Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services *and* International Alliance of Theatrical Stage Employees, Local 15. Case 19–CA–167454

May 19, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

Pursuant to a charge filed by the Union on January 7, 2016, the General Counsel issued a complaint and notice of hearing on June 23, 2016, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union from January 4, to May 23, 2016, following the Union's certification in Case 19–RC–161471. (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).)[1] The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses. On September 12, 2016, the Respondent filed a Motion for Summary Judgment and memorandum in support. On September 15, 2016, the General Counsel filed a brief in opposition, and the Respondent filed a reply. Thereafter, on October 13, 2016, pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations, the parties submitted to the Division of Judges a Joint Motion and Stipulation of Facts, in which the parties jointly moved to transfer the proceedings to the Division of Judges, waive a hearing, and authorize the judge to issue a decision based on the stipulation of facts and parties' briefs. By order dated October 13, 2016, Associate Chief Administrative Law Judge Gerald M. Etchingham granted the parties' Joint Motion, approved the joint stipulation of facts and supporting exhibits, and postponed the hearing indefinitely. By subsequent order dated October 14, 2016, Associate Chief Judge Etchingham suspended briefing on the stipulated record until the National Labor Relations Board ruled on the Respondent's Motion for Summary Judgment.

On November 9, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Respondent's September 12, 2016 motion should not be granted. The General Counsel filed a response and cross-motion for summary judgment. The Union filed a response in support of the General Counsel's motion. The Respondent filed no response.

Ruling on Motions for Summary Judgment

The Respondent admits in its motion and by stipulation that from about January 4 to May 23, 2016, it declined to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees. The Respondent argues, however, that it did not violate the Act by refusing to bargain during this period because its request for review of the Regional Director's Decision and Direction of Election and his Decision on Challenges and Objection and Certification of Representative was pending with the Board. The Respondent adds that once the Board denied its request for review on May 19, 2016, it promptly responded to the Union's bargaining requests and the parties have since engaged in multiple bargaining sessions and exchanged proposals and counterproposals.[2]

Counsel for the General Counsel, in her response to the Notice to Show Cause and cross motion for summary judgment, argues that the Respondent's obligation to recognize and bargain with the Union began on the date that the Regional Director certified the Union as the exclusive collective-bargaining representative of the unit, absent the Board overturning the certification. Given that the Union was certified on December 18, 2015, and that the Board subsequently denied the Respondent's request for review, counsel for the General Counsel argues that the Respondent's motion should be denied and that the General Counsel is entitled to summary judgment because the Respondent has admitted its refusal to recognize and bargain with the Union as alleged in the complaint. We agree with the General Counsel.

[1] More specifically, on October 23, 2015, the Regional Director for Region 19 issued a Decision and Direction of Election. An election was conducted by secret mail ballot from November 9, 2015 to November 30, 2015. On December 18, 2015, the Regional Director issued a Decision on Challenges and Objection and Certification of Representative in Case 19–RC–161471, in which he certified the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit. On January 4, 2016, the Respondent filed with the Board in Washington, D.C., a request for review of the both the Decision and Direction of Election and the Decision on Challenges and Objection and Certification of Representative. On May 19, 2016, the Board denied the Respondent's request for review.

[2] Chairman Miscimarra notes that this case involves, in part, the Board's recently revised representation case procedures, with which he has expressed his disagreement. See 79 Fed.Reg. 74308, at 77430–74460 (Dec. 15, 2014) (dissenting views of Members Miscimarra and Johnson). While Chairman Miscimarra continues to disagree with the revised Rule, the Respondent here did not challenge the application of the Election Rule in the underlying representation proceeding. Accordingly, Chairman Miscimarra does not pass or reach any question regarding the consequences of the Rule's application to the instant case. See *Durham School Service, L.P.*, 363 NLRB No. 129, slip op. at 1 fn. 1 (2016).

Under well-established law, an employer is not relieved of its obligation to bargain with a certified representative of its employees pending Board consideration of a request for review. *Benchmark Industries*, 262 NLRB 247, 248 (1982), enfd. mem. 724 F.2d 974 (5th Cir. 1984). By relying on its filing of a request for review in refusing to bargain with the certified Union, the Respondent acted at its peril. *Allstate Insurance Co.*, 234 NLRB 193, 193 (1978). See also *Volkswagen Group of America, Inc.*, 364 NLRB No. 110, slip op. at 2 fn. 4 (2016) (citing *L. Suzio Concrete Co.*, 325 NLRB 392, 396 (1998), enfd. mem. 173 F.3d 844 (2d Cir. 1999)); *Madison Detective Bureau, Inc.*, 250 NLRB 398, 399 (1980).

