

**Coastal Lumber Company and United Steelworkers  
of America, AFL-CIO, CLC. Case 6-CA-31698**

January 5, 2001

**DECISION AND ORDER**

**BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN  
AND HURTGEN**

Pursuant to a charge filed on November 6, 2000, the General Counsel of the National Labor Relations Board issued a complaint on November 8, 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 following the Union's certification in Case 6-RC-11850. (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 defenses, admitting in part and denying in part the allegations in the complaint.

On November 27, 2000, the General Counsel filed a Motion for Summary Judgment. On November 28, 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 but attacks the validity of the certification on the basis of the Board's unit determination 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). Accordingly, we grant the Motion for Summary Judgment.<sup>1</sup>

<sup>1</sup> The Respondent's alternative requests that the complaint be dismissed or that it be granted a hearing are therefore denied.

Although the Respondent alleges as improper certain preelection conduct by the employees it contends are supervisors, it did not file any objections to the election. Because the Respondent failed to raise this issue in a timely filed objection, it is foreclosed from presenting it now.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Virginia corporation, with its principal office in Weldon, North Carolina, and a place of business in Hazelton, West Virginia, herein called the Respondent's facility, has been engaged in the manufacture of hardwood components for the cabinet and furniture industry.

During the 12-month period ending October 31, 2000, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000. During the same period, the Respondent purchased and received at its Hazelton, West Virginia facility goods valued in excess of \$50,000 from points outside the State of West Virginia and sold and shipped from its Hazelton, West Virginia facility goods valued in excess of \$50,000 directly to points outside the State of West Virginia.

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 September 7, 2000, the Union was certified on September 20, 2000, 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 employed by the Employer at its Hazelton, West Virginia, facility; excluding all office clerical employees, confidential employees and guards, professional employees and supervisors as defined in the Act.

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

*NLRB v. Aaron's Office Furniture*, 825 F.2d 1167, 1170-1173 (7th Cir. 1987).

We also disagree with the Respondent's assertion that the votes of the six alleged supervisors would have affected the election results. In its answer to the complaint, the Respondent acknowledges that there were 33 votes for and 24 votes against the Union. Assuming arguendo that the six individuals voted for the Union, their exclusion from the unit would still have occasioned an election victory for the Union with a mathematical result of 27 "yes" votes and 24 "no" votes.

Finally, we deny the General Counsel's request that we strike the Respondent's answers to complaint paragraphs 9 through 15. We do not find these answers to be frivolous or signed with intent to defeat the purpose of Section 102.21 of the Board's Rules.

### B. Refusal to Bargain

About September 25, 2000, the Union, by letter, requested the Respondent to bargain, and, since about September 25, 2000, the Respondent has failed and refused.<sup>2</sup> We find that this 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 September 25, 2000, to 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 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, Coastal Lumber Company, Hazelton, West Virginia, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL-CIO, CLC, 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.

<sup>2</sup> The Respondent correctly points out in its response that the General Counsel's Motion alleges a refusal to bargain since February 16, 2000. That clearly is an inadvertent error. The complaint alleges a demand to bargain on September 25, 2000, and the Respondent admits that it responded to that demand by letter dated October 17, 2000, indicating that it was engaging in a "technical refusal to bargain" in order to test the Board's certification.

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 employed by the Employer at its Hazelton, West Virginia, facility; excluding all office clerical employees, confidential employees and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Hazelton, West Virginia, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 6 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 September 25, 2000.

(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.

<sup>3</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."

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL–CIO, CLC, 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 condi-

tions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees employed by us at our Hazelton, West Virginia, facility; excluding all office clerical employees, confidential employees and guards, professional employees and supervisors as defined in the Act.

COASTAL LUMBER COMPANY