

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

S. BATTLE & COMPANY

and

Case 26--CA--13743

UNLICENSED DIVISION, DISTRICT  
NO. 1 NATIONAL MARINE ENGINEERS  
BENEFICIAL ASSOCIATION

DECISION AND ORDER

*By Chairman Stephens and Member Concraft and Witt*

Upon a charge filed by the Union, Unlicensed Division, District No. 1

National Marine Engineers Beneficial Association, the General Counsel of the National Labor Relations Board issued a complaint on March 29, 1990, against S. Battle & Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On April 3, 1990, the General Counsel issued an amendment to complaint. The Respondent filed an answer to the complaint admitting in part and denying in part the allegations of the complaint.<sup>1</sup>

On August 28, 1990, the General Counsel filed with the Board a motion to transfer the case to the Board and a Motion for Summary Judgment, submitting that the Respondent's answer raised no material issues on which a hearing was required. On August 31, 1990, the Board issued an order transferring the

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<sup>1</sup> The Respondent did not file an answer to the amendment to complaint.

proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response September 14, 1990. On September 24, 1990, the General Counsel filed an opposition to the Respondent's response.

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

#### Ruling on Motion for Summary Judgment

In its answer to the complaint, the Respondent denied that it has a substantial impact on the national defense of the United States.<sup>2</sup> It did, however, admit all other complaint allegations, including the allegation that it was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent also admitted that it failed to execute a written memorandum of agreement embodying the contract modifications agreed on with the Union, but claimed that its failure was due to extenuating circumstances of which the Union was aware. No further detail or explanation of the circumstances was offered. Accordingly, based on the Respondent's admissions, the answer raises no factual issues regarding the Respondent's violation of Section 8(a)(5) and (1) of the Act.

In its response to the Notice to Show Cause, the Respondent notified the Board that it has filed a corporate voluntary petition for reorganization bankruptcy under Chapter 11. The Respondent contends that under 11 U.S.C. § 362(a)(1), the institution of bankruptcy proceedings automatically stays the commencement or continuation of Board proceedings against it. The Respondent's claim has no merit since it is well established as a matter of law that the

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<sup>2</sup> As noted, the Respondent did not file an answer to the amendment to complaint. Therefore, the allegation it contains is deemed admitted. See Sec. 102.20 of the Board's Rules.

Board's jurisdiction to hear and determine charges of unfair labor practices are exempted from the automatic stay provisions of the Bankruptcy Act under the exception of 11 U.S.C. § 362(b)(4). See Goldstein Co., 274 NLRB 682 (1985). We find the Respondent's response does not constitute good cause for its failure to raise material issues on which a hearing should be granted. Accordingly, 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 an office and place of business in Columbus, Georgia, has been engaged in providing food services to various bases of the United States military, including Columbus Air Force Base, Columbus, Mississippi. During the calendar year ending December 31, 1989, Respondent provided services valued in excess of \$50,000 to the United States Air Force at Columbus Air Force Base, Columbus, Mississippi, and purchased and received there goods valued in excess of \$5000 directly from points located outside the State of Mississippi. The Respondent admits, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(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

###### A. The Unit and the Union's Representative Status

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 food service employees employed by Respondent at Columbus Air Force Base, Mississippi, but excluding all supervisors as defined in the Act.

At all times material, the Union has been the designated collective-bargaining representative of the unit and has been recognized as such by the Respondent since March 1, 1988. Recognition has been embodied in a collective-bargaining agreement effective by its terms for the period March 1, 1988, to February 28, 1991. By virtue of Section 9(a) of the Act, the Union has been and is now the exclusive representative of the unit for the purposes of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

#### B. The Violations

Pursuant to the collective-bargaining agreement, the Respondent and the Union mutually agreed about November 6, 1989, to enter into negotiations for modifications to become effective January 1, 1990. The Respondent and the Union reached full and complete agreement regarding modifications about December 7, 1989. The Union has requested since about December 12, 1989, that the Respondent execute a written memorandum of that agreement. Since about December 12, 1989, the Respondent has failed and refused to execute a written agreement. We find that, by these acts and conduct, the Respondent has refused to bargain collectively with the representative of its unit employees and has violated Section 8(a)(5) and (1) of the Act.

#### Conclusions of Law

By failing and refusing to bargain in good faith with the representative of its unit employees by failing to execute a written memorandum of the contract modifications agreed on December 7, 1989, 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 execute a written agreement embodying the contract modifications agreed on by the Respondent and the Union. We shall also order the Respondent to make whole the unit employees for any losses due to the Respondent's failure to acknowledge, sign, and honor the contract modifications in the manner prescribed in Ogle Protection Service, 183 NLRB 682 (1970), with interest to be computed as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).<sup>3</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, S. Battle & Company, Columbus, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Unlicensed Division, District No. 1 National Marine Engineers Beneficial Association as the exclusive representative of the employees in the following appropriate unit by failing and refusing to execute a written agreement embodying the contract modifications agreed on by the Respondent and the Union.

All food service employees employed by Respondent at Columbus Air Force Base, Mississippi, but excluding all supervisors as defined in the Act.

<sup>3</sup> If the losses include employee benefit fund payments, the Respondent shall make the required payments to the funds as provided in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979), and shall reimburse its unit employees for any expenses resulting from the failure to make those payments as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in New Horizons, supra.

(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) Execute a written agreement embodying the contract modifications agreed on December 7, 1989, by the Respondent and the Union.

(b) Make whole the unit employees and make any required fringe benefit fund payments, in the manner set forth in the remedy section of this decision.

(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 amounts due under the terms of this Order.

(d) Post at the facility in Columbus, Mississippi, copies of the attached notice marked 'Appendix.'<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 26, 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.

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<sup>4</sup> 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 Respondent has taken to comply.

Dated, Washington, D.C. September 28, 1990

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James M. Stephens, Chairman

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Mary Miller Cracraft, Member

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Clifford R. Oviatt, Jr., 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 bargain with Unlicensed Division, District No. 1 National Marine Engineers Beneficial Association, as the exclusive representative of the employees in the following appropriate unit by failing and refusing to execute a written agreement embodying the contract modifications agreed upon by us and the Union.

All food service employees employed by Respondent at Columbus Air Force Base, Mississippi, but excluding all 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 execute a written agreement embodying the contract modifications agreed on December 7, 1989.

WE WILL make whole the unit employees for any losses that occurred because of our failure to execute such an agreement, and WE WILL make any required fringe benefit fund payments, plus interest.

S. BATTLE & COMPANY

\_\_\_\_\_  
(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, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104--3627, Telephone 901--722--2687.

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 UNLICENSED DIVISION, DISTRICT NO. 1 NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, as the exclusive representative of the employees in the following appropriate unit by failing and refusing to execute a written agreement embodying the contract modifications agreed upon by us and the Union.

All food service employees employed by Respondent at Columbus Air Force Base, Mississippi, but excluding all 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 execute a written agreement embodying the contract modifications agreed on December 7, 1989.

WE WILL make whole the unit employees for any losses that occurred because of our failure to execute such an agreement, and WE WILL make any required fringe benefit fund payments, plus interest.

S. BATTLE & COMPANY

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)