

Meenan Oil Co., L.P. and Local 463, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO. Cases 29-CA-20467 and 29-CA-20535

March 28, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge and amended charge filed on November 12 and 15, 1996, respectively, in Case 29-CA-20467, and a charge filed on December 10, 1996, in Case 29-CA-20535,¹ the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on January 17, 1997, 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 Cases 29-RC-8609 and 29-RC-8627. (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, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On March 3, 1997, the General Counsel filed a Motion for Summary Judgment. On March 4, 1997, 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 March 18, 1997, the Respondent filed a response.

¹ The Respondent's answer admits filing and service of the charge and amended charge in Case 29-CA-20467, but denies filing and service of the charge in Case 29-CA-20535, and asserts as an affirmative defense that the charges are barred by the 10(b) 6-month limitations period. We find that the Respondent's answer does not raise any issue in this regard warranting a hearing. As indicated, the Respondent admits that the charge and amended charge in Case 29-CA-20467 involving the office clerical/sales unit (unit B) were served on the Respondent on November 14, 1996, and January 17, 1997, respectively, which is well within 6 months of the Respondent's refusal to bargain in that unit. Although the Respondent's answer denies that the charge in Case 29-CA-20535 involving the plant clerical unit (unit A) was filed and served on December 10 and 16, 1996, respectively, a copy of the charge and affidavit of service are included in the formal file, and they indicate that that charge was also filed and served well within 6 months of the Respondent's subsequent refusal to bargain in that unit. Moreover, the Respondent has not repeated its contentions in this regard in its response to the Notice to Show Cause or otherwise disputed the General Counsel's assertions in the Motion for Summary Judgment that the charges were timely filed and served. In these circumstances, we find that no issue warranting a hearing has been raised and that the charges were timely filed and served as alleged.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits that the Union was certified as bargaining representative of the employees in the plant clerical unit (unit A) and office clerical/sales unit (unit B), but attacks the validity of the certifications on the basis of the Board's unit determinations and disposition of the Respondent's objections and challenges in the representation proceedings.

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.² See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). 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 New York corporation, has maintained its principal office and place of business at 3020 Burns Avenue, Wantagh, New York, where it is engaged in the retail and non-retail sale and delivery of fuel oil and related services.

During 1996, which period is representative of its annual operations generally, the Respondent, in the course and conduct of its business operations, received gross revenues valued in excess of \$500,000 and purchased and received at its Wantagh facility goods and supplies valued in excess of \$5000 directly from points located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 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.³

² Member Higgins did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any representation issue that is properly litigable before the Board in the unfair labor practice proceeding.

³ The Respondent's answer asserts as an affirmative defense that the Board lacks jurisdiction over the Respondent. However, inasmuch as the Respondent did not contest jurisdiction in the representation proceeding, and the Respondent's answer to the complaint in the instant proceeding admits all the jurisdictional allegations, we find that no issue is raised by the Respondent's affirmative defense warranting a hearing and that the Board has jurisdiction over the Respondent.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following elections held August 22, 1996, the Union was certified on September 17 and November 27, 1996, respectively, as the exclusive collective-bargaining representative of the employees in the following two separate appropriate units:

UNIT A

All full-time and regular part-time plant clerical employees employed by the Employer at its Wantagh, New York facility, including oil dispatchers, service dispatchers, loading clerks, inventory clerks, and yardmen, but excluding all other employees, office clerical and sales employees, oil drivers and truck mechanics, service mechanics, guards and supervisors as defined in the Act.

UNIT B

All full-time and regular part-time office clerical employees and sales employees employed by the Employer at its Wantagh, New York facility, including customer service clerks, cash clerks, purchasing clerks, sales clerks, data entry clerks, service clerks, installation clerks, customer satisfaction clerks, payroll/personnel administrator, executive secretary, fleet clerk, wholesale inventory supervisor, sales representatives and telemarketers, but excluding all other employees, commercial sales and alarm sales persons, plant clerical employees, oil drivers and truck mechanics, service mechanics, 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 November 1, 1996, the Union requested the Respondent to bargain with it as the exclusive collective-bargaining representative of the employees in unit B and, by letter dated November 11, 1996, the Respondent refused. By subsequent letters dated November 15 and 26, 1996, the Union also requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative in unit A, and, by letter dated December 5, 1996, the Respondent refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.⁴

⁴The Respondent's answer asserts as an affirmative defense that the Union's demand for collective bargaining was defective and invalid. However, the Respondent has not repeated or explained this affirmative defense in its response to the Notice to Show Cause. In any event, the Union's letters on their face clearly constitute valid

CONCLUSION OF LAW

By refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, 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.

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, Meenan Oil Co., L.P., Wantagh, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to bargain with Local 463, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining units.

- (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 units on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

UNIT A

All full-time and regular part-time plant clerical employees employed by the Employer at its Wantagh, New York facility, including oil dispatchers, service dispatchers, loading clerks, inventory clerks, and yardmen, but excluding all other employees, office clerical and sales employ-

demands for bargaining. Accordingly, we find that this affirmative defense does not raise any issue warranting a hearing.

ees, oil drivers and truck mechanics, service mechanics, guards and supervisors as defined in the Act.

UNIT B

All full-time and regular part-time office clerical employees and sales employees employed by the Employer at its Wantagh, New York facility, including customer service clerks, cash clerks, purchasing clerks, sales clerks, data entry clerks, service clerks, installation clerks, customer satisfaction clerks, payroll/personnel administrator, executive secretary, fleet clerk, wholesale inventory supervisor, sales representatives and telemarketers, but excluding all other employees, commercial sales and alarm sales persons, plant clerical employees, oil drivers and truck mechanics, service mechanics, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Wantagh, New York, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 29 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 in unit A since December 10, 1996, and in unit B since November 12, 1996.

(c) 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.

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 Local 463, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO as the exclusive representative of the employees in the bargaining units.

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 appropriate bargaining units:

UNIT A

All full-time and regular part-time plant clerical employees employed by us at our Wantagh, New York facility, including oil dispatchers, service dispatchers, loading clerks, inventory clerks, and yardmen, but excluding all other employees, office clerical and sales employees, oil drivers and truck mechanics, service mechanics, guards and supervisors as defined in the Act.

UNIT B

All full-time and regular part-time office clerical employees and sales employees employed by us at our Wantagh, New York facility, including customer service clerks, cash clerks, purchasing clerks, sales clerks, data entry clerks, service clerks, installation clerks, customer satisfaction clerks, payroll/personnel administrator, executive secretary, fleet clerk, wholesale inventory supervisor, sales representatives and telemarketers, but excluding all other employees, commercial sales and alarm sales persons, plant clerical employees, oil drivers and truck mechanics, service mechanics, guards and supervisors as defined in the Act.

MEENAN OIL CO., L.P.

⁵If 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."