

**Cornerstone Propane GP, Inc. d/b/a Synergy Gas
and Local 707, International Brotherhood of
Teamsters, AFL-CIO. Case 29-CA-20733**

May 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

Pursuant to a charge and first amended charge filed on February 20 and March 3, 1997,¹ the General Counsel of the National Labor Relations Board issued a complaint on March 20, 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 Case 29-RC-8559. (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 April 17, 1997, the General Counsel filed a Motion for Summary Judgment. On April 18, 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 23, 1997, the Charging Party filed a position statement supporting the request for a bargaining order, and also requesting certain additional remedies, including appointment of a Special Master to supervise compliance, the imposition of costs on Synergy Gas, and action by the Board to hold Synergy Gas in civil contempt. On April 25, 1997, the Respondent filed a response to the General Counsel's motion.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's disposition of a challenged ballot 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*

¹ Although the Respondent denies knowledge or information sufficient to form a belief with respect to the filing and service of the charges, it is clear from the exhibits attached to the General Counsel's motion that the charges were filed and served as alleged in the complaint.

Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION³

At all material times, the Respondent, a Delaware corporation, with a principal office and place of business in Watsonville, California, has been the managing general partner of Cornerstone Propane Partners, L.P., and has been engaged in operating the business of Synergy Gas, including the wholesale and retail sale of propane gas, at Bayshore, Medford, Patchogue, Riverhead, and South Hampton, New York, which business has been conducted by Cornerstone, Propane, L.P., a subsidiary of Propane Partners, L.P. The Respondent is the successor employer for the employees of the former Synergy Gas Corporation on Long Island, New York. Since December 12, 1996, the Respondent, in conducting its business operations described above, received gross revenues at an annual rate in excess of \$500,000 and purchased and received at its New York facilities goods, materials, and supplies valued, at an annual rate, in excess of \$50,000 directly from points 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.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held February 14, 1996, the Union was certified on November 26, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers, installers, service employees, bulk drivers, mechanics, yard and warehouse employees, refurbishers and helpers employed by the Synergy Gas Corp. at its facilities located at 180 Corbin Street, Bay Shore, New York; 190 Corbin Street, Bay Shore, New York; 125 Peconic Avenue, Medford, New York; 689 Route 112, Patchogue, New York; West Main Street, Riverhead, New York; and 749 County Road 39, Southhampton, New York, but excluding all other employees, office clerical employees,

² Member Higgins did not participate in the underlying representation case. However, he agrees that the Respondent has raised no new issues in this "technical" 8(a)(5) case and that summary judgment is therefore appropriate.

³ With respect to the commerce data set forth below, we grant the General Counsel's motion to conform the complaint to the Respondent's answer.

sales 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

Since at least December 17, 1996, the Union has requested the Respondent to bargain, and, since December 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.

CONCLUSION OF LAW

By refusing on and after December 26, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate 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 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).⁴

ORDER

The National Labor Relations Board orders that the Respondent, Cornerstone Propane GP, Inc. d/b/a Syn-

⁴We deny the Charging Party's request for extraordinary remedies. With respect to its request that the Board act to hold the Respondent in contempt for its alleged failure to abide by earlier court orders, that request should be directed to the General Counsel, who has the initial responsibility to consider whether to institute contempt proceedings, and who acts as the Board's counsel in such matters. See Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel, April 1, 1955, 20 F.R. 2175, par. B, reprinted in NLRB Rules and Regulations and Statements of Procedures at 212. We also find no basis on the current record for the appointment of a "Special Master" to monitor the Respondent's compliance with this order. Finally we deny the request for attorneys' fees and costs on the ground that in this case the Respondent's position regarding the certification was not frivolous within the meaning of *Frontier Hotel & Casino*, 318 NLRB 857 (1995). See also *Super K-Mart*, 322 NLRB 583 fn. 4 (1996).

ergy Gas, Watsonville, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 707, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(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 drivers, installers, service employees, bulk drivers, mechanics, yard and warehouse employees, refurbishers and helpers employed by the Synergy Gas Corp. at its facilities located at 180 Corbin Street, Bay Shore, New York; 190 Corbin Street, Bay Shore, New York; 125 Peconic Avenue, Medford, New York; 689 Route 112, Patchogue, New York; West Main Street, Riverhead, New York; and 749 County Road 39, Southhampton, New York, but excluding all other employees, office clerical employees, sales employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in 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 at any time since February 20, 1997.

(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

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."

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 707, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

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 drivers, installers, service employees, bulk drivers, mechanics, yard and warehouse employees, refurbishers and helpers employed by us at our facilities located at 180 Corbin Street, Bay Shore, New York; 190 Corbin Street, Bay Shore, New York; 125 Peconic Avenue, Medford, New York; 689 Route 112, Patchogue, New York; West Main Street, Riverhead, New York; and 749 County Road 39, Southampton, New York, but excluding all other employees, office clerical employees, sales employees, guards and supervisors as defined in the Act.

CORNERSTONE PROPANE GP, INC. d/b/a
SYNERGY GAS