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RC Aluminum Industries, Inc. and RC Erectors, Inc. and Local Union No. 272 and Shopmen's Local Union No. 698 of the International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers, AFL-CIO. Case 12-CA-21323

July 5, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND TRUESDALE

Pursuant to a charge filed on February 14, 2001,¹ the Acting General Counsel of the National Labor Relations Board issued a complaint on March 8, 2001, alleging that RC Aluminum Industries, Inc. and RC Erectors, Inc., jointly referred to as the Respondent, have 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 12-RC-8506. (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 April 10, 2001, the Acting General Counsel filed a Motion for Summary Judgment. On April 11, 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. On May 1, 2001, the Respondent filed an opposition to the Acting General Counsel's Motion for Summary Judgment and a Cross Motion for Summary Judgment. Subsequently, the Acting General Counsel filed a response to the Respondent's opposition and cross motion, and 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 findings in the representation pro-

¹ Although the Respondent's answer to the complaint denies having knowledge or information sufficient to form a belief as to the date the charge was filed and mailed, a copy of the charge and letter of service of the charge are attached to the Acting General Counsel's motion, and the Respondent has not challenged the authenticity of those documents in response to the Notice to Show Cause.

ceeding regarding the appropriate units and the Respondent's single employer status.

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.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, RC Aluminum Industries, Inc. and RC Erectors, Inc., Florida corporations with their headquarters/main production facility, as well as other production facilities, located in Miami-Dade County, Florida, and jobsites located at various locations in the State of Florida, have been engaged in the business of manufacturing and installing windows, handrails, and doors.

At all material times, RC Aluminum Industries, Inc. and RC Erectors, Inc. have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise.

Based on the operations described above, RC Aluminum Industries, Inc. and RC Erectors, Inc. constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

During the 12-month period preceding issuance of the complaint, RC Aluminum Industries, Inc. and RC Erectors, Inc., in conducting their business operations described above, have purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Florida.

We find that RC Aluminum Industries, Inc. and RC Erectors, Inc., individually, and as a single employer, are employers engaged in commerce within the meaning of

² Members Liebman and Hurtgen did not participate in the underlying representation proceeding. They find, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case.

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 elections held July 21, 2000, the Union was certified on November 9, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate units:

UNIT A: All full-time and regular part-time production and maintenance employees and truck drivers employed by the Employer at its facilities in Miami-Dade County, Florida, including the shipping clerk and the receiving clerk; but *excluding* purchasing clerks, estimators, draftsmen, secretaries, receptionists, accounting employees, personnel clerks and all other office clerical employees, guards and supervisors as defined in the Act.

UNIT B: All full-time and regular part-time installers, including installers who meet the eligibility formula set forth in *Daniel Construction*, 133 NLRB 264 (1961), as modified, 167 NLRB 1078 (1967), employed by the Employer (RC Aluminum Industries, Inc. and RC Erectors, Inc.); but *excluding* office clerical 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*

By letters dated November 20, and December 15 and 19, 2000, and January 19, 2001, and by its unfair labor practice charge filed February 14, 2001, the Union requested the Respondent to recognize and bargain with it as the exclusive collective-bargaining representative of units A and B.³ The Respondent's answer admits, and

³ The Respondent's answer denies the allegation that the Union requested bargaining by letters dated November 20, and December 15 and 19, 2000, and January 19, 2001. In addition, in its opposition and Cross Motion for Summary Judgment, the Respondent argues that those letters did not constitute proper demands for bargaining because they were not sent by both Local 272 and 698 in their capacity as the certified joint representative of units A and B. Rather, Local 698 sent separate letters stating that it was the "sole" representative of unit A, and Local 272 sent separate letters stating that it was the "sole" representative of unit B.

We find that the Respondent has not raised any issue warranting denial of the Acting General Counsel's Motion for Summary Judgment. Even assuming that the letters separately sent by Local 272 and Local 698 were not by themselves proper demands for bargaining, the subsequent refusal-to-bargain charge filed in this proceeding clearly was a sufficient demand. Thus, that charge identified the Union as both Local 272 and Local 698, alleged that the Respondent had "informed the undersigned that it was refusing to bargain and negotiate with the Un-

we find, that since on or about November 20, 2000, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of units A and B.⁴ We find that the failure and refusal to do so 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 November 20, 2000, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, 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, RC Aluminum Industries, Inc. and RC Erectors, Inc., Miami-Dade County, Florida, its officers, agents, successors, and assigns, shall

I. Cease and desist from

(a) Refusing to bargain with Local Union No. 272 and Shopmen's Local Union No. 698 of the International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, AFL-CIO, as the exclusive bar-

ion," and was signed by Kevin Wallace in his capacity both as president of Local 272 and as district representative of Local 698. We find that this charge, either by itself, or together with the earlier letters, constituted a valid demand for bargaining. See, e.g., *Parkview Manor*, 321 NLRB 477 (1996); and *Williams Enterprises*, 312 NLRB 937, 938-939 (1993), *enfd.* 50 F.3d 1280 (4th Cir. 1995).

⁴ The Respondent's December 21, 2000 letter to Local 272 and February 2, 2001 letter to Local 698 stated that the Respondent was refusing to bargain because it intends to seek judicial review of the Board's findings in the representation proceeding.

gaining representative of the employees in the bargaining units.

(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 units on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

UNIT A: All full-time and regular part-time production and maintenance employees and truck drivers employed by the Employer at its facilities in Miami-Dade County, Florida, including the shipping clerk and the receiving clerk; but *excluding* purchasing clerks, estimators, draftsmen, secretaries, receptionists, accounting employees, personnel clerks and all other office clerical employees, guards and supervisors as defined in the Act.

UNIT B: All full-time and regular part-time installers, including installers who meet the eligibility formula set forth in *Daniel Construction*, 133 NLRB 264 (1961), as modified, 167 NLRB 1078 (1967), employed by the Employer (RC Aluminum Industries, Inc. and RC Erectors, Inc.); but *excluding* office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Miami-Dade County, Florida, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 12, 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 November 20, 2000.

⁵ 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."

(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.

Dated, Washington, D.C. July 5, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

John C. Truesdale, 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 Local Union No. 272 and Shopmen's Local Union No. 698 of the International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining units.

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 units:

UNIT A: All full-time and regular part-time production and maintenance employees and truck drivers employed by us at our facilities in Miami-Dade County, Florida, including the shipping clerk and the receiving clerk; but *excluding* purchasing clerks, estimators, draftsmen, secretaries, receptionists, accounting employees, personnel clerks and all other office clerical employees, guards and supervisors as defined in the Act.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

UNIT B: All full-time and regular part-time installers, including installers who meet the eligibility formula set forth in *Daniel Construction*, 133 NLRB 264 (1961), as modified, 167 NLRB 1078 (1967), employed by us;

but *excluding* office clerical employees, guards and supervisors as defined in the Act.

RC ALUMINUM INDUSTRIES, INC.
AND RC ERECTORS, INC.