

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PHOTECH, INC.

and

Case 1--CA--27201

INTERNATIONAL UNION OF ELECTRONIC,
ELECTRICAL, SALARIED, MACHINE AND
FURNITURE WORKERS, LOCAL 224, AFL--CIO

DECISION AND ORDER

By Members Crocraft, Reaney, and Quatt
upon a charge filed by the Union on April 3, 1990, the General Counsel of

the National Labor Relations Board issued a complaint against Photech, 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 the complaint, the Respondent has failed to file an answer.

On January 4, 1991, the General Counsel filed a Motion for Summary Judgment with exhibits attached. On February 11, 1991, 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 certified letter dated September 13, 1990, notified the Respondent that unless an answer was received by the Regional Office by the close of business on September 21, 1990, a Motion for Summary Judgment would be filed. On September 15, 1990, the September 13, 1990 letter was returned to the Regional Office with the notation of the United States Postal Service that it had been refused.¹ 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 an office and place of business in Rochester, New York, and Williamstown, Massachusetts, is engaged in the manufacture of photo-sensitive, type-sensitive paper and related printing paper. During the calendar year ending December 31, 1989, the Respondent, in the course and conduct of its business operations, sold and shipped from its Rochester, New York facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of New York. During the same

¹ The Respondent's refusal or failure to claim certified mail does not defeat the purposes of the Act. Delta Star Trucking, 288 NLRB No. 63 at fn. 1 (Apr. 22, 1988); Sheet Metal Workers Local 49 (Driver-Miller Plumbing), 124 NLRB 888, 890 (1959); Pasco Packing Co., 115 NLRB 437 (1956).

period, the Respondent purchased and received at its Rochester, New York facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New York. 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 the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including testers, employed by Photech, Inc. at its Williamstown, Massachusetts facility, but excluding chemists, research technicians, professional employees, plant and office clerical employees, area supervisors, guards, and all other supervisors as defined in the National Labor Relations Act.

Since about June 23, 1989, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit described above. Since about June 23, 1989, the Union has been recognized as the exclusive collective-bargaining representative of the unit employees by the Respondent. Such recognition has been embodied in a collective-bargaining agreement effective by its terms from August 3, 1989, through March 1, 1990.

The 1989--1990 contract referred to above contained, inter alia, provisions, set out at appendix D, section 3, of the contract, that committed the Respondent to pay all the hospital insurance plan premiums for a period of 3 months following layoff for certain bargaining unit employees who were permanently laid off by the Respondent. Since about November 1989, the Respondent has refused and failed to pay the health insurance plan premiums for 3 months for employees who were permanently laid off and who qualified for the benefit under the provisions described above. The 1989--1990 contract

provisions described above are terms and conditions of employment of employees in the unit and are mandatory subjects of bargaining.

Based on the above, we find that the Respondent, since about November 1989, has failed and refused to bargain collectively and in good faith with the Union as the exclusive representative of the unit employees in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing to bargain collectively with the Union by failing and refusing, since about November 1989, to pay the hospital insurance plan premiums for 3 months for unit employees who were permanently laid off and who qualified for that benefit under appendix D, section 3, of the 1989--1990 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 pay the contractually required hospital insurance plan premiums for its employees who qualified for that benefit. We also shall order the Respondent to reimburse its employees for any expenses they incurred because of its unlawful failure to make the required payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to the 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, Photech, Inc., Williamstown, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 224, AFL--CIO, by failing and refusing to pay the hospital insurance plan premiums for 3 months for unit employees who were permanently laid off and who qualified for that benefit under appendix D, section 3, of the 1989--1990 collective-bargaining agreement with the Union. The unit is:

All production and maintenance employees, including testers, employed by Photech, Inc. at its Williamstown, Massachusetts facility, but excluding chemists, research technicians, professional employees, plant and office clerical employees, area supervisors, guards, and all other supervisors as defined in the National Labor Relations 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 following affirmative action necessary to effectuate the policies of the Act.

(a) Pay the hospital insurance plan premiums for 3 months for employees who were permanently laid off and who qualified for that benefit under appendix D, section 3, of the 1989--1990 collective-bargaining agreement with the Union.

(b) Reimburse its employees for any expenses incurred because of its unlawful failure to pay the hospital insurance plan premiums, 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 amount of backpay due under the terms of this Order.

(d) Post at its facility in Williamstown, 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 any other material.

(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. March 22, 1991

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 fail and refuse to bargain collectively with International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 224, AFL--CIO, by failing and refusing to pay the hospital insurance plan premiums for 3 months for unit employees who were permanently laid off and who qualified for that benefit under appendix D, section 3, of the 1989--1990 collective-bargaining agreement with the Union. The unit is:

All production and maintenance employees, including testers, employed by Photech, Inc. at its Williamstown, Massachusetts facility, but excluding chemists, research technicians, professional employees, plant and office clerical employees, area supervisors, guards, and all other supervisors as defined in the National Labor Relations Act.

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

WE WILL pay the hospital insurance plan premiums for 3 months for employees who were permanently laid off and who qualified for such a benefit under appendix D, section 3, of the 1989--1990 collective-bargaining agreement with the Union.

WE WILL reimburse our employees for any expenses incurred because of our failure to pay hospital insurance plan premiums, plus interest.

PHOTECH, 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.