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**River City Elevator Co., Inc. and International Union of Elevator Constructors, AFL-CIO.** Case 25–CA–27125–1

March 12, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge filed on June 2, 2000, the General Counsel of the National Labor Relations Board issued a complaint on July 6, 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 provide information following the Union’s certification in Case 25–RC–9901. (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 January 29, 2001, the Acting General Counsel filed a Motion for Summary Judgment. On January 31, 2001, 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).

We also find that there are no factual issues warranting a hearing with respect to the Union’s request for information. The complaint alleges, and the Respondent admits, that by letter dated May 6, 2000, the Union requested that the Respondent furnish the Union with the following information: (1) a list of current employees,

including their names, dates of hire, rates of pay, job classifications, last known address, phone number, date of completion of any probationary period, and any records of discipline; (2) a copy of all current company policies which concern or relate to wages, hours, and working conditions; (3) a copy of all company fringe benefit plans (including the plan document and summary plan description) including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care, or any other plans which relate to the employees; and (4) copies of all current job descriptions. The Respondent’s answer states that it is without sufficient information to admit or deny the relevancy of the information requested to 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. *Maple View Manor*, 320 NLRB 1149 (1996); and see, e.g., *Masonic Hall*, 261 NLRB 436, 437 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977). The Respondent, in its response to the Notice to Show Cause, has not attempted to rebut the relevance of the information requested by the Union. We therefore find that no material issues of fact exist with respect to the Respondent’s refusal to furnish the requested information.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Evansville, Indiana, has been engaged in the business of the service, installation, and construction of lifting apparatus. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its normal business operations, purchased and received at its Evansville, Indiana facility, goods and services directly from points outside the State of Indiana, the combined value of which was in excess of \$50,000. 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 November 18, 1999, the Union was certified on April 27, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All mechanics and helpers employed by the Employer at its Evansville, Indiana facility, BUT EXCLUDING

all sales, office clerical employees, professional employees and all 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

Since May 5, 2000, the Union has requested the Respondent to bargain, and, since May 10, 2000, the Respondent has refused. Since about May 6, 2000, the Union, by letter, has requested that the Respondent furnish it with certain information described above. Since about May 6, 2000, the Respondent has failed and refused to furnish the Union with the information requested. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after May 10, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and by refusing on and after May 6, 2000, 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 May 6, 2000.

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, River City Elevator Co., Inc., Evansville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the International Union of Elevator Constructors, 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 mechanics and helpers employed by the Employer at its Evansville, Indiana facility, BUT EXCLUDING all sales, office clerical employees, professional employees and all guards and supervisors as defined in the Act.

(b) Furnish to the Union in a timely manner the information it requested in its letter to the Respondent dated May 6, 2000.

(c) Within 14 days after service by the Region, post at its facility in Evansville, Indiana, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 25, 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 May 6, 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. March 12, 2001

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John C. Truesdale, Chairman

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Wilma B. Liebman, Member

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Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</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 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 the International Union of Elevator Constructors, 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 mechanics and helpers employed by us at our Evansville, Indiana facility, BUT EXCLUDING all sales, office clerical employees, professional employees and all guards and supervisors as defined in the Act.

WE WILL provide the Union with the information it requested on May 6, 2000.

RIVER CITY ELEVATOR CO.