

Keeler Die Cast and International Union, United Automobile, Aerospace and Agricultural Implementation Workers of America (UAW), AFL-CIO.
Case 7-CA-40259

March 23, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
LIEBMAN

Pursuant to a charge and amended charge filed on September 29 and October 14, 1997, the General Counsel of the National Labor Relations Board issued a complaint on October 24, 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 7-RC-20932. (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 December 19, 1997, the General Counsel filed a Motion for Summary Judgment. On December 23, 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 to the complaint and its response to the Motion for Summary Judgment, the Respondent not only relies on the objections it filed to the election in the underlying representation case, but also makes two additional arguments. It contends (1) that the certification of the Union should not have issued because there was an unremedied unfair labor practice at the time of the election and (2) that the bargaining unit in which the Respondent will be ordered to bargain if the Motion for Summary Judgment is granted must be deemed inappropriate in light of a position the General Counsel is taking in a different pending unfair labor practice case.

Even accepting the factual premises of these contentions, we find no basis for denying the Motion for Summary Judgment. As to the first contention, the unremedied unfair labor practice to which the Respondent refers was the Respondent's own domination of, and provision of support to, an in-house organization (the "Keeler Brass Grievance Committee"), in

violation of Section 8(a)(2) and (1) of the Act.¹ As the party that committed the violation and was ordered by the Board to remedy it, the Respondent obviously knew whether or not it had complied with that order, and therefore could have raised this point before the election. It did not, but rather stipulated to the election that was held. In any event, any contention that the election should now be set aside is meritless, since the Union whose certification the Respondent now attacks won the election notwithstanding the Respondent's unlawful support of the in-house committee. As for the Respondent's contention that the General Counsel is taking a position in another case which is inconsistent with the certification of the Union as the bargaining representative of a unit limited to employees at the Respondent's Stevens Street facility, the Respondent's proper course is to raise its argument in the other case. The Respondent stipulated to the appropriateness of the unit concerned here, and it has alleged no change in the unit that would warrant reopening the representation case to revisit the determination.

For these reasons, we find that 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). 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 corporation, with an office and place of business in Grand Rapids, Michigan (the Steven Street facility) has been engaged in the manufacture and nonretail sale of die cast automobile parts and furniture hardware. During the 1996 calendar year, the Respondent, in the course and conduct of its business operations, purchased and received at its Steven Street facility goods valued in excess of \$50,000 directly from points located outside the State of Michigan. 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.

¹ *Keeler Brass Co.*, 317 NLRB 1110 (1995).

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held December 12, 1996, the Union was certified on September 3, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees including all leadmen, quality auditors and material handling clerks employed by the Employer at its facility located at 236 Stevens Street, S.W., Grand Rapids, Michigan, but excluding all office clerical employees, quality analysts, technical employees, professional employees, casual employees, 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*

Since September 9, 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 September 9, 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, Keeler Die Cast, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implementation Workers of America (UAW), 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 production and maintenance employees including all leadmen, quality auditors and material handling clerks employed by the Employer at its facility located at 236 Stevens Street, S.W., Grand Rapids, Michigan, but excluding all office clerical employees, quality analysts, technical employees, professional employees, casual employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Grand Rapids, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7 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 September 9, 1997.

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."

(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.

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 Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), 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 production and maintenance employees including all leadmen, quality auditors and material handling clerks employed by Keeler Die Cast at our facility located at 236 Stevens Street, S.W., Grand Rapids, Michigan, but excluding all office clerical employees, quality analysts, technical employees, professional employees, casual employees, guards and supervisors as defined in the Act.

KEELER DIE CAST