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Osram Sylvania Products, Inc.¹ and International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers and its Local 101, AFL-CIO². Case 6-CA-29851

August 27, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge filed on June 12, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint and amended complaint on June 18 and 26, 1998, respectively, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the International Union's request to bargain following the International Union's certification in Case 6-RC-11305. (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 answers admitting in part and denying in part the allegations in the complaint and amended complaint.

On July 20, 1998, the Acting General Counsel filed a Motion for Summary Judgment. On July 22, 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 to the amended complaint the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election and the Board's disposition of certain challenged ballots 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*

¹ The name of the Respondent is corrected as set forth in its answers to the complaint and amended complaint.

² The International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, is referred to herein as "The International Union."

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

During the 12-month period ending May 31, 1998, the Respondent, in conducting its business operations, purchased and received at its St. Marys, Pennsylvania facility goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the International 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 June 27, 1996, the International Union was certified on May 14, 1998, 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 employed by the Employer at its Washington Road, St. Marys, Pennsylvania, facility; excluding all office clerical employees, salespersons, transport workers and guards, professional employees and supervisors as defined in the Act, and all other employees.

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

B. *Refusal to Bargain*

About May 20, 1998, the International Union, by letter, requested the Respondent to recognize and bargain, and since about June 2, 1998, by letter, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after June 2, 1998, to recognize and bargain with the International 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

³ The Respondent's demand that the complaint be dismissed is therefore denied.

desist, to recognize and bargain on request with the International 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 International 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, Osrsm Sylvania Products, Inc., St. Marys, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers and its Local 101, 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, recognize and bargain with the International 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 employed by the Employer at its Washington Road, St. Marys, Pennsylvania, facility; excluding all office clerical employees, salespersons, transport workers and guards, professional employees 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 St. Marys, Pennsylvania, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 6 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 June 2, 1998.

(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. August 27, 1998

Sarah M. Fox, Member

Wilma B. Liebman, Member

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 fail and refuse to recognize and bargain with the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers and its Local 101, 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.

⁴ 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."

WE WILL, on request, recognize and bargain with the International 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 employed by us at our Washington Road, St. Marys, Pennsylvania, facility; ex-

cluding all office clerical employees, salespersons, transport workers and guards, professional employees and supervisors as defined in the Act, and all other employees.

OSRAM SYLVANIA PRODUCTS, INC.