Dredge Operators, Inc. *and* Unlicensed Division of District No. 1 MEBA/NMU, AFL–CIO, National Marine Engineers Beneficial Association. Case 15–CA–11843

December 16, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On July 10, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing 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 following the Union's certification in Case 16–RC–9388. (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 9, 1992, the General Counsel filed a Motion for Summary Judgment. On November 12, 1992, 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 3, 1992, the Respondent filed a response and cross-motion for summary judgment.

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 with the Union since its certification, but attacks the validity of that certification on the basis of the Board's assertion of jurisdiction and disposition of challenged ballots in the representation proceeding.[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.[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). Accordingly, we grant the General Counsel's Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Louisiana corporation operating an ocean-going, United States flag vessel known as the dredge *Stuyvesant*, which is presently performing work in the harbor in Hong Kong pursuant to a contract with the government of Hong Kong. During the 12-month period ending May 31, 1992, the Respondent, in conducting its business operations received funds in excess of $1 million at its Metairie, Louisiana headquarters directly from Hong Kong. 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 August 7, 1991, the Unlicensed Division of District No. 1 MEBA/NMU, AFL–CIO, National Marine Engineers Beneficial Association (the Union) was certified on April 14, 1992, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All unlicensed seamen employed aboard the dredge *Stuyvesant*; excluding all licensed seamen, supervisors and guards, as defined in the Act.

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

B. *Refusal to Bargain*

Since April 14, 1992, the Union has been certified as the exclusive collective-bargaining representative of the unit, and since the same date, the Respondent has refused to bargain with the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

[1] In its response to the Notice to Show Cause, the Respondent also contends that the instant complaint must be dismissed because it did not include a notice of hearing. We reject the Respondent's contention as without merit. See *Lighthouse for the Blind of Houston*, 248 NLRB 1366, 1367–1368 (1980), affd. 696 F.2d 399 (5th Cir. 1980).

[2] The only new circumstances cited by the Respondent are that the Hong Kong government has recently required it to employ a total of 12 Hong Kong citizens in the bargaining unit, and that work on the Hong Kong project has been suspended since October 1992 because of ''political bickering'' between the governments of Hong Kong and China. The possibility of such circumstances occurring was fully considered by the Regional Director in his Decision and Direction of Election and by the Board on Respondent's exceptions thereto. Further, as the Respondent acknowledges, it has not to date been required to recognize and bargain with any other union as representative of the 12 Hong Kong crewmembers, and 14 of its American crewmembers are still employed on the vessel.

[3] We therefore deny the Respondent's cross-motion for summary judgment.

CONCLUSION OF LAW

By refusing on and after April 14, 1992, 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 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, Dredge Operators, Inc., Metairie, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Unlicensed Division of District No. 1 MEBA/NMU, AFL–CIO, National Marine Engineers Beneficial Association, as the exclusive collective-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 unlicensed seamen employed aboard the dredge *Stuyvesant*; excluding all licensed seamen, supervisors and guards, as defined in the Act.

(b) Post at its facility in Metairie, Louisiana, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 15 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[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.''

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 Unlicensed Division of District No. 1 MEBA/NMU, AFL–CIO, National Marine Engineers Beneficial Association, 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 unlicensed seamen employed aboard the dredge *Stuyvesant*; excluding all licensed seamen, supervisors and guards, as defined in the Act.

DREDGE OPERATORS, INC.