

John Kolkka, d/b/a Kolkka Tables and Finnish-American Saunas, a sole proprietorship and Carpenters Local 2236, and the Bay Counties District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 20-CA-27666

June 11, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on February 13, 1997, the General Counsel of the National Labor Relations Board issued a complaint on February 28, 1997, and an amendment to complaint on April 3, 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 Representative's¹ certification in Case 20-RC-17168. (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 several affirmative defenses.

On May 1, 1997, the General Counsel filed a Motion for Summary Judgment. On May 2, 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 May 21, 1997, the Respondent filed a response opposing the Motion for Summary Judgment and requesting that the instant case be consolidated with Case 20-CA-27284. On May 22, 1997, the General Counsel filed a supplemental memorandum in support of its motion and in opposition to the Respondent's motion to consolidate the proceeding with Case 20-CA-27284.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its challenges and related objections to the election in the representation proceeding. In addition, in its response, the Respondent contends that certain evidence developed at the hearing in Case 20-CA-27284 indicates that the Union made illegal promises of benefits, specifically immunity from the Immigration Laws of the United States, and that those promises created a false showing of support which destroyed any hope of laboratory conditions in the election. The

¹ The amendment to complaint added the Bay Counties District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (District Council) as a party. The Union and the District Council are collectively referred to as the Representative.

Respondent requests that record evidence from that case be considered as previously unavailable and newly discovered evidence.

It is well established that, in the absence of newly discovered and previously unavailable evidence or other special circumstances requiring reexamination of the decision in the representation proceeding, a respondent is not entitled to relitigate in a subsequent refusal-to-bargain proceeding representation issues that were or could have been litigated in the prior representation proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Here, although the Respondent asserts in its response that it has newly discovered evidence supporting its contention that the Representative won the election under false pretenses, specifically that the Representative promised immunity from the Immigration Laws of the United States, we find that the Respondent's alleged new evidence does not warrant reexamination of the representation decision or establish the need for a hearing. The Respondent's new evidence consists of excerpts from the record in Case 20-CA-27284 to the effect that the purpose of the Union's organizing committee was to convince coworkers to accept the Union, so that they wouldn't be afraid of the Company, as well as an affidavit from a member of the organizing committee, in which he stated that the Union obtained authorization cards by promising employees, who were in the country illegally, protection and assistance in getting new Social Security cards. The Respondent, however, has failed to demonstrate or even present any theory why such evidence was unavailable during the representation case proceedings.²

We, therefore, find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.³ 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 sole proprietorship owned by John Kolkka, with facilities in Redwood, City, California, has been engaged in the manufacture and sale of tables and saunas. During the 12-month period ending December 31, 1996, the Re-

² Since we have found that there is no legal basis for considering the Respondent's additional evidence at this stage, we need not decide whether such evidence, if timely presented during the representation proceeding, would have warranted a hearing.

³ We also deny the Respondent's request that this case be consolidated with Case 20-CA-27284, et al. In the present case there are no issues warranting a hearing and thus it can be more expeditiously processed in a summary judgment proceeding. *ITT Automotive*, 321 NLRB No. 156 fn. 1 (Aug. 23, 1996) (not reported in Board Volumes). See *Pony Express Courier Corp.*, 310 NLRB 354 fn. 1 (1993).

spondent, in conducting its business operations described above, sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of California. 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 August 9, 1996, the Representative was certified on January 8, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its facilities located at 2384 Bay Road and 841 Kaynyne Avenue, Redwood City, California, including welders and foreman (Octavio Barajas) and plant clerical Alicia Williamson; excluding all office clerical employees, guards and supervisors as defined in the Act.

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

B. *Refusal to Bargain*

Since January 3 and 29, 1997, the Representative has requested the Respondent to bargain and, since January 8, 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 8, 1997, to bargain with the Representative 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 Representative 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 Representative. *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, John Kolkka, d/b/a Kolkka Tables and Finnish-American Saunas, a sole proprietorship, Redwood City, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Carpenters Local 2236, and the Bay Counties District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, 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 Representative 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 production and maintenance employees employed by the Employer at its facilities located at 2384 Bay Road and 841 Kaynyne Avenue, Redwood City, California, including welders and foreman (Octavio Barajas) and plant clerical Alicia Williamson; excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Redwood, California, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 20 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

⁴If 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."

its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 13, 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 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 Carpenters Local 2236, and the Bay Counties District Council of Carpenters, United Brotherhood of Carpenters and

Joiners of America, 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 Representative 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 production and maintenance employees employed by us at our facilities located at 2384 Bay Road and 84 Kaynyne Avenue, Redwood City, California, including welders and foreman (Octavio Baraja) and plant clerical Alicia Williamson; excluding office clerical employees, guards and supervisors as defined in the Act.

JOHN KOLKKA, D/B/A KOLKKA TABLES
AND FINNISH-AMERICAN SAUNAS, A
SOLE PROPRIETORSHIP