Allstate Insurance Company *and* Allstate Agents Association. Case 29–CA–5135

January 11, 1978

DECISION AND ORDER

By Chairman Fanning and Members Jenkins and Murphy

On July 15, 1977, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent did not violate Section 8(a)(5) and (1) by refusing to bargain collectively with the Union pending final determination by the Board of Respondent's request for review of the Regional Director's report on the objections and certification of representative, and that, as there was no evidence which indicated that Respondent's refusal to bargain during the period of review was made as part of a bad-faith effort by Respondent to avoid its bargaining obligation, the Board's decision in *Howard Plating Industries, Inc.*,[1] was dispositive of the issue.

The General Counsel excepts, contending that the Board should not adopt the Administrative Law Judge's recommended dismissal of the complaint, and requests that the Board reopen the record and consolidate the instant case with four complaints which have been consolidated and set for hearing before an Administrative Law Judge, or, in the alternative, that the Board defer decision in the instant case pending the outcome of the decision in the consolidated complaints, which is expected to prove that the refusal to bargain in the instant case was made as part of a bad-faith effort by Respondent to avoid its bargaining obligation. While we deny the General Counsel's request to reopen or to defer decision in the instant case, we find merit in his contention that the complaint should not be dismissed.

The essential facts, as more fully set forth by the Administrative Law Judge, show that on July 14, 1976, the Regional Director certified the Union as the exclusive bargaining representative. On July 21, 1976, the Union made its bargaining request to Respondent. The Respondent, by letter dated July 23, 1976, refused to bargain with the Union on grounds that Respondent had filed with the National Labor Relations Board a request for review of the Regional Director's decision on the objections to the election upon which the Union's certification was predicated, and that Respondent would meet with the Union for collective bargaining when and if a decision of the National Labor Relations Board was issued upholding the Regional Director. The Board subsequently denied review and recognition was granted on October 12, 1976.

We find that the Administrative Law Judge's Decision and the General Counsel's exceptions have overlooked the real issue in the instant case, and that is the importance of an outstanding certification. If an employer declines to meet for bargaining in the face of a Regional Director's certification (which certification would follow the Regional Director's passing on objections) even though there has been no final action by the Board on review, the General Counsel need not show bad faith in support of a refusal-to-bargain allegation.

In *E. V. Williams Company, Inc.*, 175 NLRB 792, fn. 1, par. 2, (1969) the Board, in refusing to adopt the Trial Examiner's finding that the respondent's refusal to meet with the unions was in bad faith, held that all that is required to prove a violation is the respondent's admitted refusal to meet with the certified unions. Cf. *N.L.R.B.* v. *Benne Katz, etc., d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736 (1962). In that case, as here, recognition was requested and refused during the pendency of the employer's request for review of the Regional Director's certification of representative, but, unlike the instant situation, the employer there continued to refuse recognition after review was denied. It is well established that an employer refuses to recognize a certified labor organization at its peril.[2]

Accordingly, we find that Respondent has, since July 23, 1976, and until October 12, 1976, refused to bargain collectively with the certified Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

[1] 230 NLRB 178 (1977).

[2] See *E. V. Williams Company, Inc., supra.*

Conclusions of Law

1. Allstate Insurance Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Allstate Agents Association is a labor organization within the meaning of Section 2(5) of the Act.

3. All insurance salesmen including retail agents, account agents, senior account agents, general agents, account executives, agent-trainees, direct agents, and assistant district sales managers, employed by the Respondent at its Long Island region, excluding all other employees, supervisors, and guards, as defined in the Act, constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

4. Since its July 14, 1976, certification by the Regional Director the above-named labor organization has been the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing on or about July 23, 1976, and until October 12, 1976, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel,* 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company,* 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Allstate Insurance Company, Huntington Station, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Allstate Agents Association as the exclusive bargaining representative of its employees in the following appropriate unit:

> All insurance salesmen including retail agents, account agents, senior account agents, general agents, account executives, agent-trainees, direct agents, and assistant district sales managers, excluding all other employees, supervisors, and guards, as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Huntington Station, New York, facility copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places,

[3] In the event that 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."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Allstate Agents Association as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All insurance salesmen including retail agents, account agents, senior account agents, general agents, account executives, agent-trainees, direct agents, and assistant district sales managers at Huntington Station, New York, excluding all other employees, supervisors, and guards, as defined in the Act.

ALLSTATE INSURANCE COMPANY

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge: This case was heard before me on February 14, 1977, at Brooklyn, New York. The charge was filed August 9, 1976, by Allstate Agents Association, herein called the Union. The complaint issued November 30, 1976, alleging that Allstate Insurance Company, herein called Respondent, violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, by refusing between July 23, 1976, and October 12, 1976, to bargain collectively with the Union which had been duly certified by the Regional Director for Region 29 of the National Labor Relations Board on July 14, 1976, as the collective-bargaining representative of Respondent's employees in an appropriate unit.

