

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VSI TECHNOLOGIES, a/k/a VACUUM SERVICES, INC.

and

TEAMSTERS LOCAL UNION NO. 453,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL--CIO

Case 5--CA--20758

FRANK T. JURECKI, an Individual

Case 5--CA--20968
(formerly 3--CA--15313)

and

VSI ENVIRONMENTAL SERVICES OF
NEW YORK, INC.
Party in Interest

By Member Cracraft, DeWany, and Oviatt
DECISION AND ORDER
Upon charges filed by Teamsters Local Union No. 453, affiliated with

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO (Union), on October 19, 1989, and amended January 29, 1990, in Case 5--CA--20758, and by Frank T. Jurecki, an individual, on November 28, 1989, in Case 5--CA--20968 (formerly 3--CA--15313), the General Counsel of the National Labor Relations Board issued a consolidated complaint on April 30, 1990, as amended May 23, 1990, against VSI Technologies, a/k/a Vacuum Services, Inc., alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the consolidated complaint, the amendment to the complaint, the charges, and the amended charge, the Respondent failed to file an answer. On June 22, 1990, VSI

Environmental Services of New York, Inc., alleged in the complaint as the Party in Interest, filed an answer.

On July 9, 1990, the General Counsel filed a Motion to Transfer Proceedings To the Board and for Summary Judgment against the Respondent,¹ with exhibits attached. On July 11, 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. No response was filed. 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 by May 14, 1990 (14 days after the date of service), "all of the allegations in the consolidated 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 the Deputy Regional Attorney for Region 5, by letter dated June 19, 1990, notified the Respondent that the deadline for filing an answer to the consolidated complaint was extended to June 25, 1990, and that unless an answer to the complaint was received by that date, a Motion for

¹ At fn. 1 of his Motion for Summary Judgment, the General Counsel stated that the motion does not seek an order establishing the liability of the Party in Interest, VSI Environmental Services of New York, Inc., which the complaint alleges is a successor to the Respondent. As noted by the General Counsel, the Party in Interest may litigate any issues as to its liability raised by its answer in compliance proceedings. See National Transit, 299 NLRB No. 58 fn. 4 (Aug. 13, 1990).

Summary Judgment would be filed. The Respondent has not filed an answer nor requested an extension of time to do so.

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, with its principal office and place of business in Baltimore, Maryland, has been engaged in the business of cleaning industrial equipment. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 directly to points outside the State of Maryland. We find that the Respondent is, and has been at all times material, 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

A. The Unit

The employees of the Respondent as set forth in article 24 of the collective-bargaining agreement between the Respondent and the Union, effective November 1, 1987, to October 1, 1990, as supplemented by the employees employed at the Respondent's facility in Niagara Falls, New York, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

B. The Refusal to Bargain

Since about November 1, 1980, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the unit described in article 24 of the collective-bargaining agreement and the Union has been recognized as that representative by the Respondent. Recognition has been embodied in successive collective-bargaining agreements between the Respondent and the Union, the most recent of which is effective by its terms from November 1, 1987, to October 1, 1990. Since about June 1, 1988, the Respondent orally agreed to and, by practice, acceded to the inclusion of the employees at its Niagara Falls, New York facility in the unit described in article 24 of the most recent collective-bargaining agreement. Therefore, since June 1, 1988, the Union has been the exclusive representative of the employees in the unit described in section II, A, above, and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the unit employees for the purposes of collective bargaining regarding rates of pay, wages, hours of employment, and other terms and conditions of employment.

About April 20, 1989, the Respondent failed to continue in full force and effect the terms and conditions of the most recent collective-bargaining agreement by, among other things, failing to make pension fund payments as required by article 33 of the contract, failing to make health and welfare payments as required by article 34 of the contract, and failing to remit dues deducted from the pay of employees as required by article 5 of the contract. The terms and conditions of the agreement, which the Respondent has failed to continue in full force and effect, are mandatory subjects of bargaining. We find that the Respondent, by failing to continue in full force and effect the terms and conditions of the most recent collective-bargaining agreement, has

been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing to continue in full force and effect the terms and conditions of its collective-bargaining agreement with the Union, effective November 1, 1987, to October 1, 1990, by, among other things, failing to make the pension fund and health and welfare payments on behalf of unit employees, and failing to remit dues deducted from the pay of unit employees, 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.

