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Shamy Heating & Air Conditioning, Inc. and Sheet Metal Workers International Association, Local Union No. 33 of Northern Ohio, AFL-CIO
Case 8-CA-31152

May 30, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge filed on November 19, 1999, the General Counsel of the National Labor Relations Board issued a complaint on January 13, 2000, 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 furnish information following the Union's certification in Case 8-RC-15895. (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 28, 2000, the General Counsel filed a Motion for Summary Judgment. On March 30, 2000, 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 and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, 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. 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).¹

¹ The Respondent argues that it is under no obligation to recognize and bargain with the Union because 6 of the 11 bargaining unit employees resigned their employment with the Respondent shortly after the election and have not been replaced, thereby resulting in a radical fluctuation in the size of the unit that destroyed the Union's majority status.

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that the Union requested the following information from the Respondent on November 8, 1999:

1. A list of all current employees, including their current wage rate, classification, and a list of any fringe benefits they receive.
2. A copy of its current hospitalization plan, including the cost of the plan for each employee, and a copy of the summary plan description.
3. A summary plan description for its current 401-K plan and a list of any past plans in which current employees still have investments along with the summary plan description for each of those plans.
4. A copy of the summary plan description for the Benco benefits plan, the Respondent's prevailing wage, hospitalization, and 401-K plan.
5. A copy of its current company handbook.
6. A copy of its current Apprenticeship Standards.

It is well established that the foregoing type of compensation and employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.² The Respondent has not attempted to rebut the relevance of the information requested by the Union. Instead, in its answer, the Respondent relies solely on its challenge to the Union's certification as the basis for its denial that it has a duty to provide the Union with the requested information. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

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 Toledo, Ohio, has been engaged in the fabrication, installation,

This contention does not constitute a valid defense to a refusal-to-bargain allegation where the Respondent is refusing to honor a Board certification. It is well established that employee turnover is not the kind of "unusual circumstance" within the meaning of the Supreme Court's decision in *Brooks v. NLRB*, 348 U.S. 96 (1954), that would permit rebuttal of the Union's majority status or warrant reexamination of its certification. See *Action Automotive*, 284 NLRB 251 (1987), *enfd.* 853 F.2d 433 (6th Cir. 1988), *cert. denied* 488 U.S. 1041 (1989); *Murphy Bros., Inc.*, 265 NLRB 1574 (1982); *KI(USA) Corp.*, 310 NLRB 1233, fn.1 (1993).

² See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Verona Dyestuff Division*, 233 NLRB 109 (1977).

service, and repair of heating, venting, and air conditioning systems. Annually, the Respondent, in conducting its business operations described above, purchases and receives at its Toledo, Ohio facility, goods valued at more than \$50,000 directly from points 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 June 11, 1999, the Union was certified on November 5, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time installation mechanics, installation mechanics apprentices, service mechanics, and service mechanics apprentices engaged in the fabrication, installation, service, or repair of all heating, venting, and air conditioning systems employed by the Employer at or out of its 6226 American Road, Toledo, Ohio facility, the sole facility involved herein, but excluding all office clerical, professional employees, sales persons, dispatchers, guards, and supervisors as defined in the Act, and all other employees.

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

B. *Refusal to Bargain*

Since about November 8, 1999, the Union has requested the Respondent to bargain and to furnish information described above, and, since November 8, 1999, the Respondent has refused. We find that this 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 November 8, 1999, to 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 by it on November 8, 1999.

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, Shamy Heating & Air Conditioning, Inc., Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Sheet Metal Workers International Association, Local Union No. 33 of Northern Ohio, 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 installation mechanics, installation mechanics apprentices, service mechanics, and service mechanics apprentices engaged in the fabrication, installation, service, or repair of all heating, venting, and air conditioning systems employed by the Employer at or out of its 6226 American Road, Toledo, Ohio facility, the sole facility involved herein, but excluding all office clerical, professional employees, sales persons, dispatchers, guards, and supervisors as defined in the Act, and all other employees.

(b) Furnish the Union the information requested by it on November 8, 1999.

(c) Within 14 days after service by the Region, post at its facility in Toledo, 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

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."

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 November 8, 1999.

(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 30, 2000

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 refuse to bargain with Sheet Metal Workers International Association, Local Union No. 33 of Northern Ohio, 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 installation mechanics, installation mechanics apprentices, service mechanics and service mechanics apprentices engaged in the fabrication, installation, service or repair of all heating, venting and air conditioning systems employed by us at or out of our 6226 American Road, Toledo, Ohio facility, the sole facility involved herein, but excluding all office clerical, professional employees, sales persons, dispatchers, guards and supervisors as defined in the Act, and all other employees.

WE WILL provide the Union with the information it requested on November 8, 1999.

SHAMY HEATING & AIR CONDITIONING, INC.