

267 NLRB No. 172

DJZ

D--9907
Irvine, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AUDIO MAGNETICS CORPORATION

and

Case 21--CA--21971

SOUTHERN CALIFORNIA PRINTING
SPECIALTIES AND PAPER PRODUCTS
UNION, DISTRICT COUNCIL NO. 2,
INTERNATIONAL PRINTING AND GRAPHIC
COMMUNICATIONS UNION, AFL--CIO

DECISION AND ORDER

Upon a charge filed on 10 February 1983 by Southern California Printing Specialties and Paper Products Union, District Council No. 2, International Printing and Graphic Communications Union, AFL--CIO, herein called the Union, and duly served on Audio Magnetics Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint and notice of hearing on 23 March 1983 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. Copies of the charge and the complaint

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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 in substance that the Union is the exclusive representative of certain of Respondent's employees in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and that on or about 15 January 1983, and at all times thereafter, Respondent has refused and is now refusing to bargain collectively with the Union by unilaterally changing existing terms and conditions of employment of its employees in the appropriate unit, as contained in its collective-bargaining agreement with the Union, regarding remittance of union dues. By letter dated 4 April 1983 Respondent notified the Regional Director for Region 21 that it would not respond to the complaint, and Respondent has failed to file an answer to the complaint.

On 15 April 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, based upon Respondent's failure to file an answer as required by Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended. Subsequently, on 22 April 1983 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 failed to file a response to the Notice To Show Cause.

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, Series 8, as amended, provides as follows:

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 complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations contained in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Respondent has not filed an answer to the complaint, nor has it requested an extension of time to file an answer, nor has said time been extended. Furthermore, Respondent failed to file a response to the Notice To Show Cause and, therefore, the allegations of the Motion for Summary Judgment and of the

attached supporting exhibits ¹ stand uncontroverted. Therefore, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted as true and are so found by the Board without the taking of evidence in support of said allegations.

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

Findings of Fact

I. The Business of Respondent

Respondent is a Delaware corporation engaged in the manufacture of recording tape. At all times mentioned herein Respondent has operated a facility located at 2602 Michelson Drive, Irvine, California. In the normal course and conduct of its business at its Irvine facility, Respondent annually purchases and receives goods and products valued in excess of \$50,000 directly from suppliers outside the State of California.

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

Southern California Printing Specialties and Paper Products Union, District Council No. 2, International Printing and Graphic

¹ On 26 May 1983 counsel for the General Counsel filed a "Supplement to Motion for Summary Judgment" in which he requests that the Board accept as an additional attachment to the Motion for Summary Judgment a copy of the 1981--84 collective-bargaining agreement between Respondent and the Union. The Board herein grants that request.

Communications Union, 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 the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees including warehousemen, truck drivers and lead persons, but excluding professional employees, guards and supervisors as defined in the Act.

On or before 1 August 1981 a majority of employees of Respondent in the unit described above designated and selected the Union as their representative for collective bargaining, and since on or before 1 August 1981 the Union has been and is now, pursuant to Section 9(a) of the Act, the exclusive representative of the employees in the unit described above. As a result of the representative status of the Union, Respondent and the Union have entered into successive collective-bargaining agreements, the most recent of which is effective by its terms for the period of 1 August 1981 to 31 July 1984.

Since on or about 15 January 1983 Respondent has unilaterally changed existing terms and conditions of employment of its employees in the above-described unit by failing and refusing to remit to the Union the dues withheld from the pay of the employees for the months of December 1982 and January and February 1983 as required by the collective-bargaining agreement described above. Accordingly, we find that by the aforesaid conduct Respondent has failed and refused to bargain collectively with the Union as the exclusive representative of its employees

in the appropriate unit. By such conduct Respondent has engaged 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 made unilateral changes in certain terms and conditions of employment in violation of Section 8(a)(5) and (1) of the Act, we shall order that Respondent cease and desist therefrom and take the specific action set forth below.

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

Conclusions of Law

1. Audio Magnetics Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Southern California Printing Specialties and Paper Products Union, District Council No. 2, International Printing and Graphic Communications Union, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees including warehousemen, truck drivers and lead persons, but excluding

professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the above-named labor organization has been and now is the 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. Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) by failing and refusing to remit to the Union dues withheld from the pay of the employees for the months of December 1982 and January and February 1983 pursuant to the collective-bargaining agreement described above.

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, Audio Magnetics Corporation, Irvine, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to remit to the Union dues withheld for the months of December 1982 and January and February 1983 pursuant to the collective-bargaining agreement described above.

(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 designed to effectuate the policies of the Act:

(a) Remit to the Union dues withheld for the months of December 1982 and January and February 1983 pursuant to the collective-bargaining agreement described above, plus interest.²

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amount due under the terms of this Order.

(c) Post at its place of business in Irvine, California, copies of the attached notice marked "'Appendix.'"³ Copies of said notice, on forms provided by the Regional Director for Region 21, 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.

² See Isis Plumbing & Heating Co., 138 NLRB 716 (1967), as modified by Florida Steel Corporation, 231 NLRB 651 (1977).

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.'"

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. 26 August 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT unilaterally change existing terms and conditions of employment of our employees by failing and refusing to remit to Southern California Printing Specialties and Paper Products Union, District Council No. 2, International Printing and Graphic Communications Union, AFL--CIO, dues withheld for the months of December 1982 and January and February 1983 pursuant to 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 remit to the Union dues withheld for the months of December 1982 and January and February 1983 pursuant to our collective-bargaining agreement with the Union, plus interest.

AUDIO MAGNETICS CORPORATION

(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, City National Bank Building, 24th Floor, 606 South Olive Street, Los Angeles, California 90014, Telephone 213--688--5229.