Accordingly, we shall order the Respondent to adhere to its collective-bargaining agreement with the Union during its term. To remedy the Respondent's unlawful refusal to continue in effect the terms and conditions of its collective-bargaining agreement with the Union by failing to make pension fund and health and welfare payments, we shall order it to comply with the collective-bargaining agreement by paying all contributions.² Further, the Respondent shall be ordered to make whole all affected unit employees for any losses incurred by virtue of its failure to make pension fund and health and

² Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. Any additional amounts shall be determined in the manner set forth in Merryweather Optical Co., 240 NLRB 1213 fn. 7 (1979).

welfare payments as required by the collective-bargaining agreement. Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). This shall include reimbursing employees for any contributions they themselves may have made, with interest, for the maintenance of any fund after the Respondent made its unilateral changes.³ Finally, to remedy the Respondent's refusal to remit dues deducted from the pay of employees to the Union, we shall order the Respondent to remit those dues. All payments to the employees and to the Union shall be with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, VSI Technologies, a/k/a Vacuum Services, Inc., Baltimore, Maryland, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local Union No. 453, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO as the exclusive representative of its employees in the following appropriate unit, by failing to continue in full force and effect the most recent collective-bargaining agreement during its term by, among other things, failing to make pension fund and health and welfare payments on behalf of unit employees, and by failing to remit dues deducted from the pay of unit employees:

³ See Concord Metal, 295 NLRB No. 94, slip op. at 8--9 (June 30, 1989).

The employees of the Employer as set forth in Article 24 of its collective-bargaining agreement with the Union, effective November 1, 1987, to October 1, 1990, as supplemented by the employees employed at the Employer's facility in Niagara Falls, New York.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the collective-bargaining agreement effective by its terms from November 1, 1987, to October 1, 1990, for all unit employees.

(b) Pay all benefits, including pension fund and health and welfare payments, required by the collective-bargaining agreement, as provided in the remedy section of this decision.

(c) Remit to the Union all union dues deducted from the pay of unit employees, with interest, as set forth in the remedy section of this decision.

(d) Make unit employees whole for any losses resulting from the failure to adhere to the collective-bargaining agreement, including reimbursing them for expenses ensuing from the failure to pay pension fund and health and welfare benefits pursuant to the collective-bargaining agreement in the manner set forth in the remedy section of this decision.

(e) 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 moneys due under the terms of this Order.

(f) Post at its facilities in Baltimore, Maryland, and Niagara Falls, New York, copies of the attached notice marked 'Appendix.'⁴ 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.

(g) 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. November 28, 1990

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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.'

(f) Post at its facilities in Baltimore, Maryland, and Niagara Falls, New York, copies of the attached notice marked 'Appendix.'⁴ 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.

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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 Teamsters Local Union No. 453, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO as the exclusive representative of the employees in the following appropriate unit, by failing to continue in full force and effect our collective-bargaining agreement with the Union during its term, by, among other things, failing to make pension fund and health and welfare payments, as required by the collective-bargaining agreement, and by failing to remit union dues deducted from the pay of employees, as required by the collective-bargaining agreement:

The employees of the Employer as set forth in Article 24 of the collective-bargaining agreement between it and the Union, effective November 1, 1987, to October 1, 1990, as supplemented by the employees employed at the Employer's facility in Niagara Falls, New York.

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 comply with all terms and conditions of the collective-bargaining agreement by paying all wages and benefits, including pension fund and health and welfare payments, and by remitting dues to the Union for all unit employees.

WE WILL make unit employees whole for any losses resulting from our repudiation of the collective-bargaining agreement and WE WILL reimburse you for any expenses ensuing from our unlawful failure to make pension fund and health and welfare payments pursuant to the collective-bargaining agreement.

