

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MIDLANTIC BEEF AND VEAL, INC., d/b/a
WESTERN BEEF COMPANY, INC.

and

Case 5--CA--20881

WASHINGTON WHOLESALERS HEALTH AND
WELFARE FUND

DECISION AND ORDER

By Chairman Stephens and Members Cacciatto and Deaney
Upon a charge filed by the Charging Party on December 29, 1989, as

amended on January 22, 1990, the General Counsel of the National Labor Relations Board issued a complaint on February 9, 1990, against the Company (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Company has failed to file an answer.

On May 21, 1990, the General Counsel filed a Motion for Summary Judgment. On May 24, 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.

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 counsel for the General Counsel, by letters dated April 18, 1990, and April 25, 1990, notified the Respondent that unless an answer was received by May 9, 1990,¹ a Motion for Summary Judgment would be filed. In addition, on May 17, 1990, the Respondent advised the General Counsel that no answer would be filed in this proceeding.

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 New Jersey corporation with an office and place of business in Washington, D.C., is engaged in the processing and nonretail distribution and sale of meat and related products. During the 12-month period ending December 31, 1989, the Respondent, in the course and conduct of its business operations, purchased and received at its Washington, D.C. facility,

¹ Although counsel for the General Counsel's April 18, 1990 letter set a May 30, 1990 date as the deadline for receiving an answer, the April 25, 1990 letter stated that the May 30, 1990 date was supposed to have been April 30, 1990, and set a new deadline of May 9, 1990.

products, goods, and materials valued in excess of \$50,000 directly from points outside the District of Columbia. 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 United Food and Commercial Workers, Local 400, AFL--CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At all times from about 1979 until about May 1988, the Union was the designated collective-bargaining representative of certain employees of the Western Beef Company, and during that period of time, the Union was recognized as such representative by Western Beef Company, Inc. Such recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period July 2, 1986, through July 1, 1989. At all times from about 1979 until about May 1988, the Union, by virtue of Section 9(a) of the Act, was the exclusive representative of certain employees of the Western Beef Company for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

In or around May 1988, the Respondent purchased the Western Beef Company, Inc., including the existing lease on the facilities, the equipment, supplies and materials. Since that date, it has been engaged in the same business operations, at the same location, selling the same products to substantially the same customers, and has as a majority of its employees, the same individuals who were previous employees of Western Beef Company, Inc. Accordingly, the Respondent is a successor of Western Beef Company, Inc., within the meaning of NLRB v. Burns International Security Services, 406 U.S. 272 (1972).

Since around May 1988, the Union has been the designated exclusive collective-bargaining representative of certain employees of the Respondent, described below, and during that period of time, the Union has been recognized as such representative by the Respondent. Such recognition was evidenced by the Respondent's adherence to and compliance with the collective-bargaining agreement in effect by its terms for the period July 2, 1986, through July 1, 1989. The following employees of the Respondent, in accordance with the contractual bargaining unit, 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 employees engaged in the processing of meat and meat products, and those doing cleanup work, at Respondent's place of business in Washington, D.C.

At all times since May 1988, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the Respondent's 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.

About April 5, 1989, the Union, by certified letter, requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of the unit employees with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment. About July 6, 1989, the Respondent and the Union met for the purpose of engaging in negotiations with respect to wages, hours, and other terms and conditions of employment of the unit employees. About July 6, 1989, the Union and the Respondent reached full and complete agreement with respect to terms and conditions of employment of the unit employees, to be incorporated in a

collective-bargaining agreement.² About July 10, 1989, and continuing to date, the Union has requested the Respondent to execute a written contract embodying the agreement reached about July 6, 1989. Since about July 10, 1989, and continuing to date, the Respondent has failed and refused to execute a written contract embodying the agreement reached.

Based on the foregoing, we find that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to execute a written contract embodying the agreement reached by the parties on or about July 6, 1989, as requested by the Union about July 10, 1989. H. J. Heinz Co., v. NLRB, 311 U.S. 514 (1941).

Conclusions of Law

By failing and refusing to execute a written contract embodying the collective-bargaining agreement reached by the parties on or about July 6, 1989, as requested by the Union on or about July 10, 1989, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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.

To remedy the Respondent's unlawful refusal to execute the agreement reached on or about July 6, 1989, we shall order the Respondent to execute that agreement in a signed contract, and abide by its terms, as requested by

² The record does not establish the term of the agreement reached.

the Union on or about July 10, 1989, and give retroactive effect to its terms and conditions, and make the bargaining unit employees whole for any loss of earnings and other benefits they may have suffered as a result of its refusal to sign such agreement. Backpay for employees shall be computed in accordance with the method stated in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), except that any interest on additional amounts that the Respondent must pay into employee benefit trust funds shall be determined in the manner set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn 7. (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Midlantic Beef and Veal, Inc., d/b/a Western Beef Company, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain by refusing to execute a written contract embodying the collective-bargaining agreement reached between the parties on or about July 6, 1989, as requested by the Union on or about July 10, 1989.

(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) Sign a collective-bargaining agreement, as requested by the Union on July 10, 1989, containing the terms and conditions of employment agreed to between the Respondent and the Union on July 6, 1989, and abide by its terms, and give retroactive effect to its terms and conditions, and make its unit

employees whole, with interest, for any loss of earnings and other benefits they may have suffered as a result of its refusal to sign such agreement, in the manner set forth in the remedy section of this Decision. The appropriate unit is:

All full-time and regular part-time employees engaged in the processing of meat and meat products, and those doing cleanup work at Respondent's place of business in Washington, D.C.

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

(c) Post at its facility in Washington, D.C., copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 5, 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 any other material.

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."

(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. September 28, 1990

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Dennis M. Devaney, 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

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 execute a written contract embodying the collective-bargaining agreement reached between ourselves and the Union on or about July 6, 1989.

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 sign a collective-bargaining agreement containing the terms and conditions of employment agreed to between ourselves and the Union on or about July 6, 1989, WE WILL abide by its terms and give retroactive effect to its terms and conditions, and WE WILL make the unit employees covered by the contract whole, with interest, for any loss of earnings and other benefits they may have suffered as a result of our refusal to sign such agreement. The appropriate unit is:

All full-time and regular part-time employees engaged in the processing of meat and meat products, and those doing cleanup work, at Respondent's place of business in Washington, D.C.

MIDLANTIC BEEF AND VEAL, INC.
d/b/a WESTERN BEEF 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, 109 Market Place, Fourth Floor, Baltimore, Maryland 21202-4026, Telephone 301--962--2772.