In its answer, filed December 9, 1976, and amended at the hearing, Respondent admitted the appropriateness of the unit; that on July 14, 1976, the Union was certified by the Regional Director for Region 29 as the exclusive collective-bargaining representative of Respondent's employees; that the Union on July 21, 1976, requested Respondent to bargain pursuant to said certification; but denied that on July 23, 1976, Respondent refused and continued until October 12, 1976, to refuse to bargain collectively with the Union; and denied also the conclusionary allegations contained in the complaint.

All parties appeared at the hearing and were afforded full opportunity to be heard and present evidence and argument. General Counsel and Respondent filed briefs. Upon the entire record[1] and after giving due consideration to the briefs, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Illinois corporation, with its principal office and place of business located at Northbrook, Illinois, and various other places of business in the State of New York, and other States of the United States, is engaged in the sale of insurance and related products or services. During the year preceding issuance of the complaint Respondent, in the course and conduct of its business operations, derived revenues in excess of $1 million from the interstate sale of insurance, of which in excess of $1 million was remitted to its principal office in Northbrook, Illinois, directly from its locations in New York State. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On May 5, 1976,[2] a majority of the employees of Respondent in an appropriate unit, by a secret-ballot election conducted under the supervision of the Regional Director for Region 29 of the National Labor Relations Board, designated and selected the Union as their representative for purposes of collective bargaining with Respondent. On July 14, 1976, the Regional Director certified the Union as the exclusive bargaining representative of said

[1] No witnesses were called by any of the parties.

[2] The complaint and answer were amended at the hearing to reflect the proper date of the election.

employees. On July 21, 1976, pursuant to the certification, the Union requested Respondent to bargain collectively with it concerning the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the unit. This much is alleged in the complaint and admitted by Respondent. At the hearing, General Counsel placed in evidence, without objection from the Union, a letter from Respondent to the Union dated July 23, in which Respondent declined to bargain with the Union:

> William D. Gallagher, Esq. 10 East 40th Street New York, New York 10016
>
> Dear Mr. Gallagher:
>
> Your letter of July 21, 1976, directed to Mr. Amis and requesting a negotiation meeting to be scheduled no later than August 4, 1976, has been referred to the undersigned as one of the attorneys for Allstate Insurance Company.
>
> As you are aware, Allstate has filed objections to the conduct of the election of May 5, 1976, and no final decision has yet been rendered on those objections. Consequently, unless and until a final decision is reached concerning those objections and the Union's certification, we must decline your request for bargaining.
>
> Very truly yours, Lederer, Fox and Grove
>
> Kalvin M. Grove

Thus, Respondent defends the charge of refusal to bargain on grounds that it need not do so, though certification has issued, while it is still pursuing its procedural rights of review until a final decision is rendered by the Board. General Counsel, however, citing various cases available at the time of the hearing and submission of briefs, contends that under the circumstances of the instant case, if Respondent refuses to bargain during the review period, as indeed it did, it does so at its peril and should be found in violation of Section 8(a)(5) where its objections prove without merit.

On June 13, 1977, subsequent to hearing and the filing of briefs, the Board issued its decision in *Howard Plating Industries, Inc.*, 230 NLRB 178, 179, a case factually identical to the instant case. The Board in discussing the precise issue presented herein stated:

> Although an employer's obligation to bargain is established as of the date of an election in which a majority of unit employees vote for union representation, the Board has never held that a simple refusal to initiate collective-bargaining negotiations pending final Board resolution of timely filed objections to the election is a *per se* violation of Section 8(a)(5) and (1). There must be additional evidence, drawn from the employer's whole course of conduct, which proves that the refusal was made as part of a bad-faith effort by the employer to avoid its bargaining obligation.
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> . . . Respondent herein has timely exercised its legal right to request Board consideration of the Regional Director's report in the underlying representation election. While awaiting issuance of a Board decision which might have relieved it of any bargaining obligation, Respondent did not violate the Act, absent additional conduct reflective of bad-faith intentions, by refraining from the negotiation of a potentially moot collective-bargaining agreement. [Footnote omitted.]
>
> Accordingly, we deny the Motion for Summary Judgment and find that Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing the Union's precertification request to bargain. We shall therefore dismiss the complaint.

Inasmuch as the instant case contains no evidence which indicates that the refusal to bargain during the period of review was made as a part of a bad-faith effort by the employer to avoid its bargaining obligation.[3] I conclude that *Howard Plating Industries, Inc.*, is dispositive of the issue presented here and that Respondent, in refusing to bargain pending the Board's review of its timely filed objections, did not violate Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Respondent, Allstate Insurance Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Allstate Agents Association is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not violated Section 8(a)(5) and (1) by refusing to bargaining collectively with the Union pending final determination by the Board of timely filed exceptions to the Regional Director's report.

[Recommended Order for dismissal omitted from publication.]

[3] On the contrary, Respondent's agreement that the certification year should commence as of October 12, 1976, when negotiations were actually undertaken is indicative of Respondent's good-faith acceptance of its bargaining obligation.