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263 NLRB No. 65

D--9019
Norfolk, VA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WORLD'S BEST JANITORIAL
SERVICES, INC.

and

Case 5--CA--13490

METRO PUBLIC SERVICE WORKERS,
LOCAL 52, LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL--CIO

DECISION AND ORDER

Upon a charge filed on July 13, 1981, by Metro Public Service Workers Local 52, Laborers' International Union of North America, AFL--CIO, herein called the Union, and duly served on World's Best Janitorial Services, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 5, issued an amended complaint on January 13, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended.[1] Copies of the charge and amended complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

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[1] On August 27, 1981, the Acting Regional Director issued a consolidated complaint in Cases 5--CA--13490 and 5--CA--13548. By letter dated November 17, 1981, the Union (continued)

With respect to the unfair labor practices, the amended complaint alleges in substance that, at all times since 1979, the Union has been the exclusive collective-bargaining representative for all employees in an appropriate unit [2] and recognition has been embodied in successive collective-bargaining agreements between Respondent and the Union, the most recent of which was effective for the period August 17, 1979, to July 17, 1981. The amended complaint also alleges that on April 24, 1981, Respondent and the Union reached full and complete agreement with respect to the terms and conditions of employment of the employees in the unit described below to be incorporated in a collective-bargaining agreement, and on May 7, 1981, and successive times thereafter, the Union requested Respondent to execute a written contract which embodied said agreement; but that, since May 7, 1981, Respondent has refused to execute a written collective-bargaining agreement. The amended complaint alleges that by refusing to execute a written contract that embodies the agreement of the parties reached on April 24, 1981, Respondent has refused to bargain collectively, in violation of Section

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[1] requested withdrawal of the charge in Case 5--CA--13548 and on December 22, 1981, the Acting Regional Director issued an order severing Case 5--CA--13548 from Case 5--CA--13490 and approved the Union's request to withdraw the charge in Case 5--CA--13548.

[2] The amended complaint alleges that the following employees of Respondent constitute an appropriate unit:

> All employees working under service and supply contract No. 62470--79--C--2096 at the U.S. Naval Station at Norfolk, Virginia, but excluding all guards and supervisors as defined in the Act.

8(a)(1) and (5) and Section 2(6) and (7) of the Act. On October 26, 1981, by letter to the Board agent assigned to this matter Respondent stated, inter alia, that ''[s]ince Worlds Best Janitorial Services, Inc. will not accept the contract at the Naval Station, we decline to sign the union contract.'' The Regional Director interpreted this letter to be a general denial of paragraphs 8 through 12 of the then consolidated complaint, which contained the unfair labor practice allegations. As indicated above, an amended complaint issued on January 13, 1982, and Respondent did not file an answer to the amended complaint.

On March 8, 1982, the General Counsel filed directly with the Board a Motion for Summary Judgment contending that Respondent had failed to file an answer to the amended complaint which was due on January 24, 1982. Subsequently, on March 12, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

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.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The amended complaint and notice of hearing served on Respondent specifically states that unless an answer to the amended complaint is filed within 10 days of service thereof ''all of the allegations in the amended complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, according to the uncontroverted allegation of the Motion for Summary Judgment, counsel for the General Counsel, both telephonically and by certified letter dated February 8, 1982, informed Respondent that the deadline for filing an answer to the amended complaint had been extended to February 16, 1982, but to date there has been no response to counsel for the General Counsel's letter and as of March 4, 1982, the date of the Motion for Summary Judgment, Respondent has failed to file an answer to the amended complaint and to date has not indicated that it would file an answer. Respondent also failed to file a response to the Notice To Show Cause and, therefore, the allegations of the Motion for Summary Judgment stand uncontroverted.

Accordingly, under the rule set forth above, no good cause having been shown for failure to file an answer, the allegations of the amended complaint are deemed admitted and are found to be true and we grant the Motion for Summary Judgment.[3]

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent, a Virginia corporation, at all times material herein, has maintained an office and place of business located at 900 South Washington Street, Falls Church, Virginia, and is engaged in the provision of janitorial services to the U.S. Naval Station located in Norfolk, Virginia, pursuant to a contract under the terms of which said Respondent annually receives revenues in excess of $500,000. During this same period, Respondent purchased and received goods and material valued in excess of $5,000 from Crown Suppliers, located in Springfield, Virginia, which supplier received said goods and materials directly from points located outside the Commonwealth of Virginia.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in

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[3] We find merit to counsel for the General Counsel's averments that Respondent's letter of October 26, 1981, is a clear admission of its refusal to execute a written collective-bargaining agreement in violation of Sec. 8(a)(1) and (5) of the Act and that Respondent is well aware of the provisions of Sec. 102.20 of the Board's Rules and Regulations having previously suffered partial summary judgment due to its failure to promptly and fully answer. World's Best Janitorial Services, Inc., 255 NLRB 582 (1981).

commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Metro Public Service Workers, Local 52, Laborers' International Union of North America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All employees working under service and supply contract No. 62470--79--C--2096 at the U.S. Naval Station at Norfolk, Virginia, but excluding all guards and supervisors as defined in the Act.

