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**Temple Inland Food Service Corporation and Warehousemen's Union Local 17, International Longshoremens and Warehousemen's Union, AFL-CIO. Case 20-CA-27955**

October 31, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge and first amended charge filed on August 4 and 11, 1997, the General Counsel of the National Labor Relations Board issued a complaint on August 14, 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 20-RC-17185. (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 September 22, 1997, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On September 25, 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 October 8, 1997, the Respondent filed a response.

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 grounds that the Board erred in sustaining the Union's objection to the initial election and ordering a rerun election.<sup>1</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

<sup>1</sup> The original election was conducted on September 27, 1996. The Union filed timely objections. Following a hearing on the objections, the hearing officer issued a report recommending that the Union's second objection be sustained and that the election be set aside and a new election held based on the Respondent's election day surveillance of the Union's lawful leafleting and electioneering activities. The Respondent filed exceptions to the hearing officer report. Thereafter, on May 30, 1997, the Board issued a Decision and Direction of Second Election adopting the hearing officer's findings and recommendations. The second election was held June 27, 1997.

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). 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 Delaware corporation, with an office and place of business in Sacramento, California, has been engaged in the manufacture of finished paper goods for the food service industry. During the 12-month period ending August 30, 1996, the Respondent, in conducting its business operations, 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(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 second election held June 27, 1997, the Union was certified on July 8, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:<sup>2</sup>

All full-time and regular part-time hourly production and maintenance employees employed by the Employer at its Sacramento, California place of business; excluding office clerical employees, quality control employees, managerial 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 about July 25, 1997, the Respondent has refused the Union's request to bargain. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

<sup>2</sup> Although the Respondent's answer denies the appropriateness of the unit, the Respondent stipulated to the unit in the underlying representation proceeding. Accordingly, the Respondent is precluded from contesting the appropriateness of the unit in the instant proceeding.

CONCLUSION OF LAW

By refusing on and after July 25, 1997, to recognize and 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 recognize and 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 recognize and 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, Temple Inland Food Service Corporation, Sacramento, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Warehousemen’s Union Local 17, International Longshoremen’s and Warehousemen’s Union, 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 hourly production and maintenance employees employed by the Employer at its Sacramento, California place of business; excluding office clerical employees, quality control employees, managerial employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Sacramento, California, copies of the

attached notice marked “Appendix.”<sup>3</sup> 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 its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 4, 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.

Dated, Washington, D.C. October 31, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>3</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.”

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 Warehousemen’s Union Local 17, International Longshoremen’s and Warehousemen’s Union, 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 hourly production and maintenance employees employed by us at our Sacramento, California place of business; excluding office clerical employees, quality control employees, managerial employees, guards and supervisors as defined in the Act.

TEMPLE INLAND FOOD SERVICE CORPORATION



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 WAREHOUSEMEN'S UNION LOCAL 17, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, 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 hourly production and maintenance employees employed by us at our Sacramento, California place of business; excluding office clerical employees, quality control employees, managerial employees, guards and supervisors as defined in the Act.

TEMPLE INLAND FOOD SERVICE  
CORPORATION

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

901 Market Street, Room 400, San Francisco, California 94103-1735, Telephone 415-356-5138.