

**White Cap, Inc. and Local 458-3M, Graphic Communications International Union, AFL-CIO.**  
Case 13-CA-34869

April 17, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge and an amended charge filed on January 23 and February 19, 1997, respectively, the General Counsel of the National Labor Relations Board issued a complaint on February 25, 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 and to furnish relevant and necessary information following the certification issued in Case 13-RC-19333. (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 March 19, 1997, the General Counsel filed a Motion for Summary Judgment. On March 20, 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 April 3, 1997, the Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its contentions in the representation proceeding. In addition, the Respondent in its answer denies that the information requested by the Union is necessary and relevant to its duties as the exclusive bargaining representative of the unit.

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 factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that the Union requested the following information from the Respondent:

1. Name, address, social security number, telephone number, hiring date, department & hiring date, job classification and wage rate for each employee.
2. Current overtime, holiday and premium pay policies.
3. Current benefits for these employees, including, but not limited to, premiums for any medical, dental, disability, life or other insurance paid by the Company and employees, levels of benefits and conditions for coverage.
4. Current vacation and holiday policies and individual vacation entitlements.
5. Terms of all pension plans, 401(K) plans and any other retirement benefits or programs currently covering these employees.
6. Current hours of employment.
7. Current policies concerning downgrading and/or transfer of these employees to positions outside of the Lithographic Department.

It is well established that, with the exception of employee social security numbers, such information is presumptively relevant for purposes of collective bargaining and must be furnished on request.<sup>1</sup> The Respondent has not rebutted the presumption.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested, with the exception of employee social security numbers.

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 Chicago, Illinois, has been engaged in the business of manufacturing metal and plastic bottle and container closures. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Chicago, Illinois facility goods valued in excess of \$50,000 di-

<sup>1</sup>The Board has held that employee social security numbers are not presumptively relevant and that the Union must therefore demonstrate the relevance of such information. See, e.g., *Dexter Fastener Technologies*, 321 NLRB 612 (1996); and *Maple View Manor*, 320 NLRB 1149 (1996). Here, the record fails to indicate why the Union wanted the social security numbers or otherwise establish the relevance of the numbers. The Union's January 15, 1997 letter requesting the Respondent to bargain and to furnish information is not included in the record submitted with the Motion for Summary Judgment. Accordingly, we cannot conclude that the Respondent was obligated to provide the numbers to the Union. This does not excuse the Respondent's failure to supply all of the other information requested by the Union, however. Such information is clearly relevant, and the Respondent's failure to provide the information on request violated Sec. 8(a)(5) of the Act. See *id.*

rectly to points outside the State of Illinois, and purchased and received at its Chicago, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois.

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.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the election held July 17 and 18, 1996, a Certification of Results of Election issued on September 13, 1996, certifying that the Union may bargain for the employees in the group described below as part of the unit of employees already represented by the Union:

All lithographic production and maintenance employees not represented by a labor organization employed by Respondent at its North Major Avenue, Chicago, Illinois facility, but excluding all other employees, guards and supervisors as defined in the Act.<sup>2</sup>

At all times since September 13, 1996, the Union has been and continues to be the exclusive bargaining representative of the unit, including the employees in the voting group, under Section 9(a) of the Act.

### B. *Refusal to Bargain*

About January 15, 1997, the Union, by letter, requested the Respondent to bargain collectively and to furnish information, and, since January 22, 1997, 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 on and after January 22, 1997, 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.

<sup>2</sup> Although the complaint alleges that the foregoing group of employees constitute an appropriate unit, and that the Union was certified on September 13, 1996, as the exclusive bargaining representative of the unit, this is an incorrect statement of the results of the representation proceeding. The representation proceeding involved a self-determination election among the foregoing group of employees and the certification simply certified that the Union may bargain for the employees in the voting group as part of the unit of employees it currently represents.

## 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.<sup>3</sup> We also shall order the Respondent to furnish the Union the information requested, with the exception of employee social security numbers.

## ORDER

The National Labor Relations Board orders that the Respondent, White Cap, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 458-3M, Graphic Communications International Union, AFL-CIO as the exclusive bargaining representative of 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 following group of employees as part of the recognized appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All lithographic production and maintenance employees not represented by a labor organization employed by Respondent at its North Major Avenue, Chicago, Illinois facility, but excluding all other employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union with the information that it requested on January 15, 1997, with the exception of employee social security numbers.

(c) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the no-

<sup>3</sup> The complaint requests that the Board require the Respondent to bargain in good faith with the Union as the exclusive representative of the unit for the period set forth in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *Edward J. DeBartolo Corp.*, 315 NLRB 1170, 1171 fn. 3 (1994); and *University of Pittsburgh Medical Center*, 315 NLRB 1173 (1994). Accordingly, the request is denied.

<sup>4</sup> If 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

tice, on forms provided by the Regional Director for Region 13 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 January 23, 1997.

(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.

#### 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.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to bargain with Local 458-3M, Graphic Communications International Union, AFL-CIO as the exclusive representative of 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 set forth below as part of the recognized appropriate unit:

All lithographic production and maintenance employees not represented by a labor organization employed by us at our North Major Avenue, Chicago, Illinois facility, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on January 15, 1997, with the exception of employee social security numbers.

WHITE CAP, INC.