Since in or around 1979, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in the unit described above, and since that date the Union has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective-bargaining agreements with the Union and Respondent, the most recent of which was effective by its terms from August 17, 1979, to July 17, 1981. At all times since 1979, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in the above-described unit for the purposes of collective-bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or around May 7, 1981, and successive times thereafter, Respondent has failed and refused to execute a written contract embodying the agreement reached between Respondent and the Union. By refusing to execute a written contract which embodies the parties' agreement, Respondent has refused, and is continuing to refuse, to bargain collectively with the representative of its employees.

Accordingly, we find that Respondent has since May 7, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees, 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.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. 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 we shall order that Respondent immediately, upon the Union's request, execute the agreement embodying such terms and conditions of employment and that, in order to fully remedy

its refusal to execute such agreement, Respondent shall make whole all employees covered by the aforesaid collective-bargaining agreement for the loss of any benefits which would have accrued to them under the contract had Respondent executed the same within a reasonable time after the Union's request for Respondent's signature, computed in the manner set forth in Ogle Protection Services, Inc. and James L. Ogle and Individual, 183 NLRB 682 (1970),[4] with interest to be computed thereon in the manner prescribed in Florida Steel Corporation, 231 NLRB 651 (1977).[5] In the event no such request is made, we shall order Respondent to bargain collectively in good faith with the Union, upon its request as the exclusive representative of the employees in the appropriate unit over the terms and conditions of a collective-bargaining agreement and, if an agreement is reached, embody it in a signed agreement.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. World's Best Janitorial Services, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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[4] Contributions owing the Union's employee benefit funds shall be computed in the manner set forth in Merry Weather Optical Company, 240 NLRB 1213 (1979).

[5] See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962). Member Jenkins would award interest on the backpay in accordance with the formula set forth in his dissent in Olympic Medical Corporation, 250 NLRB 146 (1980).

2. Metro Public Service Workers, Local 52, Laborers' International Union of North America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees working under service and supply contract No. 62470--79--C--2096 at the U.S. Naval Station at Norfolk, Virginia, but excluding all guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since in or around 1979, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing since on or about May 7, 1981, to execute and sign the agreed-upon collective-bargaining agreement reached by Respondent and the Union in their negotiations, Respondent has violated, and is violating, Section 8(a)(5) of the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, World's Best Janitorial Services, Inc., Falls Church, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully refusing to execute and sign the written agreement representing the terms and conditions theretofore agreed upon between the Union and Respondent in the following appropriate unit:

> All employees working under service and supply contract No. 62470--79--C--2096 at the U.S. Naval Station at Norfolk, Virginia, but excluding all guards and supervisors 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, execute and sign a written contract, the terms and conditions of which were agreed upon between the Union and Respondent; give effect to the terms and provisions of the collective-bargaining agreement retroactively to May 7, 1981, as provided by the terms of the agreement, and make its unit employees whole for any losses they may have suffered as a result of Respondent's refusal to sign such an agreement in the manner set forth in the section of this Decision entitled ''The Remedy.''

(b) If no such request is made, bargain collectively in good faith with the Union, upon its request, as the exclusive representative of the employees in the appropriate unit, over the terms and conditions of a collective-bargaining agreement and, if an understanding is reached, embody that understanding in a signed agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in the Norfolk Naval Station, Norfolk, Virginia, copies of the attached notice marked ''Appendix.''[6] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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6 ~~5~~ 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.''

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps the Respondent taken to comply herewith.

Dated, Washington, D.C. August 16, 1982

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, 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

WE WILL NOT fail or refuse to bargain collectively, upon request, concerning rates of pay, wages, hours, and other terms and conditions of employment with Metro Public Service Workers, Local 52, Laborers' International Union of North America, AFL--CIO, 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, execute a copy of the collective-bargaining agreement which contains the terms which were agreed to between us and the Union.

If no such request to sign the agreement is made, WE WILL, upon request, bargain collectively with the Union over the terms of an agreement, and, if an agreement is reached, WE WILL sign the agreement.

WE WILL bargain collectively with the Union by recognizing the Union as the collective-bargaining representative of all employees in the appropriate bargaining bargaining unit described below and by giving effect to the terms and conditions of the above-described agreement retroactive to May 7, 1981, as provided by the terms of said agreement.

WE WILL make whole our employees in the unit represented by Metro Public Service Workers, Local 52, Laborers' International Union of North America, AFL--CIO, for any loss of benefits which they may have incurred because of our failure to execute the collective-bargaining agreement at the times the Union requested us to do so, and we will pay appropriate interest on these sums. The bargaining unit is:

All employees working under service and supply contract No. 62470--79--C--2096 at the U.S. Naval Station at Norfolk, Virginia, but excluding all guards and supervisors as defined in the Act.

WORLD'S BEST JANITORIAL SERVICES, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 9100 Edward A. Garmatz Federal Building & Court House, 101 West Lombard Street, Baltimore, Maryland 21201, Telephone 301--962--2772.