

300 NLRB No. 116

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D--1619
Burlington, MA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INFORMATION TRANSPORT SYSTEMS, INC.

and

Case 1--CA--27321

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 103, AFL--CIO

DECISION AND ORDER

By Members Ciaccia, Devaney, and Oviatt
Upon a charge filed by the Union on May 17, 1990, the General Counsel of

the National Labor Relations Board issued a complaint on June 28, 1990, against Information Transport Systems, Inc., the Respondent, 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 Respondent has failed to file an answer.

On October 16, 1990, the General Counsel filed a Motion for Summary Judgment with exhibits attached. On October 18, 1990, 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 Respondent filed no response. The allegations in the motion therefore are undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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Ruling on 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 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that Counsel for the General Counsel, by certified mail dated August 9, 1990, notified the Respondent that unless an answer was received by the close of business August 16, 1990, a Motion for Summary Judgment would be filed. To date, the Respondent has failed to file an answer and has failed to file a response to the Notice to Show Cause.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation with its principal office and place of business in Burlington, Massachusetts, has been engaged as a cabling subcontractor in the electrical contracting industry. Annually, in the course and conduct of its business operations, the Respondent provides services valued in excess of \$50,000 directly for Massachusetts Electric Company, an entity directly engaged in interstate commerce. Additionally, during the same period, the Respondent, in the course and conduct of its business operations, purchases and receives at its Massachusetts facility and jobsites goods and materials valued in excess of \$50,000 directly from suppliers outside the

Commonwealth of Massachusetts. We find that the Respondent 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 the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

All full-time and regular part-time employees employed by the Respondent, including but not limited to general foremen, subforemen, telecommunications foremen, telecommunications technicians and telecommunications trainees, who perform the following work: all installation, operations, inspection, maintenance, repair and service of radio, television, video, recording voice, sound, nurse calls, emergency call, microwave and visual production and reproduction apparatus, equipment and appliances used for domestic, commercial, educational and entertainment purposes; all installation and erection of equipment, apparatus or appliance, cables and/or wire, emergency power [batteries] and all directly related work which becomes an integral part of the telecommunication and/or telecommunication related systems repair and service maintenance work of telecommunications systems and devices including, but not limited to, Private Branch Exchanges (PBX-PABX), Key equipment and associated devices, PCM, TI, and/or telephone related systems, customer-owned or employer-owned; the repair, maintenance and operation of fire alarm systems; the installation, repair, maintenance and operation of hold-up alarm, burglar alarm surveillance systems, CCTV, CATV, card access, Systems RS 232 ethernet and/or any local area network system associated with computer installation, but excluding all guards and supervisors as defined in the Act.

At all times material, the Union has been designated as the exclusive collective-bargaining representative of the employees in the unit, and the Union has been recognized as the representative by the Respondent. Recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period March 1, 1990, to February 28, 1992. 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 for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about November 17, 1989, through January 31, 1990, the Respondent has failed to make payments into the health and welfare, pension, joint apprentice and training committee, deferred income, and holiday/vacation funds, which it is required to do by article IV of its collective-bargaining agreement with the Union. These payments relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

We find that, by the above acts and conduct, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees, and that the Respondent thereby has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusion of Law

By failing, since about November 17, 1989, through January 31, 1990, to make payments to the health and welfare, pension, joint apprentice and training committee, deferred income and holiday/vacation funds, as required by its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make its unit employees whole by making all payments into the health and welfare, pension, joint apprentice and training committee, deferred income, and holiday/vacation funds, as required by the collective-bargaining agreement, which have not been paid and which would have been paid in the absence of the Respondent's unlawful unilateral discontinuance of the

payments;¹ and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make that required payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), affd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Information Transport Systems, Inc., Burlington, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Electrical Workers Local 103, AFL--CIO, as the exclusive bargaining representative of the employees in the appropriate unit set forth below, by failing to make payments to the health and welfare, pension, joint apprentice and training committee, deferred income, and holiday/vacation funds, as required by the collective-bargaining agreement. The unit is:

All full-time and regular part-time employees employed by the Respondent, including but not limited to general foremen, subforemen, telecommunications foremen, telecommunications technicians and telecommunications trainees, who perform the following work: all installation, operations, inspection, maintenance, repair and service of radio, television, video, recording voice, sound, nurse calls, emergency

¹ 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 the question of whether the Respondent 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 withholding 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).

call, microwave and visual production and reproduction apparatus, equipment and appliances used for domestic, commercial, educational and entertainment purposes; all installation and erection of equipment, apparatus or appliance, cables and/or wire, emergency power [batteries] and all directly related work which becomes an integral part of the telecommunication and/or telecommunication related systems repair and service maintenance work of telecommunications systems and devices including, but not limited to, Private Branch Exchanges (PBX-PABX), Key equipment and associated devices, PCM, TI, and/or telephone related systems, customer-owned or employer-owned; the repair, maintenance and operation of fire alarm systems; the installation, repair, maintenance and operation of hold-up alarm, burglar alarm surveillance systems, CCTV, CATV card access, Systems RS 232 ethernet and/or any local area network system associated with computer installation, but excluding all guards and supervisors as defined in the Act.

(b) 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) Make whole the unit employees by making payments on their behalf to the health and welfare, pension, joint apprentice and training committee, deferred income, and holiday/vacation funds, as required by the collective-bargaining agreement with the Union, which have not been paid, and by reimbursing the unit employees for any expenses ensuing from the failure to make those payments, in the manner set forth in the remedy section of this decision.

(b) 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.

(c) Post at its facility in Burlington, Massachusetts, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and 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 Respondent to ensure that the notices are not altered, defaced, or covered by another material.

(d) 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. December 11, 1990

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² 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

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 with International Brotherhood of Electrical Workers Local 103, AFL--CIO, as the exclusive bargaining representative of the employees in the appropriate unit set forth below by failing to make payments to the health and welfare, pension, joint apprentice and training committee, deferred income and holiday/vacation funds, as provided in our collective-bargaining agreement with the Union. The unit is:

All full-time and regular part-time employees employed by the Respondent, including but not limited to general foremen, subforemen, telecommunications foremen, telecommunications technicians and telecommunications trainees, who perform the following work: all installation, operations, inspection, maintenance, repair and service of radio, television, video, recording voice, sound, nurse calls, emergency call, microwave and visual production and reproduction apparatus, equipment and appliances used for domestic, commercial, educational and entertainment purposes; all installation and erection of equipment, apparatus or appliance, cables and/or wire, emergency power [batteries] and all directly related work which becomes an integral part of the telecommunication and/or telecommunication related systems repair and service maintenance work of telecommunications systems and devices including, but not limited to, Private Branch Exchanges (PBX-PABX), Key equipment and associated devices, PCM, TI, and/or telephone related systems, customer-owned or employer-owned; the repair, maintenance and operation of fire alarm systems; the installation, repair, maintenance and operation of hold-up alarm, burglar alarm surveillance systems, CCTV, CATV, card access, Systems RS 232 ethernet and/or any local area network system associated with computer installation, but excluding all guards and supervisors as defined in the Act.

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

WE WILL make whole our unit employees by making payments on their behalf to the health and welfare, pension, joint apprentice and training committee, deferred income, and holiday/vacation funds, as required in the collective-bargaining agreement, which have not been paid, and by reimbursing our unit employees, with interest, for any expenses ensuing from our unlawful failure to make the required payments.

INFORMATION TRANSPORT
SYSTEMS, 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, 10 Causeway Street, Sixth Floor, Boston, Massachusetts 02222-1072, Telephone 617--565--6739.