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Streicher Mobile Fueling, Inc. and International Brotherhood of Teamsters, Local 385, AFL-CIO. Case 12-CA-23237

October 31, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and an amended charge filed on July 28 and August 8, 2003,¹ respectively, the General Counsel issued a complaint on August 12, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 12-RC-8859. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Sections 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, and asserting affirmative defenses.

On September 15, 2003, the General Counsel filed a Motion for Summary Judgment. On September 23, 2003, 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 October 7, 2003, 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 and response to the Notice to Show Cause, the Respondent admits its refusal to bargain and to furnish information, but contests the validity of the

¹ The Respondent in its answer to the complaint states that it is without sufficient knowledge or information to form a belief as to whether the amended charge was filed and served on Respondent by mail on August 8 and 11, 2003, respectively. However, copies of the amended charge and affidavit of service are attached as Exhibits N and P to the General Counsel's motion and the Respondent has not contested the authenticity of these documents in its response to the Notice to Show Cause. Accordingly, we find that the Respondent has not raised any issue regarding filing and service of the amended charge warranting a hearing. See, e.g., *Shore Club Condominium Association Inc.*, 340 NLRB No. 82 fn. 1 (2003); *Corrections Corp. of America*, 330 NLRB 663 (2000), enfd. 234 F.3d 1321 (D.C. Cir. 2000).

certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. In addition, the Respondent denies that the information requested by the Union is necessary and relevant, asserting that the Union's information request is overbroad and that some of the requested information is confidential.

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, and we do not find any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.² 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 July 18, 2003, the Union re-

² In the representation proceeding, one of the Respondent's objections was that the Union distributed a marked sample ballot. The Hearing Officer overruled this objection, finding that the language on the Board's Notice of Election disclaiming any involvement by the Board in altering or defacing the sample ballot was sufficient to reassure employees of the Board's neutrality. In its response to the Notice to Show Cause, the Respondent contends that issuance of the Board's decision in *International Business Machines Corp.*, 339 NLRB No. 120 (2003), creates special circumstances warranting reexamination of the decision in the representation proceeding. We reject the Respondent's contention, for the following reasons.

The Respondent's argument is based on the premise that most of the employees in the voting unit work off-site and therefore may not have been exposed to the Notice of Election, which was posted on company bulletin boards (but not electronically). The adequacy of the posting of the Notice of Election could have been litigated in the prior representation proceeding. The Respondent does not contend that it has newly discovered and previously unavailable evidence concerning the matter. Indeed, it was always free to post the notice electronically on its own initiative, or to alert employees electronically to the bulletin board posting. The Board's decision in *International Business Machines* has no bearing here. In that case, the Board simply rejected, on procedural grounds, the charging party's request, in the compliance proceeding, that the respondent employer be required to post a remedial notice electronically.

Member Walsh adheres to his position in *International Business Machines* that electronic posting of the Board's remedial notice is required where notices to employees are customarily posted in that manner and posting by paper bulletin board would be inadequate. However, he agrees that the Board's decision in that case does not constitute a special circumstance requiring the Board to reexamine its decision in the underlying representation proceeding here.

Member Liebman, who was not on the panel that decided *International Business Machines*, agrees that the decision there does not constitute a special circumstance requiring the Board to reexamine its decision in the underlying representation proceeding here.

requested that the Respondent furnish the Union with the following information for unit employees:

- (1) A list of current employees including their names, dates of hire, rates of pay, job classifications, last known address, phone number, dates of completion of any probationary period, and any records of discipline;
- (2) A copy of all current company personnel policies, practices or procedures;
- (3) A statement and description of all company personnel policies, practices or procedures other than those stated in number 2 above;
- (4) 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;
- (5) Copies of all current job descriptions;
- (6) Copies of any company wage or salary plans;
- (7) Copies of all disciplinary notices, warnings or records of disciplinary action for the last year;
- (8) A statement and description of all wage and salary plans which are not provided under number 6 above.

