leave, pension, etc.
4. Wage rates for each classification including timing of any regular increases and a copy of the progression rates of pay for new hires.
5. Job classifications and descriptions.
6. Any other pertinent information regarding employee benefits, wages and/or conditions of employment.
7. Any and all copies of discipline currently in effect for each bargaining unit employee.

Although the Respondent's answer denies that the foregoing information is necessary and relevant to the Union's duties as the exclusive collective-bargaining representative of the unit, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See e.g., *Maple View Manor, Inc.*, 320 NLRB 1149 (1996); *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

At all material times, the Respondent, a corporation, with an office and place of business in Omaha, Nebraska, has been engaged in the collection and disposal of residential trash and yard waste. During the 12-month period ending August 31, 1996, the Respondent, in conducting its business operations, purchased and received at its facility goods and services valued in excess of \$50,000 directly from points outside the State of Nebraska, and derived gross revenues in excess of \$500,000. 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 November 30, 1995, the Union was certified on August 14, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time residential drivers, residential helpers and mechanics employed by Respondent from its facility located in Omaha, Nebraska, but excluding all office clerical employees, guards and supervisors as defined in the Act and all other employees.

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

B. *Refusal to Bargain*

About August 19, 1996, the Union requested the Respondent to bargain and to furnish necessary and relevant information, and since about August 26, 1996, 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.

CONCLUSIONS OF LAW

By refusing on and after August 26, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union necessary and relevant 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); *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, Deffenbaugh Industries, Inc., Omaha, Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with General Drivers & Helpers Union, Local No. 554, affiliated with 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 residential drivers, residential helpers and mechanics employed by Respondent from its facility located in Omaha, Nebraska, but excluding all office clerical employees, guards and supervisors as defined in the Act and all other employees.

(b) Furnish the Union the information that it requested on August 19, 1996.

(c) Within 14 days after service by the Region, post at its facility in Omaha, Nebraska, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 17 after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 3, 1996.

¹If 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) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 31, 1996

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins Jr., 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 General Drivers & Helpers Union, Local No. 554, affiliated with International Brotherhood of Teamsters, 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 residential drivers, residential helpers and mechanics employed by us from our facility located in Omaha, Nebraska, but excluding all office clerical employees, guards and supervisors as defined in the Act and all other employees.

WE WILL furnish the Union the information that it requested on August 19, 1996.

DEFFENBAUGH INDUSTRIES, INC.