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**EDCO Waste and Recycling Services, Inc. and Building Material, Construction, Industrial, Professional and Technical Teamsters, Local 36, International Brotherhood of Teamsters, AFL-CIO.** Case 21-CA-34108

November 27, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESALE AND MEMBERS FOX AND HURTGEN

Pursuant to a charge filed on July 31, 2000,<sup>1</sup> the General Counsel of the National Labor Relations Board issued a complaint on August 22, 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 to furnish information following the Union's certification in Case 21-RC-20074. (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 October 17, 2000, the General Counsel filed a Motion for Summary Judgment. On October 18, 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 as relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of the Board's disposition of certain challenged ballots in the representation proceeding.<sup>2</sup>

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to ad-

<sup>1</sup> Although the Respondent states that it is without knowledge regarding the truth of the allegation with respect to the filing of the charge on July 31, 2000, and service on August 2, 2000, a copy of the charge and affidavit of service thereof is attached as an exhibit to the General Counsel's motion and the Respondent has not challenged the authenticity of those documents in its response to the Notice to Show Cause.

<sup>2</sup> Although the Respondent took exception to the hearing officer's decision to overrule its objections in the underlying representation case, it has not relied on those objections in its response to the Notice to Show Cause. In these circumstances, the Respondent has waived reliance on these objections in this proceeding. See *The Detroit Free Press, Inc.*, 332 NLRB No. 43 (2000).

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.<sup>3</sup> See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request to bargain and for information. The Respondent admits that by letters dated July 12 and 31, 2000, the Union requested that the Respondent bargain collectively and furnish the Union with the following information: (1) a list of current employees employed by the Respondent, with their classification, wage rate, and date of hire; (2) copies of any health and welfare, life insurance, pension and profit-sharing plans provided to employees by the Respondent; (3) the Respondent's policies regarding payment of holidays, vacations and sick leave; and (4) a list of any other employee benefits provided to the employees by the Respondent. The Respondent's answer admits that it refused to provide this information, but denies that the information requested is relevant and necessary for the Union's role as the exclusive bargaining representative of the unit employees. It is well established, however, that information of the kind requested concerning unit employees is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436, 437 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977). The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary Judgment<sup>4</sup> and will order the Respondent to recognize and bargain with the Union and to furnish it the information requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with its principal offices located at 224 South Las Posas Road, in San Marcos, California, has been engaged in waste collection, disposal, and recycling.

<sup>3</sup> The Respondent's answer asserts as an affirmative defense that the Board has no jurisdiction over alleged unfair labor practices set forth in the complaint which are barred by the 6-month statute of limitations set forth in Sec. 10(b) of the Act. The critical allegations of the unfair labor practice complaint occurred less than 1 month before the charge was filed. Neither the Respondent's answer nor its response to the notice presents any factual or legal basis for this asserted defense. Accordingly, we reject the Respondent's 10(b) defense.

<sup>4</sup> The Respondent's requests that the complaint be dismissed and that it recover costs and attorneys' fees are denied.

During the 12-month period ending July 31, 2000, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 for customers located within the State of California, each of which customers, during that same period of time, purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

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.<sup>5</sup>

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. The Certification

Following the election held May 25, 1999, the Union was certified on June 28, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All drivers, helpers, fleet and container maintenance employees, recycling sorters and equipment operators employed by the Employer at its facility located at 224 South Las Posas Road, San Marcos, California; excluding all other employees, office clerical employees, salesmen, 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

On or about July 12, 2000, and again on or about July 31, 2000, the Union, by letter, requested the Respondent to bargain and to furnish information, and, since July 31, 2000, 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 July 31, 2000, 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.

<sup>5</sup> The Respondent's answer denies that it has purchased and received goods valued in excess of \$5000 directly from suppliers located outside the State of California. It also avers that it is without knowledge as to the truth of the allegation that the Union is a labor organization. We note that the Respondent stipulated to these commerce allegations in the Stipulated Election Agreement in the underlying representation case and that that agreement identified the Union as a labor organization. We further note that the Respondent has not asserted these positions in its response to the Notice to Show Cause. Accordingly, those denials do not present any issue warranting a hearing. *The Detroit Free Press, Inc.*, supra.

## 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), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, EDCO Waste and Recycling Services, Inc., San Marcos, California, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Refusing to bargain with Building Material, Construction, Industrial, Professional and Technical Teamsters, Local 36, 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 drivers, helpers, fleet and container maintenance employees, recycling sorters and equipment operators employed by the Employer at its facility located at 224 South Las Posas Road, San Marcos, California; excluding all other employees, office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on July 12 and 31, 2000.

(c) Within 14 days after service by the Region, post at its facility in San Marcos, California, copies of the a-

tached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 21 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 July 31, 2000.

(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. November 27, 2000

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John C. Truesdale, Chairman

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Sarah M. Fox, Member

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Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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<sup>6</sup> 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."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United 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 Building Material, Construction, Industrial, Professional and Technical Teamsters, Local 36, International Brotherhood of Teamsters, 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 drivers, helpers, fleet and container maintenance employees, recycling sorters and equipment operators employed by us at our facility located at 224 South Las Posas Road, San Marcos, California; excluding all other employees, office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on July 12 and 31, 2000.

EDCO WASTE AND RECYCLING SERVICES, INC.