The Respondent's reliance on *Howard Plating Industries*, 230 NLRB 178 (1977), is misplaced. In *Howard Plating*, there was no outstanding certification at the time of the alleged unlawful refusal to bargain. Indeed, the complaint allegations in that case focused exclusively on the employer's conduct *prior* to issuance of the certification in the related representation proceeding. Id. at 179 fn. 2. Here, in contrast, the complaint allegations focus on the Respondent's conduct *after* issuance of the certification of representative. In these circumstances, "all that is required to prove a violation is the respondent's admitted refusal to meet with the certified union[]." *Allstate Insurance Co.*, above, 234 NLRB at 193. The Respondent has admitted its refusal to bargain in this case.

The Respondent also contends that the Regional Director's decisions and his issuance of certification were not final as of January 4, 2016, because those decisions provided the Respondent a right to request review. In addition, the Respondent asserts that the Region's decision to hold the unfair labor practice charge in the present case in abeyance pending a Board ruling on the Respondent's request for review indicates that the Union's certification was "conditional." The Respondent's arguments are without merit. Nothing in the Regional Director's decisions or the Region's actions establish, or even suggest, that the Union's certification was "conditional" or that the Respondent's obligation to recognize and bargain with the Union was stayed by its filing of a request for review. See *Allstate Insurance Co.*, above, 234 NLRB at 193.[3]

[3] See also Sec. 102.69(c)(2) of the Board's Rules and Regulations, as amended, providing that: "The decision of the regional director may include a certification of the results of the election, including certification of representative where appropriate, and *shall be final unless a request for review is granted*." Id., emphasis added. This section of the Board's Rules is reinforced by Sec. 102.67(g) providing that actions of a Regional Director "are final *unless a request for review is granted*." Id., emphasis added.

Accordingly, as the Respondent admits that from about January 4, 2016, until May 23, 2016, it declined to recognize and bargain collectively with the certified Union, we shall grant the General Counsel's motion for summary judgment, and deny the Respondent's motion for summary judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a State of Delaware corporation with offices and places of business in Tukwila, Seattle, Sea-Tac, Bellevue, and Tacoma, Washington, where it is engaged in the business of providing event technology services. In conducting its operations during the 12-month period preceding issuance of the complaint, which period is representative of all material times, the Respondent received gross revenue in excess of $500,000, and purchased and received at its facilities located within the state of Washington goods valued in excess of $50,000 directly from points outside the State of Washington.

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 representation election held and conducted by mail ballot from November 9, 2015, until November 30, 2015, the Union was certified on December 18, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with the Employer, and guards and supervisors as defined by the Act.

B. Refusal to Bargain

By email dated January 4, 2016, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. From about January 4 to May 23, 2016, the Respondent failed and refused to recognize and bar-

gain with the Union as the exclusive collective-bargaining representative of the unit.

We find that this failure and refusal constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing from about January to May 23, 2016, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, 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 on May 23, 2016, which is the date that the Respondent began to bargain in good faith with the Union. See *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); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The General Counsel also requests that the notice be read aloud to employees. We deny this request because the General Counsel has not established that the Board's traditional remedies are insufficient to address the violation found in this case. See *Hospital of Barstow, Inc., d/b/a Barstow Community Hospital*, 361 NLRB No. 34, slip op. at 4 (2014), adopted and incorporated by reference in 364 NLRB No. 52 (2016); *Alstyle Apparel*, 351 NLRB 1287, 1288 (2007).

ORDER

The National Labor Relations Board orders that the Respondent, Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services, Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the International Alliance of Theatrical Employees, Local 15 (the Union) 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 collective-bargaining representative of the employees in the following appropriate unit concerning 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 technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with the Employer, and guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facilities in Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 19, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities 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 4, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 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. May 19, 2017

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[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."

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, 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 fail and refuse to recognize and bargain with the International Alliance of Theatrical Employees, Local 15 (the Union) as the exclusive collective-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 listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning 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 technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with the Employer, and guards and supervisors as defined by the Act.

AUDIO VISUAL SERVICES GROUP, INC. D/B/A PSAV PRESENTATION SERVICES

The Board's decision can be found at http://www.nlrb.gov/case/19–CA–167454 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.