

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

R.P.S. CARPET SERVICE

and

Case 17--CA--10960

CARPET, LINOLEUM & RESILIENT FLOOR
DECORATORS UNION, LOCAL NO. 1179

DECISION AND ORDER

Upon a charge filed on 27 April 1982 by Carpet, Linoleum & Resilient Floor Decorators Union, Local No. 1179, herein called the Union, and duly served upon R.P.S. Carpet Service, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued a complaint on 11 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 8(d) and Section 2(6) and (7) of the National Labor Relations Act. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties.

With respect to the unfair labor practices, the complaint alleges that Respondent violated Section 8(a)(5) and (1) and Section 8(d) of the Act by, without notice to or bargaining with the Union, refusing to make payments for the benefit of unit employees into the Joint Apprenticeship and Journeyman Training Trust Fund, Kansas Building Trades Open End Health & Welfare Trust

Fund, I.B.P.A.T. Union and Industry National Pension Fund, Floor Covering Contract Administration Fund, and Vacation and Holiday Allowance, as required by the collective-bargaining agreement between Respondent and the Union. Respondent failed to file an answer to the complaint.

On 6 June 1983 the General Counsel filed directly with the Board a 'Motion to Transfer Proceeding to the Board and For Summary Judgment.' On 10 June 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 did not file a response to the Notice to Show Cause.

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 stated that, unless Respondent filed an answer to the complaint within 10 days from the service thereof, 'all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.' By letter to Respondent dated 4 April 1983 the Regional Director for Region 17 reiterated

the requirement that Respondent file an answer to the complaint, and stated that, if it did not file an answer promptly, he would consider filing a Motion for Summary Judgment. Respondent failed to file an answer to the complaint or to respond to the Notice To Show Cause.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file an answer, the allegations of the complaint are deemed admitted and found to be true. We grant the General Counsel's Motion for Summary Judgment.¹

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

Findings of Fact

I. Respondent's Business

Respondent R.P.S. Carpet Service, a sole proprietorship, with an office in Shawnee, Kansas, installs wall and floor coverings. Respondent, in the course and conduct of its business operations within the State of Kansas, annually purchases goods and services valued in excess of \$50,000, directly from sources located outside the State of Kansas, and annually sells goods and services valued in excess of \$50,000, directly to customers located outside the State of Kansas.

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

¹ In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaints. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

II. The Labor Organization Involved

Carpet, Linoleum & Resilient Floor Decorators Union, Local No. 1179, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Unit and the Union's Representative Status

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

All journeymen and apprentices, sewers and binders, and sewers and binders trainees employed by Respondent in the area of Kansas City, all areas in Missouri over which the Union exercises jurisdiction and the following counties in Kansas: Wyandotte, Johnson, Leavenworth, Bourbon, Linn and Miami; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since or or about 18 August 1980, and at all times material herein, by virtue of Section 9(a) of the Act, the Union has been, and now is, the designated exclusive collective-bargaining representative of the employees in the unit. Such recognition was embodied in a collective-bargaining agreement, in effect through 31 March 1982.

B. The Refusal To Bargain

Pursuant to the collective-bargaining agreement between Respondent and the Union, effective by its terms through 31 March 1982, Respondent is required to make payments into the Joint Apprenticeship and Journeyman Training Trust Fund, Kansas Building Trades Open End Health & Welfare Trust Fund, I.B.P.A.T. Union and Industry National Pension Fund, Floor Covering Contract Administration Fund, and Vacation and Holiday Allowance.

Since 1 December 1981, and continuing to date, Respondent has failed and refused, and continues to fail and refuse, to make payments into the funds

named in the preceding paragraph, without prior notice to or bargaining with the Union.

By its conduct Respondent has failed and refused, and is failing and refusing, to bargain with the Union as the exclusive collective bargaining representative of the employees in the appropriate unit, in violation of Section 8(a)(5) and (1) and Section 8(d) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

Respondent's activities 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 commerce.

V. The Remedy

Having found that Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act, we order that it take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent unlawfully failed to make payments into the Joint Apprenticeship and Journeyman Training Trust Fund, Kansas Building Trades Open End Health & Welfare Trust Fund, I.B.P.A.T. Union and Industry National Pension Fund, Floor Covering Contract Administration Fund, and Vacation and Holiday Allowance, as required by its collective-bargaining agreement with the Union, effective through 31 March 1982. To dissipate the effects of its unlawful action, we order Respondent to make its employees whole by making payments into the funds which the collective-bargaining

agreement ² requires and by reimbursing its employees for any expenses ensuing from Respondent's unlawful failure to make such payments as set forth in Kraft Plumbing and Heating, 252 NLRB 891, fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in Florida Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

