

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

U.P.A.C.A. NON-PROFIT HOUSING CORPORATION,
INC., 127 E. 117TH ST., N.Y., N.Y.; U.P.A.C.A.
NON-PROFIT HOUSING CORPORATION, INC., 111-113
E. 119TH ST., N.Y., N.Y.; U.P.A.C.A. NON-PROFIT
HOUSING CORPORATION, INC., 126 E. 118TH ST.,
132 E. 119TH ST., AND 115 E. 119TH ST., N.Y.,
N.Y.; U.P.A.C.A. NON-PROFIT HOUSING
CORPORATION, INC., 101 E. 119TH ST., N.Y.,
N.Y.; U.P.A.C.A. NON-PROFIT HOUSING
CORPORATION, INC., 114 E. 122ND ST., N.Y.,
N.Y., d/b/a UPACA MANAGEMENT, INC.¹

and

Case 2--CA--18826

LOCAL 966, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed on 26 May 1982 by Local 966, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on the Respondents, the General Counsel of the National Labor Relations Board issued a complaint on 30 August 1982 against the Respondents. The complaint alleges that the Respondents have engaged in and are 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

¹ Herein collectively referred to as the Respondents.

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 in substance that the Respondents violated Section 8(a)(5) and (1) of the Act by failing and refusing to execute a written contract embodying the collective-bargaining agreement negotiated by the Respondents and the Union, and by failing and refusing to comply with the terms of that agreement concerning increased wage rate and increased pension fund and health benefits fund contributions. The Respondents did not file an answer to the complaint.

By letter dated 15 October 1982, the Respondents were advised that no answer to the complaint had been received and that unless an answer was received by 25 October 1982, a Motion for Summary Judgment would be filed by the counsel for the General Counsel. There was no response to the letter.

On 13 January 1983 the General Counsel filed a Motion for Summary Judgment. On 25 January 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondents 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 Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board 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 served on the Respondents stated that unless an answer was filed 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." As noted above, the Respondent did not file an answer to the complaint. Nor did they respond to the Notice to Show Cause. No good cause to the contrary having been shown in accordance with the rule set forth above, the allegations of the complaint are deemed admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

Findings of Fact

I. The Business of the Respondents

At all times material herein, the Respondents, non-profit New York corporations, with offices and places of business at the aforementioned addresses, have been engaged in the ownership, management, operation, and rental of apartments. At all times material, the Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of the said operations; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; and have held themselves out to the public as a single intergrated business enterprise. By virtue of the above, the

² In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondents to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

Respondents constitute a single integrated business enterprise and a single employer within the meaning of the Act.

The Respondents, in the course and conduct of their business operations described above, annually derive gross revenues from the rental of apartments in excess of \$500,000 of which in excess of \$50,000 is derived from subsidies from the United States Department of Housing and Urban Development, an agency of the United States Government.

On the basis of the foregoing we find that the Respondents are, and have been at all times material herein, a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Local 966, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of the Act.

III. The Unfair Labor Practices

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

All superintendents, maintenance men and porters employed by Respondents at their New York, New York facilities, excluding guards, supervisors, foremen, salesmen and executives.

Since about June 1975 the Union has been the exclusive collective-bargaining representative of the Respondents' employees in the unit described above and has been so recognized by the Respondents. That recognition has been embodied in successive collective-bargaining agreements, including one which was effective by its terms from 15 June 1978 through 14 June 1981.

On or about 7 August 1981 the Respondents and the Union reached full and complete agreement with respect to the terms and conditions of employment of

the unit employees. Since on or about 14 April 1982 the Union has requested the Respondents to execute a written contract embodying the agreement.

Since on or about 14 April 1982 the Respondents have failed and refused to execute a written contract embodying the agreement described above.

Since on or about 27 November 1981 the Respondents have failed and refused to pay the increased wage rates and the increased pension fund and health benefits fund contributions, as set forth in the agreed-upon collective-bargaining agreement.

On the basis of the foregoing we find that by refusing to execute the agreed-upon collective-bargaining agreement and by refusing to honor and abide by its terms in refusing to pay the contractually required increased wage rates and the increased pension fund and health benefits fund contributions, the Respondents have violated Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents set forth in section III, above, occurring in connection with their 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 the Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that the Respondents cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondents refused to pay the increased wage rates and the increased pension fund and health benefits fund contributions in violation of Section 8(a)(5). In order to dissipate the effects of this

unlawful action, we shall order the Respondents to make whole the employees by paying them backpay for any loss of wages which resulted from the Respondents' unfair labor practices, by paying the increased pension fund and health benefits fund contributions required by the collective-bargaining agreement,³ and by reimbursing employees for any expenses ensuing from the Respondents' unlawful failure to make such required contributions, as set forth in Kraft Plumbing, 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 Co., 138 NLRB 716 (1962). In addition, we shall order the Respondent to execute the agreed-upon collective-bargaining agreement and abide by its terms.

