

**Willamette Industries, Inc., Duraflake Division and International Brotherhood of Electrical Workers, Local 280, AFL-CIO. Case 36-CA-7937**

May 19, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on February 20, 1997, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on March 6, 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 36-RC-5742. (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).)<sup>1</sup> The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On April 9, 1997, the General Counsel filed a Motion for Summary Judgment. On April 10, 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 24 and 28, 1997, respectively, the Union filed a brief in support of the motion and the Respondent filed a brief in opposition to the motion.<sup>2</sup>

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the cer-

<sup>1</sup> In its opposition to the Motion for Summary Judgment, the Respondent contends that the motion must be denied because the General Counsel failed to either include a copy of the representation hearing transcript and exhibits in the record accompanying the motion, or note in the motion that such documents would be forwarded separately, as required by Sec. 10282.2 of the NLRB Casehandling Manual. We reject the Respondent's contention as the General Counsel subsequently forwarded a copy of the documents to the Board and the Respondent has not shown any prejudice resulting from the General Counsel's failure to do so earlier. See *Fall River Savings Bank*, 250 NLRB 935 fn. 3 (1980), enf'd. 649 F.2d 50 (1st Cir. 1981).

<sup>2</sup> On April 23 and 24, 1997, respectively, the Western Council of Industrial Workers (WCIW) and the Timber Operators Council (TOC) filed motions to intervene in the instant proceeding for the purpose of presenting evidence at a hearing regarding the potential disruptive impact of the Acting Regional Director's unit determination in the representation proceeding on the overall stability of the lumber industry. We deny the motions on the grounds that the WCIW and TOC failed to timely request intervention at the representation hearing, the Respondent itself had the opportunity to present evidence regarding industry impact at the representation hearing, and there is no contention that the evidence of industry impact which WCIW and TOC now seek to adduce at a hearing in the instant proceeding is newly discovered and previously unavailable.

tification on the basis of the Board's unit determination in the representation proceeding.<sup>3</sup>

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.

In any event, we find no merit to the Respondent's contentions regarding the issue that it asks the Board to reexamine, i.e., the unit determination. The Respondent asserts in its response, as it did in its request for review in the representation proceeding, that the Acting Regional Director's decision either overruled Board precedent, as set forth in *U.S. Plywood-Champion Papers*, 174 NLRB 292 (1969), that maintenance-only units in the lumber industry are inappropriate, or improperly distinguished that case and *Timber Products Co.*, 164 NLRB 1060 (1967), on the basis that a second union was seeking to represent a broader, production and maintenance unit in those cases. In addition, the Respondent argues for the first time in its response that the Acting Regional Director's decision is contrary to an unpublished, November 14, 1980, Regional Director's decision in *Manke Lumber Co.*, Case 19-RC-9732, review denied February 20, 1981.

Contrary to the Respondent's contention, the Board's decision in *U.S. Plywood* did not establish that maintenance-only units are inappropriate in the lumber industry. Indeed, the Board in that case specifically stated that it would no longer adhere to the doctrine that only plantwide units embracing all production and maintenance employees are appropriate in the lumber industry, and that the Board would instead apply the same factors applied in any other industry. 174 NLRB at 295. Further, although the Board in *U.S. Plywood* ultimately determined that the petitioned-for maintenance department unit in that case was inappropriate, it did so primarily on the ground that the subject maintenance employees were not a distinct and homogeneous group, not on the basis of industry bargaining pattern and stability, and distinguished a prior lumber industry case reaching the opposite result (*Crown Simpson Pulp Co.*, 163 NLRB 796 (1967)), based on the lack of integration and interchange between production and maintenance employees in that case. Here, although we agree with the Respondent that the Board in *U.S. Plywood* and *Timber Products* did not rely on the fact that a second union was seeking to represent a broader unit in those cases, we agree with the Acting

<sup>3</sup> See 322 NLRB 856 (1997) (denying Respondent's request for review of the Acting Regional Director's Decision and Direction of Election except with respect to the direction of a mail-ballot election).

Regional Director that those cases are otherwise distinguishable from the instant case based on the substantial integration and interchange of job functions between production and maintenance employees in those cases, which was not shown to be present here. Finally, we find that *Manke Lumber* is also clearly distinguishable from the instant case since the issue in that case was the appropriateness of a separate unit limited to saw filers and fitters, rather than the appropriateness of a separate unit of all maintenance employees.

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). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent is a State of Oregon corporation with office and place of business in several locations in the United States, including Albany, Oregon, where it is engaged in the business of manufacturing particle board and other lumber industry-related products. The Respondent, during the 12-month period preceding the issuance of the complaint, which is representative of all material times, in the course and conduct of its business operations, had gross sales of goods and services valued in excess of \$500,000, and sold and shipped goods and provided services from its facilities within the State of Oregon to customers outside the State, or sold and shipped goods or provides services to customers within the State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total valued in excess of \$50,000.

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 January 30, 1997, the Union was certified on February 7, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All maintenance department employees employed by the Employer at its Albany, Oregon facility; but excluding all office clerical employees, guards and supervisors as defined by 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 February 10, 1997, the Union requested that the Respondent bargain, and, since about February 18, 1997, the Respondent has failed and 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 February 18, 1997, 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).

#### ORDER

The National Labor Relations Board orders that the Respondent, Willamette Industries, Inc., Duraflake Division, Albany, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Electrical Workers, Local 280, 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 maintenance department employees employed by the Employer at its Albany, Oregon facility; but excluding all office clerical employees, guards and supervisors as defined by the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Albany, Oregon, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 36 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

<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 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 International Brotherhood of Electrical Workers, Local 280, 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 maintenance department employees employed by us at our Albany, Oregon facility; but excluding all office clerical employees, guards and supervisors as defined by the Act, and all other employees.

WILLAMETTE INDUSTRIES, INC.,  
DURAFLAKE DIVISION