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Seawin, Inc. and Teamsters Local 20, affiliated with the International Brotherhood of Teamsters, AFL-CIO. Case 8-CA-30514

May 11, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on February 9, 1999, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on February 26, 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 and to furnish information following the Union's certification in Case 8-RC-15693. (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 April 8, 1999, the General Counsel filed a Motion for Summary Judgment. On April 13, 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 did not file 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 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 Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

The Respondent denied that the Union has requested that it recognize and bargain as the exclusive collective-bargaining representative of the employees. Attached to the General Counsel's Motion for Summary Judgment is a copy of the Union's letter dated January 27, 1999, which demonstrates that the Union has requested recognition and bargaining and that the Union has refused. The Respondent does not dispute the receipt or authen-

ticity of this letter. In fact, in its letter dated February 5, 1999, the Respondent replied to the Union's letter and stated that it is refusing "your request to bargain" in order to test the Union's certification by the Board. Accordingly, we find that the Union has requested recognition and bargaining with the Respondent.

We also find that the Respondent has not, by its denial, raised any issue requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

A seniority list, which should include employees names, department, hire date, rates of pay and employment status.

The names and addresses of employees who were laid off in the last year.

The Respondent's answer admits that the Respondent refused to provide this information to the Union. Further, although the Respondent's answer effectively denies that the information requested is necessary and relevant to the Union's duties as the exclusive representative of the unit employees, it is well established that wage and employment information of this type is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Maple View Manor*, 320 NLRB 1149 (1996); *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977). The Respondent has not attempted to rebut the relevance of the requested information.

Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation, with an office and place of business in Fremont, Ohio, has been engaged in the manufacture of fittings and valves used in pneumatic instrumentation.

Annually, in the course and conduct of its business as described above, the Respondent sells and ships products valued in excess of \$50,000 directly to points located outside the State of Ohio.

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 March 25, 1998, the Union was certified on January 19, 1999, as the exclusive col-

¹ The Respondent's requests that the complaint be dismissed and that it recover its costs and attorney's fees are therefore denied.

lective-bargaining representative of the employees in the following appropriate unit:²

All full-time and regular part-time production and maintenance employees excluding all confidential employees, sales employees, office clerical employees, and professional 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

About January 27, 1999, the Union, by letter, requested the Respondent to recognize and bargain and to furnish information, and, since about February 5, 1999, 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 February 5, 1999, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested 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 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 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, Seawin, Inc., Fremont, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local 20, affiliated with the International Brotherhood of Teamsters, 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 and regular part-time production and maintenance employees excluding all confidential employees, sales employees, office clerical employees, and professional employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on January 27, 1999.

(c) Within 14 days after service by the Region, post at its facility in Fremont, Ohio, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 8, 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 February 5, 1999.

² Although the Respondent's answer denies the appropriateness of the unit, the Respondent entered into a Stipulated Election Agreement in the underlying representation proceeding in which it agreed that the above-described unit was appropriate for collective bargaining. Accordingly, the Respondent is precluded from contesting the appropriateness of the unit in the instant proceeding. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992).

³ 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. May 11, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, 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 Teamsters Local 20, affiliated with the International Brotherhood of Teamsters, AFL-CIO as the bargaining 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 and regular part-time production and maintenance employees excluding all confidential employees, sales employees, office clerical employees, and professional employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on January 27, 1999.

SEAWIN, INC.