In its answer, the Respondent relies on its challenge to the Union's certification as a defense to its refusal to provide the Union with the requested information. The Respondent also contends that the employees' telephone numbers and the disciplinary records of former employees are confidential, and that the Union's information request is overbroad. However, it is well established that the foregoing type of employment information sought by the Union, including employees' telephone numbers and disciplinary records, is presumptively relevant for purposes of collective bargaining and must be furnished on request.³ Further, although the Union's information request is not specifically limited to bargaining unit employees and could therefore be construed as requesting information pertaining to nonunit as well as unit employees, this would not justify the Respondent's blanket refusal to comply with the Union's request. It is well established that an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply with the request to

³ See, e.g., *Super K-Mart*, 322 NLRB 583 (1996)(telephone numbers and disciplinary records); *Maple View Manor*, 320 NLRB 1149 (1996), enf. 107 F.3d 923 (D.C. Cir. 1997)(telephone numbers).

the extent it encompasses necessary and relevant information.⁴

We therefore find that the Respondent unlawfully refused to furnish the information sought by the Union. See, e.g., *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977). However, in granting summary judgment, we shall only require the Respondent to provide the requested information to the extent it pertains to current or former unit employees.⁵ See *Cheboygan Health Care Center*, 338 NLRB No. 115, slip op. at 2 fn. 2 (2003); *Freyco Trucking, Inc.*, 338 NLRB No. 97, slip op. at 2 fn. 1 (2003).

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 to the extent the information pertains to current or former unit employees.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation, has had an office and principal place of business located in Orlando, Florida, where it is engaged in the business of providing on-site fueling services. During the past 12 months, the Respondent, in the course and conduct of its business operations described above, purchased and received at or near its Orlando, Florida facility goods valued in excess of \$50,000 directly from points located outside the State of Florida. 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 26, 2002, the Union was certified on May 30, 2003, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers employed by Streicher Mobile Fueling, Inc., out of its Orlando, Florida location, excluding all other employees, guards and supervisors as defined in the Act.

⁴ *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Holiday Inn Coliseum*, 303 NLRB 367 fn. 6 (1991).

⁵ This is consistent with the complaint, which alleges that the Respondent's failure to furnish information "for the Unit" violated the Act.

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

B. Refusal to Bargain

Since about July 18, 2003, the Union, by letter, has requested the Respondent to bargain and to furnish information. The information requested by the Union is necessary for, and relevant to the Union's performance of its duties as exclusive collective-bargaining representative of the unit employees. Since on or about July 18, 2003, the Respondent has failed and refused to bargain with the Union and to furnish the requested information. We find that the Respondent has thereby violated Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after July 18, 2003, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union with requested necessary and relevant 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 shall also order the Respondent to furnish the Union with the information it requested by letter dated July 18, 2003, to the extent the information pertains to current or former unit employees.

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).⁶

⁶ In accordance with the General Counsel's unopposed request, and as the record in the underlying representation case indicates that some of the unit employees did not speak English, we shall order that the Notice to Employees be posted in both English and Spanish. In this case, unlike *Shore Club Case Condominium*, 340 NLRB No. 82 (2003), the record in the underlying representation case indicates that some of the unit employees speak Spanish, but not English, and that the sample ballot circulated by the Union (which was the subject of an objection) was printed in both Spanish and English.

ORDER

The National Labor Relations Board orders that the Respondent, Streicher Mobile Fueling, Inc., Orlando, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Teamsters, Local 385, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit employees.

(c) 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 and regular part-time drivers employed by Streicher Mobile Fueling, Inc., out of its Orlando, Florida location, excluding all other employees, guards and supervisors as defined in the Act.

(b) Furnish the Union with the information that it requested in its letter dated July 18, 2003, to the extent the information pertains to current or former unit employees.

(c) Within 14 days after service by the Region, post at its facility in Orlando, Florida, copies of the attached notice marked "Appendix."⁷ 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 translated into Spanish, and both Spanish and English notices 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

⁷ 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."

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 18, 2003.

(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. October 31, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Brotherhood of Teamsters, Local 385, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

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 following bargaining unit:

All full-time and regular part-time drivers employed by us, out of our Orlando, Florida location, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union with the information that it requested in its letter dated July 18, 2003, to the extent the information pertains to current or former unit employees.

STREICHER MOBILE FUELING, INC.