

Inalfa Roof Systems, Inc. and Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) AFL-CIO. Case 7-CA-41906

June 11, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge and amended charge filed on March 29 and April 5, 1999, respectively, the General Counsel of the National Labor Relations Board issued a complaint on April 15, 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 7-RC-21235. (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, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On May 14, 1999, the General Counsel filed a Motion for Summary Judgment. On May 18, 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 essentially 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.

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.¹ 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 Counsel for the General Counsel in the instant unfair labor practice proceeding is the same individual who served as the Board agent in charge of the election. We specifically reject the Respondent's bare assertion that this unequivocally demonstrates continued attempts to thwart Inalfa's attempt to seek review of the misconduct of the Board agent. The conduct of the Board agent was fully litigated and considered by the hearing officer and by the Board in the representation case. The Respondent's objections were overruled in that proceeding and the Respondent does not allege that it has any newly discovered evidence. In these circumstances, we can perceive no impropriety in the assignment of this matter to counsel for the General Counsel.

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

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 place of business at 1370 Pacific Drive, Auburn Hills, Michigan, has been engaged in the manufacture and non-retail distribution of automotive sunroofs at its Auburn facility.

During calendar year 1998, the Respondent, in conducting its business operations described above, purchased goods and materials valued in excess of \$50,000 from points located outside the State of Michigan and caused those goods and materials to be shipped directly to its Auburn Hills facility.

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 13, 1998, the Union was certified on March 5, 1999, 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 assemblers, shipping and receiving employees, receiving inspectors, hi-lo drivers, quality auditors, sweepers, and CMM operators, employed by the Respondent at its facility located at 1370 Pacific Drive, Auburn Hills, Michigan; but excluding office clerical employees, professional employees, technical employees, confidential employees, managers, guards and supervisors as defined by the Act.

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

B. *Refusal to Bargain*

On March 11, 1999, the Union requested the Respondent to bargain, and, since March 11, 1999, 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.

CONCLUSION OF LAW

By failing and refusing on and after March 11, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate

² The Respondent's request to dismiss the complaint together with the imposition of costs and attorneys' fees against the Charging Party is denied.

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, Inalfa Roof Systems, Inc., Auburn Hills, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 155, International Union, United Automobile, Aerospace and Agricultural Implement 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 assemblers, shipping and receiving employees, receiving inspectors, hi-lo drivers, quality auditors, sweepers, and CMM operators, employed by the Respondent at its facility located at 1370 Pacific Drive, Auburn Hills, Michigan; but excluding office clerical employees, professional employees, technical employees, confidential employees, managers, guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in Auburn Hills, Michigan, copies of the at-

tached notice marked "Appendix."³ 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 March 11, 1999.

(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 Local 155, 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 assemblers, shipping and receiving employees, receiving inspectors, hi-

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."

lo drivers, quality auditors, sweepers, and CMM operators, employed by us at our facility located at 1370 Pacific Drive, Auburn Hills, Michigan; but excluding office clerical employees, professional employees, tech-

nical employees, confidential employees, managers, guards and supervisors as defined by the Act

INALFA ROOF SYSTEMS, INC.