

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DURALITE TRUCK BODY AND
CONTAINER CORP.

and

Case 5--CA--20923

UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA, LOCAL 122

DECISION AND ORDER

By Chairman Stephen and Members Crawford and Beatt

On a charge filed by the Union January 22, 1990, the General Counsel of the National Labor Relations Board issued a complaint against Duralite Truck Body and Container Corp., 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.¹

On October 11, 1990, the General Counsel filed a Motion for Summary Judgment. On October 12, 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 are therefore undisputed.

¹ Respondent filed a petition for Chapter XI Bankruptcy with the U.S. Bankruptcy Court for the District of Maryland, Case No. 90--5--0199, on January 16, 1990, which was converted to Chapter VII Bankruptcy on March 2, 1990. Robert Harwick was appointed by the court as the trustee for Respondent in the bankruptcy proceeding. The trustee in bankruptcy was also served copies of the complaint and notice of hearing, and has failed to file any response.

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

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 a field examiner, by letter dated September 13, 1990, requested that Respondent's trustee in bankruptcy, Robert Harwick, submit an answer by September 26, 1990.

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 Maryland corporation, is engaged in the manufacture and installation of truck bodies and equipment at its Baltimore, Maryland facility, where it annually sells and ships products, goods, and materials valued in excess of \$50,000 directly to points located outside the State of Maryland. 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 Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

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

All full-time and regular part-time production and maintenance employees employed by Respondent at its 1300 Bush Street, Baltimore, Maryland location, but excluding all salesmen, office clerical employees, managerial employees, guards and supervisors as defined in the Act.

Since July 19, 1988, the Union, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. Recognition has been embodied in a collective-bargaining agreement which is effective by its terms for the period September 20, 1988, to September 19, 1991.

On the dates listed below, the Respondent failed to continue in full force and effect all the terms and conditions of employment contained in the collective-bargaining agreement described above, by implementing the following changes in terms and conditions of employment of employees in the unit:

(a) Since October 1, 1989, Respondent failed to provide group health and hospitalization coverage for employees, as set forth in article 24 of the agreement.

(b) Since November 1, 1989, Respondent failed to provide life insurance and disability insurance for employees, as set forth in article 23 of the agreement.

(c) Since November 1989, Respondent has failed to remit to the Union the dues deducted from employees' paychecks during November 1989, as set forth in article 2 of the agreement.

(d) Since December 1989, Respondent has failed to remit to the Union the dues deducted from employees' paychecks during December 1989, as set forth in article 2 of the agreement.

(e) Since December 1989, Respondent has failed to make contributions to the Duralite Truck Body and Container Corporation Retirement and 401(k) Plan, as set forth in article 22 of the agreement.

(f) Since various dates in December 1989, Respondent has failed to pay employees for work performed, as set forth in article 27 of the agreement.

(g) Since December 18, 1989, Respondent has failed to pay employees accrued vacation benefits, as set forth in article 20 of the agreement.

(h) Since January 17, 1990, Respondent has refused to process grievances filed by the Union on January 11, 1990, as set forth in article 9 of the agreement.

The terms and conditions of the agreement that Respondent failed to continue in full force and effect are terms and conditions of employment of employees in the unit, and are mandatory subjects of bargaining. The implementation of the changes described above constitute midterm modifications of the agreement which were made without mutual agreement between the Respondent and the Union.

We find that each of the Respondent's acts set forth above violates Section 8(a)(5) and (1) of the Act.

On December 18, 1989, Respondent permanently closed its facility located at 1300 Bush Street, Baltimore, Maryland, without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of employees in the unit with respect to the effects of such acts and conduct. We find that the Respondent's refusal to bargain with the Union over the effects of the closure of its facility in Baltimore, Maryland, violates Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By implementing midterm changes in the parties' collective-bargaining agreement without the consent of the parties and by failing to bargain with the Union over the effects on unit employees of the closing of the Baltimore facility, 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 that the Respondent make whole its employees by providing contractually required group health and hospitalization, life insurance, and disability coverage it has failed to provide. We shall also order the Respondent to reimburse, with interest to be computed in the manner set forth in New Horizons for the Retarded, 283 NLRB 1173 (1987), its employees for any losses or expenses incurred by them because of the failure to provide benefits coverage. Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981).

We shall order the Respondent to remit to the Union any union dues it has deducted from employees' paychecks but failed to remit to the Union during November and December 1989, with interest to be computed in the manner prescribed in New Horizons for the Retarded, supra.

We shall order the Respondent to make whole its employees by making all contractually required contributions to the Duralite Truck Body and Container

Corporation Retirement and 401(k) Plan,² and by reimbursing them, with interest, for any losses or expenses incurred by them because of the failure to make the contributions. Kraft Plumbing & Heating, supra; New Horizons for the Retarded, supra.

We shall order the Respondent to make whole its employees by paying them wages for work performed and accrued vacation benefits, as required by the collective-bargaining agreement, with interest computed in the manner set forth in New Horizons for the Retarded, supra.

