

Coin Devices Corporation and United Federation of Security Officers, Inc. Case 2-CA-21156

March 23, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND LIEBMAN

Pursuant to a charge filed on July 8, 1997, the General Counsel of the National Labor Relations Board issued a complaint on August 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 29-RC-8819. (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 January 22, 1998, the General Counsel filed a Motion for Summary Judgment. On January 26, 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 that the Acting Regional Director certified the Union as the exclusive collective-bargaining representative and that the Respondent refused to bargain with the Union, but attacks the validity of the certification on the bases that the Union is not certifiable as an appropriate collective-bargaining representative for the Respondent's unit of guards under Section 9(b)(3) of the Act because it admits nonguards to membership and that the Union does not represent a majority of employees in the unit.¹

All representation issues raised by the Respondent were or could have been litigated in the prior represen-

¹In support of its position and in response to the notice to show cause, the Respondent contends there is newly discovered and previously unavailable evidence that the Union continues to represent and accept payment of dues from nonguards, to wit, a transcript from a representation hearing in *Armored Motor Services of America*, Case 3-RC-10609, purporting to show that, the Union accepted dues from nonguard couriers, Ralph Craig Pragliola and Paul Berkowitz in August 1997, admitted to membership and accepted dues from nonguard courier Raphael Almonte about August 1997, and has continued to accept dues from nonguard courier Michael J. Suhay who began his employment as a nonguard courier and joined the Union in approximately 1994. The Respondent also contends that since January 1992, the Union has admitted into membership 14 nonguard couriers and accepted payment of their dues.

tation 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.² 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

At all material times, the Respondent, a New York corporation, with an office and place of business in Long Island City, New York, where it is engaged in the business of the armored transportation of money and valuables for customers in New York. During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 directly to businesses located outside the State of New York. 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 about May 19, 1997, the Union was certified on June 25, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

²The Respondent's contentions do not warrant denial of the General Counsel's motion for summary judgment. The Respondent's evidence of events dating back to 1992 and 1994 does not qualify as "newly discovered" because the Respondent has not explained why that evidence was not adduced at the representation case hearing held in 1997. See *NLRB v. Joseph E. Decker & Sons*, 569 F.2d 357, 363-364 (5th Cir. 1978) ("facts implying reasonable diligence must be provided" by the party alleging evidence is newly discovered). Furthermore, the Respondent's evidence that the Union admitted nonguards to membership in August 1997 is irrelevant to the issue raised by the General Counsel's motion of whether the Respondent committed an unfair labor practice when it refused to bargain with the Union a month earlier on July 1, 1997. See *Children's Hospital of Michigan*, 317 NLRB 580, 583 (1995), enf. 105 F.3d 1139 (6th Cir. 1997). To the extent that the Respondent has evidence that, subsequent to the unlawful refusal to bargain, the Union may have admitted nonguards to membership, the appropriate procedure is for the Respondent to file a petition to revoke the certification. *Children's Hospital*, 105 F.3d at 1146; NLRB Casehandling Manual, Representation Proceedings, Sec. 11478.3.

All full-time and regular part-time non-professional armed and unarmed security guards, drivers, custodians and back-men employed by the Employer at its 5-26 45th Avenue, Long Island City, New York, location excluding all other employees, vault clerks 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 July 1, 1997, the Union has requested the Respondent to bargain and, since that date, 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 July 1, 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, Coin Devices Corporation, Long Island City, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Federation of Security Officers, Inc., 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 non-professional armed and unarmed security guards, drivers, custodians and back-men employed by the Employer at its 5-26 45th Avenue, Long Island City, New York, location excluding all other employees, vault clerks and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Long Island City, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29 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 1, 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.

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."

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 Federation of Security Officers, Inc., 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 non-professional armed and unarmed security guards, drivers, custodians and back-men employed by us at our 5-26 45th Avenue, Long Island City, New York, location excluding all other employees, vault clerks and supervisors as defined in the Act.

COIN DEVICES CORPORATION