

Superior Installation Company and Sheet Metal Workers' International Association, Local No. 332. Case 26-CA-4181

26 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Upon a charge filed on 6 July 1982 by Sheet Metal Workers' International Association, Local No. 332 (the Union), and duly served on Superior Installation Company (Respondent), the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 19, issued a complaint on 20 August 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1), 8(d), and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges that on or about 2 February 1982¹ Respondent canceled its collective-bargaining agreement with the Union, and since that date has refused to recognize and bargain collectively with the Union as the exclusive bargaining representative of certain of its employees,² and has unilaterally, and without prior notice to the Union, refused and failed to make contributions to the health and welfare, pension, training, and vacation funds as mandated by the bargaining agreement. On 24 September, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

Thereafter, on 2 November, counsel for the General Counsel filed directly with the Board his Motion for Summary Judgment. On 9 November, the Board issued an order transferring the proceed-

ing to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause.

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

Ruling on the Motion for Summary Judgment

In its answer, Respondent admits the violations of the Act alleged in the complaint insofar as the violations occurred prior to 30 August. However, Respondent denies the allegations of the complaint to the extent they involve violations occurring after 30 August contending that, on said date, it filed a petition in bankruptcy in the United States Bankruptcy Court for the District of Oregon. Respondent avers that, by filing the petition, the "debtor in possession or trustee is a successor employer with no obligations except those requirements imposed on" successors by the Act.

It is clear from the pleadings and attached exhibits, including Respondent's answer, that there are no factual issues outstanding. Hence, we find that there is no triable issue requiring a hearing and, for the following reasons, we grant the General Counsel's Motion for Summary Judgment.

The General Counsel argues that Respondent's partial defense to the unfair labor practice charges has no merit, since the filing of its bankruptcy petition does not relieve Respondent of its obligations under the Act. We agree. The Board has held that collective-bargaining agreements are not nullified by the filing of a bankruptcy petition and appointment of a debtor in possession or trustee.³ Thus, even after the filing of its bankruptcy petition Respondent was under an obligation to continue both to recognize and bargain with the Union and to abide by the collective-bargaining agreement. Accordingly, we grant the Motion for Summary Judgment.

FINDINGS OF FACT

I. BUSINESS OF RESPONDENT

Superior Installation Company is an Oregon corporation with its principal office and place of business in Eugene, Oregon, where it is engaged in the construction industry as a contractor providing installation of sheet metal and air pollution control equipment. During the past year, which is representative of its operations, Respondent has, in the course and conduct of its business, performed serv-

¹ All dates refer to 1982.

² The complaint alleges, and Respondent admits, and we find that the appropriate unit consists of:

All employees of the Employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all airveyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches, and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association; but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

³ *I.S.G. Extrusion Toolings*, 262 NLRB (1982). See also *Iron Workers Local 455 v. Kevin Steel Products, Inc.*, 519 F.2d 698 (2d Cir. 1975). We note that Respondent does not assert any bankruptcy court order allegedly affecting the continued validity of the agreement.

ices valued in excess of \$50,000 in locations outside the State of Oregon.

We find, on the basis of the foregoing, that Respondent is, and has been at all time material herein, an employer engaged in commerce within the meaning of Section 2(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

Sheet Metal Workers' International Association, Local No. 332, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The record reveals that at all times material and continuing to date, the Union has been the exclusive bargaining representative for purposes of collective bargaining for certain of Respondent's employees at Respondent's Eugene, Oregon, facility. The record further reveals that Respondent and the Union were parties to a bargaining agreement, effective from 8 September 1980 through 30 June 1983, covering these employees. Said agreement provides, *inter alia*, for the payment of certain sums of money to a pension trust, health and welfare trust, and training and vacation trusts. However, since on or about 2 February 1982 Respondent has ceased making the prescribed monetary contributions to said funds. In addition, Respondent, on or about 2 February, unilaterally canceled its collective-bargaining agreement with the Union and has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative of certain of its employees. By the above conduct, Respondent has acted, and is acting, in derogation of its statutory obligation under Section 8(d), and therefore has violated, and is violating, 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

take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we have found that Respondent has refused and continues to refuse to recognize and bargain collectively with the Union, as the exclusive bargaining representative of certain of its employees; has unilaterally canceled its collective-bargaining agreement with the Union; and has failed and refused to make the prescribed contributions to the various funds as set forth above in derogation of said agreement. We shall therefore order Respondent to recognize and bargain with the Union and honor and give retroactive effect to the terms of the collective-bargaining agreement with the Union and to make whole its employees for any loss suffered as a result of its unlawful conduct, including making the required contributions to the health and welfare fund, pension fund, training fund, and vacation fund.⁴

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

CONCLUSIONS OF LAW

1. Superior Installation Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Sheet Metal Workers' International Association, Local No. 332, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has refused on or about 2 February 1982, and at all times thereafter, to recognize and bargain collectively with the above-named labor organization as the exclusive bargaining representative of its employees in an appropriate unit.
4. Respondent on or about 2 February 1982 unilaterally canceled its collective-bargaining agreement with the above-named labor organization.
5. Respondent has failed and refused since on or about 2 February 1982, and at all times thereafter, to make contributions to the health and welfare fund, pension fund, vacation fund, and training fund as required by its collective-bargaining agreement with the above-named Union.
6. By the acts described in section III, above, Respondent has refused to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all of the employees of Respondent in the appropriate unit, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(5) and 8(d) of the Act.

⁴ We leave to the compliance stage the question of whether Respondent must pay any additional amounts to satisfy our "make whole" remedy, as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216, fn. 7 (1979).

7. By the aforesaid acts, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed 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.

8. 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, Superior Installation Company, Eugene, Oregon, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain with Sheet Metal Workers' International Association, Local No. 332, as the collective-bargaining representative of its employees in the appropriate unit.

(b) Failing and refusing to give full force and effect to its collective-bargaining agreement with the Union.

(c) Failing and refusing to make contributions to the health and welfare fund, pension fund, vacation fund, and training fund as required by its collective-bargaining agreement with the Union.

(d) 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) Make whole its employees for any loss suffered as a result of Respondent's unlawful failure to pay contributions to the health and welfare fund, pension fund, vacation fund, and training fund as required by its collective-bargaining agreement with the Union, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Post at its plant located in Eugene, Oregon, copies of the attached notice marked "Appendix."⁵

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."

Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's 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 ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps 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 recognize or bargain with Sheet Metal Workers' International Association, Local No. 332, as the collective-bargaining representative of our employees in the appropriate unit.

WE WILL NOT fail and refuse to give full force and effect to our collective-bargaining agreement with the Union.

WE WILL NOT fail and refuse to make contributions to the health and welfare fund, pension fund, training fund, and vacation fund as required by our collective-bargaining agreement with the Union.

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 make whole our employees for our unlawful failure to pay contributions to the health and welfare fund, pension fund, vacation fund, and training fund as required by our collective-bargaining agreement with the Union, including paying the appropriate amounts due as ordered by the National Labor Relations Board.

SUPERIOR INSTALLATION COMPANY