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K Mart Corporation d/b/a Super K Mart Center (Broadview, Illinois) and United Food and Commercial Workers Union, Local 546, Chartered by United Food and Commercial Workers International Union, AFL-CIO. Case 13-CA-36357

December 9, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

Pursuant to a charge filed on September 3, 1997, the General Counsel of the National Labor Relations Board issued a complaint on October 7, 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 13-RC-19476. (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 November 10, 1997, the General Counsel filed a Motion for Summary Judgment. On November 13, 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. The Respondent filed an opposition to the Motion for Summary Judgment and a response to the Notice to Show Cause. The Charging Party 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, opposition, and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.¹ Specifically, the Respondent reasserts its contention that the unit described in the complaint and in the certification of representative is not an appropriate unit for purposes of collective bargaining.

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 pre-

¹ 323 NLRB No. 108 (April 29, 1997).

325 NLRB No. 27

viously 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.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Broadview, Illinois, has been engaged in the operation of retail merchandise and grocery stores. During the past calendar year, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000, and purchased and received at its Broadview, Illinois facility, goods valued at more than \$10,000 directly from points outside the State of Illinois. 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 16, 1997, the Union was certified on August 4, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time meat cutters, and perishable service associates in the meat/seafood department of the Employer at its facility currently located in Broadview, Illinois, but, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

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

B. *Refusal to Bargain*

Since August 6, 1997, the Union has requested the Respondent to bargain, and, since August 11, 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.

² We grant the General Counsel's unopposed motion to include an additional exhibit as an attachment to his Motion for Summary Judgment.

CONCLUSIONS OF LAW

By refusing on and after August 11, 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, K Mart Corporation d/b/a Super K Mart Center, Broadview, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union, Local 546, Chartered by United Food and Commercial Workers International 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 meat cutters, and perishable service associates in the meat/seafood department of the Employer at its facility currently located in Broadview, Illinois, but, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Broadview, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 13, 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 11, 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. December 9, 1997

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William B. Gould IV,	Chairman
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Sarah M. Fox,	Member
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Wilma B. Liebman,	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 refuse to bargain with United Food and Commercial Workers Union, Local 546, Chartered by United Food and Commercial Workers International

³If 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."

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 meat cutters, and perishable service associates in the meat/seafood department of the Employer at its facility currently located in Broadview, Illinois, but, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

K MART CORPORATION D/B/A SUPER K
MART CENTER (BROADVIEW, ILLINOIS)

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 UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 546, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL 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 meat cutters, and perishable service associates in the meat/seafood department of the Employer at its facility currently located in Broadview, Illinois, but, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

K MART CORPORATION D/B/A SUPER K MART
CENTER (BROADVIEW, ILLINOIS)

(Employer)

Dated _____ By _____
(Representative) (Title)