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Special Projects Manufacturing, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO. Case 16-CA-19330

July 16, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Pursuant to a charge filed on May 20, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on May 22, 1998, 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 and to provide information following the Union's certification in Case 16-RC-9970. (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.

On June 15, 1998, the Acting General Counsel filed a Motion for Summary Judgment. On June 18, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its arguments in support of its objections to the election and the Board's disposition of certain challenged ballots in the representation proceeding. In addition, the Respondent, in its answer denies that the information requested by the Union is necessary and relevant.¹

¹ In its answer, the Respondent denies that the requested information is necessary for and relevant to the Union's performance of its duties. We note, however, that the description of the information sought on its face relates directly to the wages, hours, and terms and conditions of employment of the unit employees and we so find. In addition, the Respondent has not attempted to rebut the relevance of the information in response to the Notice to Show Cause. Accordingly, we find that the Respondent's denial does not raise any issues warranting a hearing. See *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977).

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.² 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).

Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation with a facility in White Settlement, Texas, has been engaged in the manufacture of oilfield flow control products. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its White Settlement, Texas facility goods and materials valued in excess of \$50,000 directly from sources located outside the State of Texas.

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 election held October 24, 1997, the Union was certified on April 14, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

INCLUDED: All production and maintenance employees employed by the Employer at its White Settlement, Texas facility, including plant clerical employees, quality assurance employees, and warehouse employees.

EXCLUDED: All other employees, including office clerical employees, professional employees, leadpersons, guards and supervisors as defined in the Act.

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

² Member Brame notes that he did not participate in the underlying representation proceeding.

³ We therefore deny the Respondent's cross-motion for summary judgment.

B. *Refusal to Bargain*

On about April 21 and May 8, 1998, the Union requested the Respondent to bargain and to furnish information, and, since about May 15, 1998, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after May 15, 1998, 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, Special Projects Manufacturing, Inc., White Settlement, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and failing 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:

INCLUDED: All production and maintenance employees employed by the Employer at its White Settlement, Texas facility, including plant clerical employees, quality assurance employees, and warehouse employees.

EXCLUDED: All other employees, including office clerical employees, professional employees, leadpersons, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on April 21 and May 8, 1998.

(c) Within 14 days after service by the Region, post at its facility in White Settlement, Texas, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 16 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 May 15, 1998.

(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

⁴ 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.

Dated, Washington, D.C. July 16, 1998

Sarah M. Fox, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) 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 fail and refuse to bargain with International Association of Machinists and Aerospace

Workers, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT fail and 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:

INCLUDED: All production and maintenance employees employed by us at our White Settlement, Texas facility, including plant clerical employees, quality assurance employees, and warehouse employees.

EXCLUDED: All other employees, including office clerical employees, professional employees, leadpersons, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on April 21 and May 8, 1998.

SPECIAL PROJECTS MANUFACTURING,
INC.