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

Conclusions of Law

1. R.P.S. Carpet Service is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Carpet, Linoleum & Resilient Floor Decorators Union, Local No. 1179, is a labor organization within the meaning of Section 2(5) of the Act.
3. All journeymen and apprentices, sewers and binders, and sewers and binders trainees employed by Respondent in the area of Kansas City, all areas in Missouri over which the Union exercises jurisdiction and the following counties in Kansas: Wyandotte, Johnson, Leavenworth, Bourbon, Linn and Miami; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the

² Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for the addition of a fixed rate of interest on unlawfully withheld fund payments at the adjudicatory stage of a proceeding. We leave to the compliance stage the question whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "'make-whole'" remedy. Depending upon the circumstances of each case, these additional amounts may be determined by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, by evidence of any losses directly attributable to the unlawful withholding, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Co., 240 NLRB 1213 (1979).

purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since 18 August 1980, and at all times material herein, the Union has been the designated exclusive representative of all employees in the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about 1 December 1981, and at all times thereafter, to bargain collectively with the Union as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, by failing and refusing to make payments to the Joint Apprenticeship and Journeyman Training Trust fund, Kansas Building Trades Open End Health & Welfare Trust Fund, I.B.P.A.T. Union and Industry National Pension Fund, Floor Covering Contract Administration Fund, and Vacation and Holiday Allowance, required by the collective-bargaining agreement effective through 31 March 1982, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) 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

The National Labor Relations Board orders that the Respondent, R.P.S. Carpet Service, Shawnee, Kansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Carpet, Linoleum & Resilient Floor Decorators Union, Local No. 1179, in the following appropriate unit:

All journeymen and apprentices, sewers and binders, and sewers and binders trainees employed by Respondent in the area of Kansas City, all areas in Missouri over which the Union exercises jurisdiction and the following counties in Kansas: Wyandotte, Johnson, Leavenworth, Bourbon, Linn and Miami; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to make payments into the Joint Apprenticeship and Journeyman Training Trust Fund, Kansas Building Trades Open End Health & Welfare Trust Fund, I.B.P.A.T. Union and Industry National Pension Fund, Floor Covering Contract Administration Fund, and Vacation and Holiday Allowance, pursuant to its collective-bargaining agreement with the Union, effective through 31 March 1982.

(c) 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 which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the Union as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Make whole the employees in the appropriate unit by transmitting the payments owed to the Joint Apprenticeship and Journeyman Training Trust Fund, Kansas Building Trades Open End Health & Welfare Trust Fund, I.B.P.A.T. Union and Industry National Pension Fund, Floor Covering Contract Administration Fund, and Vacation and Holiday Allowance pursuant to the terms of its collective-bargaining agreement with the Union, effective through 31 March 1982, and by reimbursing unit employees for any expenses ensuing from Respondent's unlawful failure to make such required payments in the manner set forth in the section of this Decision entitled "'The Remedy.'"

(c) Preserve and, on 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 amounts due under the terms of this Order.

(d) Post at each of its locations where unit employees work copies of the attached notice marked 'Appendix.'³ Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent, 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.

(e) Notify the Regional Director for Region 17, in writing within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C.

14 November 1983

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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.'

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 bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Carpet, Linoleum & Resilient Floor Decorators Union, Local No. 1179, in the following appropriate unit:

All journeymen and apprentices, sewers and binders, and sewers and binders trainees employed by us in the area of Kansas City, all areas in Missouri over which the Union exercises jurisdiction and the following counties in Kansas: Wyandotte, Johnson, Leavenworth, Bourbon, Linn, and Miami; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to make payments into the Joint Apprenticeship and Journeymen Training Trust Fund, Kansas Building Trades Open End Health & Welfare Trust Fund, I.B.P.A.T. Union and Industry National Pension Fund, Floor Covering Contract Administration Fund, and Vacation and Holiday Allowance, pursuant to our collective-bargaining agreement with the Union, effective through 31 March 1982.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of all employees in the bargaining unit described above, with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL make whole the employees in the appropriate unit by transmitting the payments owed to the Joint Apprenticeship and Journeyman Training Trust Fund, Kansas Building Trades Open End Health & Welfare Trust, I.B.P.A.T. Union and Industry National Pension Fund, Floor Covering Contract Administration Fund, and Vacation and Holiday Allowance, pursuant to the terms of our collective-bargaining agreement with the Union, effective through 31 March 1982, and by reimbursing unit employees for any expenses ensuing from our unlawful failure to make such required payments.

R.P.S. CARPET SERVICE

(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, Two Gateway Center, Room 616, Fourth at State, Kansas City, Kansas 66101, Telephone 816--374--4688.