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Freund Baking Co. and Bakery, Confectionery and Tobacco Workers International Union, Local Union 119, AFL-CIO-CLC. Case 32-CA-16293

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on August 19, 1997, the General Counsel of the National Labor Relations Board issued a complaint on September 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 requests to bargain and to provide information following the Union's certification in Case 32-RC-4221. (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 October 9, 1997, the General Counsel filed a Motion for Summary Judgment. On October 15, 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 30, 1997, the Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent attacks the validity of the certification on the basis of its objections to the election and the Board's unit determination in the representation proceeding. In addition, the Respondent in its answer denies certain allegations, including the allegations that the Respondent refused the Union's request to bargain and that the information requested by the Union is relevant and necessary to the Union's duties as the exclusive bargaining representative.

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 Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Respondent's alleged refusal to bargain. Although the Respondent's answer denies that the Respondent refused to bargain about August 25, 1997, a copy of the Respondent's August 19 and 25, 1997 letters to the Union and the Region stating that the Respondent was refusing to bargain with the Union are attached to the General Counsel's motion and the Respondent has not disputed the authenticity of those letters in response to the notice to show cause. Further, it is clear, based on the Respondent's affirmative defenses and arguments in its response in support of its contentions in the representation proceeding, that the Respondent is in fact refusing to bargain with the Union in order to test the certification.

Finally, we also find that no issue warranting a hearing has been raised by the Respondent's denial that the information requested by the Union is necessary and relevant. The Union requested the following information from the Respondent:

- (1) A list of current employees including their names, dates of hire, rates of pay, job classifications, last known address, phone number, and date of completion of any probationary period.
- (2) A copy of all current company personnel policies, practices, or procedures.
- (3) A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above.
- (4) A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees (Included in this are all plans, summary plan descriptions, financial statements for the plan, Form 5500's for the plan and all procedures or policies concerning the administration of the plan).
- (5) Copies of all current job descriptions.
- (6) Copies of any company wage or salary plans.
- (7) Copies of all disciplinary notices, warnings, or records of disciplinary personnel actions for the last year.

It is well established that the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Maple View Manor*, 320 NLRB 1149 (1996); *Trustees of Masonic Hall*, 261 NLRB 436 (1982), and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, the Respondent, a California corporation with an office and place of business in Hayward, California, has been engaged in the manufacture and distribution of bakery products.

During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and purchased and received goods or services valued in excess of \$5000 which originated 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 January 30 and 31, 1997, the Union was certified on August 14, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part-time production, maintenance, sanitation and loading employees employed by Respondent as its Hayward, California facility; excluding order clerks, receptionists, drivers, 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*

About August 14, 1997, the Union requested the Respondent to bargain and to furnish necessary and relevant information, and, about August 25, 1997, the Respondent refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

¹ Member Higgins notes that he dissented in part in the representation proceeding and would have granted review with respect to the Employer's Objections 3 through 6 which alleged that the Union provided improper monetary inducements to employees to support the Union by filing and publicizing a class action lawsuit on behalf of the bargaining unit employees. See his dissenting opinion in *BHY Concrete Finishing*, 323 NLRB No. 81 (April 21, 1997). However, he agrees with his colleagues that the Respondent has raised no new issues warranting a hearing in the instant "technical" refusal-to-bargain proceeding and that summary judgment is therefore appropriate.

CONCLUSIONS OF LAW

By refusing on and after August 25, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, 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. We also shall order the Respondent to furnish the Union the information requested.

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, Freund Baking Co., Hayward, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Bakery, Confectionery and Tobacco Workers International Union, Local Union 119, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(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 production, maintenance, sanitation and loading employees employed by Respondent at its Hayward, California facility; excluding order clerks, receptionists,

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

(b) Furnish the Union the information that it requested on August 14, 1997.

(c) Within 14 days after service by the Region, post at its facility in Hayward, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 32, 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 19, 1997.

(d) 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. November 7, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 Bakery, Confectionery and Tobacco Workers International Union, Local Union 119, AFL-CIO-CLC, the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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 production, maintenance, sanitation and loading employees employed by us at our Hayward, California facility; excluding order clerks, receptionists, drivers, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on August 14, 1997.

FREUND BAKING CO.

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 BAKERY, CONFECTIONERY AND TOBACCO WORKERS INTERNATIONAL UNION, LOCAL UNION 119, AFL-CIO-CLC, the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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 production, maintenance, sanitation and loading employees employed by us at our Hayward, California facility; excluding order clerks, receptionists, drivers, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on August 14, 1997.

FREUND BAKING CO.

(Employer)

Dated _____ By _____
(Representative) (Title)

1301 Clay Street, Room 300N, Oakland, CA 946120521, Telephone 510-637-3270.