

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JOLLENBECK TOOL & DIE COMPANY, INC.

and

Case 14--CA--16208

DISTRICT 9, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL--CIO

DECISION AND ORDER

Upon a charge and amended charge filed by the Union 20 January and 22 September 1982, the General Counsel of the National Labor Relations Board issued a complaint 20 January 1983 against the Company, the Responent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 22 February 1983 the General Counsel filed a Motion for Summary Judgment. On 28 February 1983 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 Company filed no response. The allegations in the motion are therefore undisputed.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint unless good cause is shown.

The complaint and the notice of hearing served on the Respondent 20 January 1983 specifically states that unless an answer to the complaint is filed by the Respondent within 10 days from service "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." On 4 February 1983 the General Counsel sent a letter by certified mail notifying the Respondent of its failure to file an answer and requesting that it do so by 11 February 1983. No answer was received from the Respondent by that date. On 14 February 1983 the General Counsel received a letter from the Respondent's counsel dated 11 February 1983, stating that no answer to the complaint and notice of hearing would be filed. In accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted to be true. Accordingly, we find as true all allegations of the complaint and grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company is a Missouri corporation with its office and place of business located in Bridgeton, Missouri, where it is engaged in the manufacture, sale, and distribution of metal dies, jigs, fixtures, tools, and related products. We find that the Company is an employer engaged in commerce within the meaning of Section 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.

¹ In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the 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. Alleged Unfair Labor Practice

1. At all times material Robert Harrington was the Respondent's president and a supervisor within the meaning of Section 2(11) of the Act.

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

All full-time and regular part-time tool and die makers, tool room machinists, journeymen machinists, apprentices, specialists, machinists helpers and all other production and maintenance employees employed by the Respondent at its Bridgeton, Missouri facility EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

3. Since before 1975, and at all times material, the Union has been the designated collective-bargaining representative of the employees in the unit described above, and has been recognized as such by the Respondent. Recognition was embodied in successive collective-bargaining agreements, the most recent of which is effective from 1 September 1981 until 1 September 1984.

4. At all times material, the Union by virtue of Section 9(a) of the Act has been, and is, the exclusive representative of the employees in the unit described above for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. On 12 July 1982 the Respondent ceased operations at its place of business described in section I causing the termination of employees included in the collective-bargaining unit described above.

6. (a) On or about 5 August 1982 the Union requested, in writing, that the Respondent engage in collective bargaining with respect to the effects of the Respondent's decision to close its operations on employees included in the collective-bargaining unit described above.

(b) Since on or about 5 August 1982 the Respondent has failed and refused to respond to the Union's request.

(c) The subject set forth above relates to the wages, hours, and other terms and conditions of employment of the employees included in the unit described above and is a mandatory subject for the purpose of collective bargaining.

7. By the acts described in paragraph 6, the Respondent interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

8. By the acts described in paragraph 6, and by each of those acts, the Respondent refused to bargain collectively and is refusing to bargain collectively with the representative of its employees, and engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

9. On 1 and 8 November 1982 the Respondent and the Union entered into a settlement agreement, approved by the Regional Director on 10 November 1982, providing, inter alia, that the Respondent bargain collectively with the Union with respect to the effects on the unit employees of the Respondent's decision to close its operations, and reduce to writing any agreement reached as a result of bargaining.

10. By the acts and conduct set forth in paragraph 6, the Respondent has violated the terms of the settlement agreement referred to in paragraph 9.

11. By order dated 20 January 1983 the Regional Director set aside the settlement agreement.

V. The Remedy

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist and bargain with the Union, on request, concerning the effects of ceasing its operations. Further, to assure meaningful bargaining and to effectuate the purposes of the Act, we shall accompany our order to bargain with a requirement that the Respondent provide pay to unit employees in a manner similar to that required in Transmarine Navigation Corp., 170 NLRB 389 (1968). We shall require that the pay for the unit employees be not less than the amounts they would have earned for a 2-week period of employment.²

Conclusions of Law

1. Jollenbeck Tool & Die Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District 9, International Association of Machinists and Aerospace Workers, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time tool and die makers, tool room machinists, journeymen machinists, apprentices, specialists, machinists helpers and all other production and maintenance employees employed by the Respondent at its Bridgeton, Missouri facility excluding office clerical and 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.

² See W. R. Grace & Co., 230 NLRB 617, 619 (1977).

4. Since before 1975 the above-named labor organization has been and is now 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. By failing and refusing since on or about 5 August 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of the Respondent in the appropriate unit, concerning the effects of its cessation of operations, the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

6. By the aforesaid refusal to bargain, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

ORDER

The National Labor Relations Board hereby orders that the Respondent, Jollenbeck Tool & Die Company, Inc., Bridgeton, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with District 9, International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive collective-bargaining representative of the Respondent's employees in the unit described below, concerning the effects of ceasing operations. The bargaining unit is:

All full-time and regular part-time tool and die makers, tool room machinists, journeymen machinists, apprentices, specialists, machinists helpers and all other production and maintenance employees employed by the Respondent at its Bridgeton, Missouri, facility EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coeicing 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) On request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to ceasing operations and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Pay the bargaining unit employees amounts at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to ceasing operations; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount each would have earned as wages from the time the Respondent ceased its Bridgeton, Missouri operation to the time each secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs first, provided, however, in no event shall this sum be less than the employees would have earned for a 2-week period, at their normal wage rate, when last employed by the Respondent.

(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 amount of backpay due under the terms of this Order.

(d) Mail an exact copy of the attached notice marked ''Appendix''³ to District 9, International Association of Machinists and Aerospace Workers, AFL--CIO, and to all bargaining unit employees who were employed at its Bridgeton, Missouri facility. Copies of the notice, on forms provided by the Regional Director for Region 14, after being duly signed by the Respondent's authorized representative, shall be mailed immediately thereafter.

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

Dated, Washington, D.C.

30 March 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

³ 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

Mailed 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively concerning the effects of ceasing our operations with District 9, International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to ceasing operations and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time tool and die makers, tool room machinists, journeymen machinists, apprentices, specialists, machinists helpers and all other production and maintenance employees employed at our Bridgeton, Missouri facility EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL pay the bargaining unit employees their normal wages for a period required and set forth in a Decision and Order of the National Labor Relations Board.

JOLLENBECK TOOL & DIE COMPANY,
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, Room 448, 210 Tucker Boulevard North, St. Louis, Missouri 63101, Telephone 314--425--4361.