

*NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Maremont Corporation/a Division of Arvin Industries and International Association of Machinists & Aerospace Workers, AFL-CIO.** Case 10-CA-30577

December 31, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
LIEBMAN

Pursuant to a charge and amended charge filed on October 14 and 21, 1997, the General Counsel of the National Labor Relations Board issued a complaint on October 31, 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 and to furnish information following the Union's certification in Case 10-RC-14720. (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 24, 1997, the General Counsel filed a Motion for Summary Judgment. On November 26, 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 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 objections to the election in the representation proceeding.

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).

325 NLRB No. 29

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 Loudon, Tennessee, has been engaged in the manufacture of exhaust systems for the automotive industry. During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Tennessee. 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 August 9, 1996, the Union was certified on September 23, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and hourly maintenance employees, except temporary employees employed by the Respondent at its Loudon, Tennessee facility, excluding office clerical employees, professional, salaried maintenance, temporary employees, guards and supervisors, including as supervisors all team leaders, 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 October 1, 1997, the Union has requested the Respondent to bargain and to furnish information, and, since about October 9, 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.

CONCLUSION OF LAW

By refusing on and after October 9, 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 in a timely fashion the information requested about October 1, 1997.

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, Maremont Corporation/A Division of Arvin Industries, Loudon, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Association of Machinists & Aerospace Workers, 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 and hourly maintenance employees, except temporary employees employed by the Respondent at its Loudon, Tennessee facility, excluding office clerical employees, professional, salaried maintenance, temporary employees, guards and supervisors, including as supervisors all team leaders, as defined in the Act.

(b) Furnish to the Union in a timely fashion the information it requested in its letter dated October 1, 1997, information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Within 14 days after service by the Region, post at its facility in Loudon, Tennessee, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 10 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 October 9, 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. December 31, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</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 International Association of Machinists & Aerospace Workers, AFL-CIO as the exclusive representative of the em-

ployees 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 and hourly maintenance employees, except temporary

employees employed by us at our Loudon, Tennessee facility, excluding office clerical employees, professional, salaried maintenance, temporary employees, guards and supervisors, including as supervisors all team leaders, as defined in the Act.

WE WILL furnish to the Union in a timely fashion the information it requested in its letter dated October 1, 1997, information that is relevant and necessary to its role as the exclusive representative of the unit employees.

MAREMONT CORPORATION/A DIVISION  
OF ARVIN INDUSTRIES