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The American Bottling Company d/b/a Keurig Dr Pepper and International Brotherhood of Teamsters Local 727. Case 13–CA–247183

February 5, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

This is a refusal-to-bargain case in which the Respondent, The American Bottling Company d/b/a Keurig Dr Pepper, is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to charges filed on August 27, 2019, by International Brotherhood of Teamsters Local 727 (the Union), the General Counsel issued the complaint on November 25, 2019, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain with it following the Union’s certification in Case 13–RC–243320. (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(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer to the complaint, admitting in part and denying in part the allegations in the complaint.

On December 11, 2019, the General Counsel filed a Motion for Summary Judgment. On December 18, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

The Respondent denies its refusal to bargain but contests the validity of the certification based on its objections

¹ In its answer, the Respondent denies the allegations in complaint par. 5(a), which sets forth the appropriate unit, and par. 5(d), which identifies the Union as the exclusive representative of the unit employees. The unit issue, however, was fully litigated and resolved in the underlying representation proceeding. Accordingly, the Respondent’s denial of the appropriateness of the unit does not raise any litigable issue in this proceeding. The Respondent also denies the allegations in par. 6(b), which states that since August 7, 2019, the Respondent has failed and refused to recognize and bargain with the Union, and par. 7, which alleges that, by this conduct, the Respondent has been failing and refusing to bargain collectively and in good faith in violation of Sec. 8(a)(1) and (5) of the Act and that this unfair labor practice affects commerce within the meaning of Sec. 2(6) and (7) of the Act. However, the Respondent admits the allegations in par. 6(a), which states that on August 7, 2019, the Union requested that the Respondent recognize and bargain collectively with the Union as the exclusive bargaining representative of the

to the election in the underlying 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. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.² See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Delaware corporation with an office and place of business in Northlake, Illinois (the Respondent’s facility), and has been engaged in the manufacturing and distribution of beverage products.

During the 12-month period ending December 31, 2018, the Respondent, in conducting its operations described above, purchased and received at its facility goods valued in excess of \$50,000 directly from points 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.

unit, and par. 6(c), which states that the Respondent’s purpose in refusing to bargain is to test the certification issued in Case 13–RC–243320. Accordingly, we conclude that the Respondent’s partial denial of complaint par. 6 and denial of complaint par. 7 do not raise any issue warranting a hearing.

In its response to the Notice to Show Cause, the Respondent argues, without citing any authority, that the Board should deny the General Counsel’s Motion. It is well settled, however, that in a certification-testing unfair labor practice case, issues that had been presented to and decided by the Board in a prior, related representation case cannot be relitigated and will not be reconsidered.

² Chairman Ring did not participate in the underlying representation proceeding. He agrees with his colleagues that the Respondent has not raised any litigable issue in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on July 12, 2019, the Union was certified on August 5, 2019³ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time account managers and sales service representatives employed by the Employer at its facility currently located at 400 North Wolf Road, Northlake, Illinois.

Excluded: All other employees, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

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

B. *Refusal to Bargain*

On August 7, 2019, the Union requested, in writing, that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since August 7, 2019, the Respondent has failed and refused to recognize and bargain with the Union.⁴

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since August 7, 2019, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the 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.

³ By unpublished order dated October 15, 2019, the Board denied the Respondent's request for review of the Acting Regional Director's Decision and Direction on Challenges.

⁴ In its answer, the Respondent denies the complaint allegation that it has failed and refused to recognize and bargain with the Union. The Respondent's denial does not preclude summary judgment or raise material issues of fact warranting a hearing because the Respondent admits

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 the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, The American Bottling Company d/b/a Keurig Dr Pepper, Northlake, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Teamsters Local 727 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:

Included: All full-time and regular part-time account managers and sales service representatives employed by the Employer at its facility currently located at 400 North Wolf Road, Northlake, Illinois.

Excluded: All other employees, 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 Northlake, Illinois facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative,

in par. 6(c) of its answer that it is testing the certification that issued in case 13-RC-243320.

⁵ 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."

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 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 7, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 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. February 5, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, 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 International Brotherhood of Teamsters Local 727 as the exclusive collective-bargaining representative of our 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 that understanding in a signed agreement:

Included: All full-time and regular part-time account managers and sales service representatives employed by the Employer at its facility currently located at 400 North Wolf Road, Northlake, Illinois.

Excluded: All other employees, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

THE AMERICAN BOTTLING COMPANY D/B/A
KEURIG DR PEPPER

The Board's decision can be found at www.nlr.gov/case/13-CA-247183 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.