Conclusions of Law

1. U.P.A.C.A. Non-Profit Housing Corporation, Inc., 127 E. 117th St., N.Y., N.Y.; U.P.A.C.A. Non-Profit Housing Corporation, Inc., 111-113 E. 119th St., N.Y., N.Y.; U.P.A.C.A. Non-Profit Housing Corporation, Inc., 126 E. 118th St., 132 E. 119th St., and 115 E. 119th St., N.Y., N.Y.; U.P.A.C.A. Non-Profit Housing Corporation, Inc., 101 E. 119th St., N.Y., N.Y.; U.P.A.C.A. Non-Profit Housing Corporation, Inc., 114 E. 122nd St., N.Y., N.Y., d/b/a UPACA Management, Inc., constitute a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

³ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage whether the Respondents must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful action, 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).

2. Local 966, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All superintendents, maintenance men and porters employed by Respondents at their New York, New York facilities, excluding guards, supervisors, foremen, salesmen and executives constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees in the appropriate unit, by refusing to execute the agreed-upon collective-bargaining agreement, and by refusing to pay the increased wage rates and the increased pension fund and health benefits fund contributions agreed to in the collective-bargaining agreement, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By the aforesaid refusal to bargain, the Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) 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 Respondents, U.P.A.C.A. Non-Profit Housing Corporation, Inc., 127 E. 117th St., N.Y., N.Y.; U.P.A.C.A. Non-Profit Housing Corporation, Inc., 111-113 E. 119th St., N.Y.,

N.Y.; U.P.A.C.A. Non-Profit Housing Corporation, Inc., 126 E. 118th St., 132 E. 119th St., and 115 E. 119th St., N.Y., N.Y.; U.P.A.C.A. Non-Profit Housing Corporation, Inc., 101 E. 119th St., N.Y., N.Y.; U.P.A.C.A. Non-Profit Housing Corporation, Inc., 114 E. 122nd St., N.Y., N.Y., d/b/a UPACA Management, Inc., New York, New York, their 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 Local 966, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive bargaining representative of its employees in the following appropriate unit:

All superintendent, maintenance men and porters employed by Respondents at their New York, New York facilities excluding guards, supervisors, foremen, salesmen and executives.

(b) Refusing to execute the agreed-upon collective-bargaining agreement and refusing to pay the increased wage rates and the increased pension fund and health benefits fund contributions established by the collective-bargaining agreement.

(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 necessary to effectuate the policies of the Act.

(a) Upon request, bargain with the above-named labor organization 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) Execute the agreed-upon collective-bargaining agreement and honor and abide by its terms.

(c) Make whole the employees in the appropriate unit by paying them the wages due them, by transmitting the payments owed to the pension and health benefits funds pursuant to the terms of the collective-bargaining agreement with the Union, and by reimbursing unit employees for any expenses ensuing from the Respondent's unlawful failure to make such required payments, in the manner set forth in the section of this Decision entitled "'The Remedy.'"

(d) Post at their New York, New York, places of business copies of the attached notice marked "'Appendix.'"⁴ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and be maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

⁴ 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.'"

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

Dated, Washington, D.C.

12 March 1984

Donald L. Dotson,

Chairman

Don A. Zimmerman,

Member

Patricia Diaz Dennis,

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 refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 966, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the following appropriate unit:

All superintendents, maintenance men and porters employed by Respondents at their New York, New York facilities, excluding guards, supervisors, foremen, salesmen and executives.

WE WILL NOT refuse to execute the agreed-upon collective-bargaining agreement with the Union and refuse to pay the increased wage rates and the increased pension fund and health benefits fund contributions.

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

WE WILL, upon request, bargain with the above-named 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 execute the agreed-upon collective-bargaining agreement and honor, abide by, and apply the terms and conditions of employment provided by that agreement to our New York, New York facilities.

WE WILL make whole the employees in the appropriate unit by paying to them the wages due them, by transmitting the payments owed to the pension and health benefits funds pursuant to the terms of our collective-bargaining agreement with the Union, and by reimbursing unit employees, plus interest, for any expenses ensuing from our unlawful failure to make such required payments.

U.P.A.C.A. NON-PROFIT HOUSING CORPORATION, INC., 127 E. 117th St., N.Y., N.Y.; U.P.A.C.A. NON-PROFIT HOUSING CORPORATION, INC., 111-113 E. 119th St., N.Y., N.Y.; U.P.A.C.A. NON-PROFIT HOUSING CORPORATION, INC., 126 E. 118th St., 132 E. 119th St., and 115 E. 119th St., N.Y., N.Y.; U.P.A.C.A. NON-PROFIT HOUSING CORPORATION, Inc., 101 E. 119th St., N.Y., N.Y.; U.P.A.C.A. NON-PROFIT HOUSING CORPORATION, INC., 114 E. 122nd St., N.Y. N.Y., d/b/a UPACA MANAGEMENT, INC.

(Employers)

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, Jacob K. Javits Federal Building, Room 3614, 26 Federal Plaza, New York, New York 10278, Telephone 212--264--0360.