

NOTICE: This opinion is subject to formal revision before publication in the bound 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.

Elizabethtown Gas Company, a Division of NUI Corporation and Communication Workers of America, AFL-CIO. Case 22-CA-23113

April 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Pursuant to a charge filed on January 11, 1999,¹ the General Counsel of the National Labor Relations Board issued a complaint on February 2, 1999, 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 22-RC-11457. (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 March 9, 1999, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On March 11, 1999, 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 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.² The Respondent does not offer to ad-

¹ Although the Respondent's answer to the complaint denies that the charge was filed and served on the Respondent on January 11, 1999, a copy of the charge and letter notifying the Respondent of the charge is attached to the Motion for Summary Judgment, and the Respondent has not challenged the authenticity of those documents in response to the Notice to Show Cause.

² The Respondent's answer denies pars. 4 and 6 of the complaint which set forth the commerce status of the Respondent and the appropriate unit, on the ground that the allegations therein constitute legal conclusions for which no response is required. We find that the Respondent's denials in this respect do not raise any litigable issues in this proceeding. The conclusion that the Respondent is engaged in commerce (par. 4) is consistent with the admitted commerce facts alleged in par. 3 of the complaint. In any event, under the Board's Rules, the Respondent had the opportunity to litigate this issue in the representation proceeding.

We also note that the Respondent alleges the unit as inappropriate because of the inclusion of the dispatchers. That issue was fully litigated in the preelection hearing and the Respondent did not request

duce 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.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with offices and places of business in Union, Elizabeth, and Perth Amboy, New Jersey, has been engaged in the operation of a regulated public utility supplying natural gas to municipal, commercial, and residential customers in the State of New Jersey.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations derived gross revenues in excess of \$250,000.

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 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 November 20, 1997, the Union was certified on December 3, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time customer service representatives, dispatchers, group leaders, support representatives, transport billing specialists, arrears control analysts, credit and collection representatives and switchboard operators employed by the Employer at its Union, Elizabeth and Perth Amboy, New Jersey facilities, excluding all office clerical employees, transportation billing analyst, revenue projection investigator, field customer relations analyst, secretaries, 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

On about December 11, 1998, the Union, by letter, requested the Respondent to meet and bargain, and, since

review of the Regional Director's Decision finding that the dispatchers were not supervisors and including them in the bargaining unit. Accordingly, the Respondent is precluded from raising that issue in this proceeding.

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

December 11, 1998, the Respondent has failed and refused. 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.

CONCLUSIONS OF LAW

By refusing on and after December 11, 1998, to recognize and 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 recognize and 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, Elizabethtown Gas Company, a Division of NUI Corporation, Union, Elizabeth, and Perth Amboy, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Communications Workers of America, 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 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 customer service representatives, dispatchers, group leaders, support representatives, transport billing specialists, arrears control analysts, credit and collection representatives and switchboard operators employed by the Employer at its

Union, Elizabeth and Perth Amboy, New Jersey facilities, excluding all office clerical employees, transportation billing analyst, revenue projection investigator, field customer relations analyst, secretaries, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Union, Elizabeth, and Perth Amboy, New Jersey, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 22, 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 December 11, 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. April 30, 1999

Sarah M. Fox, Member

Peter J. Hurtgen, 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

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."

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 recognize and bargain with Communication Workers of America, 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, recognize and 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 customer service representatives, dispatchers, group leaders, support representatives, transport billing specialists, arrears control analysts, credit and collection representatives and switchboard operators employed by us at our Union, Elizabeth and Perth Amboy, New Jersey facilities, excluding all office clerical employees, transportation billing analyst, revenue projection investigator, field customer relations analyst, secretaries, guards and supervisors as defined in the Act.

ELIZABETHTOWN GAS COMPANY, A DIVISION OF
NUI CORPORATION