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Erie Brush & Manufacturing Corp. and Service Employees International Union, Local 1, AFL-CIO.
Case 13-CA-41318

December 31, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
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 filed on September 16, 2003, the General Counsel issued the complaint on October 28, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 13-RC-20918. (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 November 21, 2003, the General Counsel filed a Motion for Summary Judgment. On November 25, 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 December 9, 2003, the Respondent filed a response and the Charging Party filed a statement in support of the motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification based on its objections to conduct alleged to have affected the results of 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.

In its response, the Respondent argues, among other things, that we should reconsider our decision to overrule its second objection, which alleged that employee Clemente Isidro had told employees that those who voted

for the Union would not have to pay an initiation fee. The Respondent contended that this conduct was objectionable under *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973) (union interfered with election by offering to waive initiation fees for those employees who signed authorization cards before the election). We overruled this objection on the ground that, even assuming that Isidro was an agent of the Union, the record failed to establish that his conduct could have affected the election results since there was no credited evidence that Isidro discussed the fee waiver with more than two employees or that his statements were disseminated, and the Union won the election by a wide margin (18 to 5, with 2 challenged ballots).

In its response, the Respondent contends that we erred in relying on the foregoing factors, arguing that there are no prior decisions where the Board has relied on the lack of dissemination in evaluating whether an election should be overturned because of a *Savair* violation. The Respondent contends that the case we cited, *M.B. Consultants, Ltd.*, 328 NLRB 1089 (1999), is distinguishable because it involved an employer's promise of benefits.

We reject the Respondent's contentions. The Supreme Court in *Savair* itself emphasized that the election was decided by only one vote. 414 U.S. at 278 and 281. Further, the Respondent does not cite any Board or court decisions holding that dissemination is irrelevant or may be presumed in cases involving a *Savair* violation. Finally, we find that *M.B. Consultants* is analogous because a union's promise to waive initiation fees for employees who sign cards is also a promise of benefit. See *Savair*, 414 U.S. at 278-281. As in *M.B. Consultants* and other cases involving an employer's promise of benefits, therefore, we find that dissemination is relevant and may not be presumed in cases involving a union's promise to waive initiation fees. See also *Peppermill Hotel Casino*, 325 NLRB 1202 fn. 2 (1998).

Accordingly, we find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding,¹ and 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, the Respondent, an Illinois corporation with an office and place of business in Chicago, Illinois, has been engaged in the production and distribution of car wash and polish products.

¹ See *Pittsburgh Plate Glass v. NLRB*, 313 U.S. 146, 162 (1941).

² The Respondent's request to dismiss the complaint is therefore denied.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent purchased and received goods, products, and materials valued in excess of \$50,000 at its Chicago, Illinois facility directly from points located outside the State of Illinois.

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 January 14, 2003, the Union was certified on July 18, 2003, 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 Respondent at its facility currently located at 860 W. Fletcher St., Chicago, Illinois; but excluding all salesmen, office clerical 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.

B. *Refusal to Bargain*

About August 18, 2003, the Union requested the Respondent to bargain, and, since about August 29, 2003, the Respondent has failed and refused to do so. We find that the Respondent's conduct 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 August 29, 2003, 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), 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).³

ORDER

The National Labor Relations Board orders that the Respondent, Erie Brush & Manufacturing Corp., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 1, AFL-CIO, 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.

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 Respondent at its facility currently located at 860 W. Fletcher St., Chicago, Illinois; but excluding all salesmen, office clerical 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 Chicago, Illinois, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 13, 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 no-

³ The record in the underlying representation proceeding indicates that a substantial number of the unit employees do not speak English. Accordingly, we shall order the Notice to Employees to be posted in both English and Spanish.

⁴ 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."

tices 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 August 29, 2003.

(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. December 31, 2003

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Robert J. Battista,	Chairman
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Peter C. Schaumber,	Member
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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 Service Employees International Union, Local 1, AFL-CIO, as the exclusive bargaining 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 conditions 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 facility currently located at 860 W. Fletcher St., Chicago, Illinois; but excluding all salesmen, office clerical employees and guards, professional employees and supervisors as defined in the Act.

ERIE BRUSH & MANUFACTURING CORP.