

Flambeau Airmold Corp. and Union of Needletrades, Industrial and Textile Employees (UNITE). Case 11–CA–17591

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on July 15, 1997, the General Counsel of the National Labor Relations Board issued an amended complaint on September 8, 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 11–RC–6135. (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 amended complaint and asserting affirmative defenses.

On October 2, 1997, the General Counsel filed a Motion for Summary Judgment. On October 7, 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 20, 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 basis of its objections to the election in the representation proceeding.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to

¹The Respondent also asserts various other affirmative defenses to the complaint, including: (1) that the allegations are barred by the 6-month limitations period set forth in Sec. 10(b) of the Act; (2) that the Union's May 2, 1996 request to bargain was not made to the Respondent's designated bargaining representative; and (3) that the Board, as presently constituted, is without legal authority to render a decision in this case. We reject all of these defenses. With respect to the first defense, the Respondent admits that the charge was filed and served on July 15 and 16, 1997, respectively, which was well within 6 months of the Respondent's admitted May 2, 1997 refusal to bargain. With respect to the second defense, the Respondent admits that the Union has demanded bargaining since May 2, 1997, and that the Respondent has refused to do so since the same date. The fact that the Union's demand may not have been made to the Respondent's designated bargaining representative is therefore immaterial. See *Acme Bus Corp.*, 317 NLRB 887 (1995), and *S. E. Nichols Co.*, 156 NLRB 1201, 1212 (1966). As for the third defense, the Respondent offers no explanation in its response to the Notice to Show Cause why the Board as currently constituted is without authority to render a decision, and we reject the defense as without merit.

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). 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 now, and has been at all times material, a North Carolina corporation, with a facility located at Roanoke Rapids, North Carolina, where it is engaged in the manufacture of plastic cases. During the 12-month period preceding the issuance of the amended complaint, the Respondent purchased and received at its Roanoke Rapids, North Carolina, facility, goods, and materials valued in excess of \$50,000 directly from points outside the State of North Carolina and sold and shipped from its Roanoke Rapids, North Carolina facility, products valued in excess of \$50,000 directly to points outside the State of North Carolina.

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 May 2, 1996, the Union was certified on April 8, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All hourly production associates, including maintenance associates, total shop associates, warehouse associates, quality assurance associates, secondary assembly associates, and leadpersons employed at Respondent's Roanoke Rapids, North Carolina facility; excluding office clerical employees, administrative employees, professional and technical employees, temporary agency employees, and 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 May 2, 1997, the Union has requested the Respondent to bargain, and, since about the same date, the Respondent has refused. We find that this re-

fusal 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 May 2, 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, Flambeau Airmold Corporation, Roanoke Rapids, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union of Needletrades, Industrial and Textile Employees (UNITE) 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 hourly production associates, including maintenance associates, total shop associates, warehouse associates, quality assurance associates, secondary assembly associates, and leadpersons employed at Respondent's Roanoke Rapids, North Carolina facility; excluding office clerical employees, administrative employees, professional and technical employees, temporary agency employ-

ees, and guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Roanoke Rapids, North Carolina, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 11 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 July 15, 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.

²If 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 the Union of Needletrades, Industrial and Textile Employees (UNITE) 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 hourly production associates, including maintenance associates, total shop associates, warehouse associates, quality assurance associates, secondary assembly associates, and leadpersons em-

ployed at our Roanoke Rapids, North Carolina facility; excluding office clerical employees, administrative employees, professional and technical

employees, temporary agency employees, and guards and supervisors as defined in the Act.

FLAMBEAU AIRMOLD CORPORATION