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**Sandvik Rock Tools, Inc. and Shopmen's Local Union No. 753 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO.** Case 11-CA-17991

September 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge and amended charge filed on June 26, 1998, and July 22, 1998, respectively, the Acting General Counsel of the National Labor Relations Board issued a complaint and notice of hearing and amended complaint and notice of hearing on July 16, 1998, and July 30, 1998, respectively, 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 11-RC-6254. (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 and amended answer admitting in part and denying in part the allegations in the amended complaint.

On September 4, 1998, the Acting General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On September 9, 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 amended 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 the Board's unit determination 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).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The amended complaint alleges, and the Respondent's amended answer admits, that the Union requested the following information on May 7, 1998:

- (1) Names of all bargaining unit employees.
- (2) Dates of hire and wage rates of all bargaining unit employees.
- (3) Job classifications or description of work performed by all bargaining unit employees.
- (4) Descriptions and explanations of bonus or incentive plans, vacation benefits, group insurance, welfare benefits, or pension plans, including costs thereof, and any other fringe benefits for all bargaining unit employees.

The Respondent's amended answer states that based on the fact that it denies that the collective-bargaining unit certified by the Regional Director was appropriate for collective bargaining, it denies that the information is relevant and necessary to the Union's duties as the exclusive bargaining representative. It is well established, however, that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted, which the Respondent has not done. See, e.g., *Maple View Manor, Inc.*, 320 NLRB 1149 (1996); *Trustees of the Masonic Hall*, 261 NLRB 436 (1982); and *Verona Dye-stuff Division*, 233 NLRB 109, 110 (1977).

Accordingly, we grant the Motion for Summary Judgment and shall order the Respondent to recognize and bargain with the Union and to furnish the Union the information requested.<sup>1</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is now, and has been at all times material, a Delaware corporation, with facilities in Bristol, Virginia, where it is engaged in the manufacture and nonretail sale of chemical products and machine tool products.

During the 12-month period preceding issuance of the complaint, which period is representative of all times material herein, the Respondent sold and shipped from its Bristol, Virginia facilities, goods valued in excess of \$50,000 directly to points outside the Commonwealth of Virginia.

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.

<sup>1</sup> Member Brame did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters that would require the Board to reexamine the decision in the representation proceeding. Accordingly, he joins his colleagues in granting the Motion for Summary Judgment.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the election held April 24, 1998, the Union was certified on May 4, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time production and maintenance employees employed by the Respondent at its Chemical Production Division in Bristol, Virginia; but excluding all clerical employees, watchmen and or guards as defined in the Act.

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

### B. *Refusal to Bargain*

Commencing on or about May 7, 1998, and continuing to date, the Union has requested, and is requesting, the Respondent to bargain collectively, and to provide information which is relevant and necessary to the Union's performance of its function as the employees' exclusive collective-bargaining representative, and, commencing on or about May 7, 1998, and at all times thereafter, the Respondent has failed and refused, and continues to fail and refuse. 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 refusing on and after May 7, 1998, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union the requested necessary and relevant 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 recognize and 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 recognize and 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, Sandvik Rock Tools, Inc., Bristol, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Shopmen's Local Union No. 753 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron 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 production and maintenance employees employed by the Respondent at its Chemical Production Division in Bristol, Virginia; but excluding all clerical employees, watchmen and or guards as defined in the Act.

(b) Furnish the Union the information that it requested on May 7, 1998.

(c) Within 14 days after service by the Region, post at its facility in Bristol, Virginia, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 11 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 7, 1998.

<sup>2</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."

(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. September 30, 1998

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Sarah M. Fox, Member

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Wilma B. Liebman, Member

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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 refuse to bargain with Shopmen's Local Union No. 753 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO as the exclusive representative of the employees 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 production and maintenance employees employed by us at our Chemical Production Division in Bristol, Virginia; but excluding all clerical employees, watchmen and or guards as defined in the Act.

WE WILL furnish the Union the information that it requested on May 7, 1998.

SANDVIK ROCK TOOLS, INC.