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**Cooper Tire & Rubber Company and International
Brotherhood of Electrical Workers, Local 1634**
Case 18-CA-17152

March 25, 2004

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 following a rerun election. Pursuant to a charge filed on January 13, 2004, the General Counsel issued the complaint on January 29, 2004, 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 18-RC-17081. (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, and asserting affirmative defenses.

On February 17, 2004, the General Counsel filed a Motion for Summary Judgment. On February 19, 2004, 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 March 10, 2004, 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

The Respondent admits its refusal to bargain, but contests the validity of the certification on the ground that the Board erred in setting aside the initial election, based on the Union's objection, and directing a second election.¹

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

¹ The Board's decision setting aside the initial election and ordering a rerun election is reported at 340 NLRB No. 108 (2003).

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

The Respondent is engaged in the manufacture, distribution and sale of tires at various facilities throughout the United States, including a facility located in Cedar Rapids, Iowa.

During the calendar year ending December 31, 2003, the Respondent, in conducting its business operations described above, purchased and received at its Cedar Rapids, Iowa facility goods and services valued in excess of \$50,000 directly from sources located outside the State of Iowa, and sold and shipped goods and services valued in excess of \$50,000 from its Cedar Rapids, Iowa facility directly to points located outside the State of Iowa.

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 second election held December 3, 2003, the Union was certified on December 10, 2003, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time warehouse employees employed at its warehouse located at 5405 Ely Road SW, Cedar Rapids, Iowa, but excluding office clerical employees, plant clerical employees, managers and guards and supervisors as defined in the Act.

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

² Chairman Battista dissented to the ordering of a second election in the underlying representation case and would have found that the Employer did not engage in objectionable conduct warranting a new election. 340 NLRB No. 108, slip op. at 3-4. While he remains of that view, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). In light of this, and for institutional reasons, he agrees with the decision to grant the General Counsel's Motion for Summary Judgment.

B. Refusal to Bargain

Since December 10, 2003, the Union has requested the Respondent to bargain, and, since January 13, 2004, the Respondent has refused. 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 January 13, 2004, 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, Cooper Tire & Rubber Company, Cedar Rapids, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Electrical Workers, Local 1634, 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 warehouse employees employed at its warehouse located at 5405 Ely Road SW, Cedar Rapids, Iowa, but excluding office clerical employees, plant clerical employees, managers and guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Cedar Rapids, Iowa, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 18, 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 January 13, 2004.

(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. March 25, 2004

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

³ 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."

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 any 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 Electrical Workers, Local 1634, 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 conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time warehouse employees employed at our warehouse located at 5405 Ely Road SW, Cedar Rapids, Iowa, but excluding office clerical employees, plant clerical employees, managers and guards and supervisors as defined in the Act.

COOPER TIRE & RUBBER COMPANY