We shall order the Respondent to process the grievances filed by the Union on January 11, 1990, as required by the collective-bargaining agreement, and to waive any objections (other than arguments available on January 11, 1990) based on time limitations or the passage of time.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union over its decision to close its facility in Baltimore, Maryland, permanently, we shall order the Respondent to bargain over the effects of that decision. As a result of the Respondent's unlawful failure to bargain about the effects of the plant closing, the laid-off employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be ensured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

² We leave to the compliance stage the question whether Respondent must pay additional amounts into the benefit funds in order to satisfy our "'make-whole remedy.'" Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

Accordingly, we shall accompany our order to bargain with a limited backpay requirement designed both to make whole the employees for losses sustained as a result of the violation, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so in this case by requiring the Respondent to pay backpay to its employees in a manner similar to that required in Transmarine Corp., 170 NLRB 389 (1968). Thus, the Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and 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 effects of the plant closing on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this decision, 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 employee exceed the amount that employee would have earned as wages from the date on which the employee was laid off as a result of the Respondent's plant closing to the time he secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employee would have earned for a 2-week period at the rate of his normal wages when last in the Respondent's employ. Interest on backpay shall be paid in the manner prescribed in New Horizons for the Retarded, supra.

Accordingly, we shall accompany our order to bargain with a limited backpay requirement designed both to make whole the employees for losses sustained as a result of the violation, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so in this case by requiring the Respondent to pay backpay to its employees in a manner similar to that required in Transmarine Corp., 170 NLRB 389 (1968). Thus, the Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and 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 effects of the plant closing on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this decision, 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 employee exceed the amount that employee would have earned as wages from the date on which the employee was laid off as a result of the Respondent's plant closing to the time he secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employee would have earned for a 2-week period at the rate of his normal wages when last in the Respondent's employ. Interest on backpay shall be paid in the manner prescribed in New Horizons for the Retarded, supra.

Finally, we shall order that, in lieu of posting, copies of the notice to employees be mailed to those unit employees on Respondent's payroll on the date final notice was given of the plant's closure.

ORDER

The National Labor Relations Board orders that the Respondent, Duralite Truck Body and Container Corp., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally implementing midterm modifications in its September 20, 1988, to September 19, 1991 collective-bargaining agreement with the United Electrical, Radio and Machine Workers of America, Local 122.

(b) Failing to bargain with the Union about the effects of the closing of its Baltimore, Maryland facility on employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its 1300 Bush Street, Baltimore, Maryland location, but excluding all salesmen, office clerical employees, managerial employees, guards and supervisors as defined in the Act.

(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) Make whole its unit employees by providing contractually required group health and hospitalization, life insurance, and disability insurance coverage, and reimbursing them for any losses or expenses incurred by them because of the failure to provide such coverage, as set forth in the remedy section of this decision.

(b) Remit to the Union any union dues it has deducted from employees' paychecks but failed to remit to the Union during November and December 1989, as set forth in the remedy section of this decision.

(c) Make whole its unit employees by making all contractually required contributions to the Duralite Truck Body and Container Corporation Retirement and 401(k), and by reimbursing them for any losses or expenses incurred by them because of the failure to make the contributions, as set forth in the remedy section of this decision.

(d) Make whole its unit employees by paying them wages for work performed and accrued vacation benefits, as required by the collective-bargaining agreement, as set forth in the remedy section of this decision.

(e) On request, process the grievances filed by the Union on January 11, 1990, as set forth in the remedy section of this decision.

(f) On request, bargain with the Union about the effects on unit employees of the closing of the Baltimore, Maryland facility.

(g) Make whole its unit employees for losses suffered as a result of Respondent's failure to bargain about the effects of closing the Baltimore facility, in the manner set forth in the remedy section of this decision.

(h) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, wage rate and other records, work schedules, production reports and data, social security payment records, timecards, personnel records and reports, and all other records and entries necessary to determine the sums due under this Order.

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 mail and abide by this notice.

WE WILL NOT unilaterally implement midterm modifications in our September 20, 1988, to September 19, 1991 collective-bargaining agreement with the United Electrical, Radio and Machine Workers of America, Local 122.

WE WILL NOT fail to bargain with the Union about the effects of closing our Baltimore, Maryland facility on employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its 1300 Bush Street, Baltimore, Maryland location, but excluding all salesmen, 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 you by Section 7 of the Act.

WE WILL make whole unit employees, with interest, by providing contractually required group health and hospitalization, life insurance, and disability insurance coverage, and reimbursing them for any losses or expenses incurred by them because of our failure to provide such coverage.

WE WILL remit to the Union any union dues we have deducted from employees' paychecks but not remitted to the Union during November and December 1989.

WE WILL make whole unit employees, with interest, by making all contractually required contributions to the Duralite Truck Body and Container Corporation Retirement and 401(k) plan, and by reimbursing them for any losses or expenses incurred by them because of our failure to make such contributions.

WE WILL make whole unit employees, with interest, by paying them wages for work performed and by paying them accrued vacation benefits, as required by the collective-bargaining agreement.

WE WILL, on request, process the grievances filed by the Union on January 11, 1990.

WE WILL, on request, bargain with the Union about the effects on unit employees of our closing of the Baltimore, Maryland facility.

WE WILL make whole unit employees, with interest, for losses suffered as a result of our failure to bargain about the effects of closing our Baltimore facility.

DURALITE TRUCK BODY AND CONTAINER 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, 109 Market Place, Fourth Floor, Baltimore, Maryland 21202-4026, Telephone 301--962--2772.