

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DECORATIVE COVERINGS, INC.

and

Case 1--CA--27627

UNITED PAPERWORKERS INTERNATIONAL UNION,
AFL--CIO, CLC AND ITS LOCAL NO. 1918

April 11, 1991

DECISION AND ORDER

By Chairman Stephens and Members Cramer and Oviatt
Upon a charge filed by United Paperworkers International Union, AFL--CIO,

CLC and its Local No. 1918 (the Union), on September 14, 1990, the General Counsel of the National Labor Relations Board issued a complaint on October 23, 1990, against Decorative Coverings, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent filed an answer to the complaint admitting in part and denying in part the allegations of the complaint.

On February 11, 1991, the General Counsel filed a Motion for Summary Judgment. On February 15, 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 has not filed a 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

In its answer to the complaint, the Respondent denied that it had committed an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act. The Respondent, however, did admit other complaint allegations including allegations that it has not paid the contractually required wages, health benefits, and pension benefits, or remitted deducted union dues of unit employees. The Respondent contends that, having ceased operation at its Chelsea facility in September 1990, its failure to make these payments was pursuant to its filing of a chapter 11 petition with the U.S. Bankruptcy Court.

The Respondent contended that under 11 U.S.C. § 362 (a)(1), the institution of bankruptcy proceedings stays the obligation to pay prepetition wage claims. It is well established, however, that the Board's jurisdiction and authority to hear and determine an unfair labor practice case to its final disposition are exempted from the automatic stay provisions of the Bankruptcy Act under the exception of 11 § U.S.C. 362(b)(4) and (5). See Katco, Inc., 295 NLRB No. 92, slip op. at 2 (June 30, 1989); American Fleet Maintenance Co., 289 NLRB 764 (1988). The Respondent's claim, therefore, is without merit and provides no defense to its admitted actions.

Accordingly, in the absence of good cause being shown, 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, had been engaged in manufacturing wallpaper products at its facility in Chelsea, Massachusetts, from where it annually shipped products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts. 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

A. The Unit and the Union's Representative Status

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

All employees except executives, clerical and office employees, watchmen working more than 50 percent of their time on such work, guards, bona fide supervisory employees engaged in supervisory work.

At all material times the Union has been the designated exclusive collective-bargaining representative in the unit and has been recognized as such by the Respondent. The Respondent is a party to a collective-bargaining agreement with the Union which is effective from June 1, 1989, to May 31, 1992. By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the unit employees for the purposes of collective bargaining, concerning rates of pay, wages, hours of employment, and terms and conditions of employment.

B. The Violations

The collective-bargaining agreement described above provides, inter alia, for certain wage rates for employees, payment to the Union of union dues, and pension fund and health insurance payments. These terms of the collective-bargaining agreement are mandatory subjects of bargaining. The Respondent failed and refused to apply the terms of the collective-bargaining agreement to bargaining unit employees by: (1) failing to pay wages due as of and since August 28, 1990; (2) failing to remit moneys owed to the Union for union dues which were deducted and owing as of and since August 30, 1990; (3) failing to pay health insurance benefit amounts due as of and since August 1, 1990; and (4) failing to pay pension benefits amounts due as of and since August 30, 1990. By these acts and conduct, the Respondent has engaged in, and is engaging 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.

Conclusions of Law

By failing and refusing to continue in full force and effect the terms and conditions of employment of its collective-bargaining agreement with the Union by failing to pay due and owing wages, failing to remit to the Union moneys deducted and owed for union dues, and failing to pay health insurance and pension benefits amounts due, 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 adhere to the terms and conditions of its current collective-bargaining agreement with the Union, and make whole the unit employees for any loss of wages due to the Respondent's unlawful conduct in the manner prescribed in Ogle Protection Service, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

We shall also order the Respondent to remit the contractually required payments to the Union for deducted union dues which it unlawfully failed to make, with interest as provided in New Horizons, supra.

We shall also order the Respondent to make the contractually required payments of health insurance and pension benefits amounts it unlawfully failed to make.¹ The Respondent shall also reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to make such payments as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as provided in New Horizons, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Decorative Coverings, Inc., Hatfield, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Paperworkers International Union, AFL--CIO, CLC and its Local No. 1918 by failing and refusing to continue in full force and effect the terms and conditions of its collective-bargaining

¹ 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. Merryweather Optical Co., 240 NLRB 1213, 1216 fn.7 (1979).

agreement with the Union by failing to make contractually required payments for wages, health insurance benefits, pension benefits, and to remit deducted union dues.

(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) Adhere to the terms and conditions of its collective-bargaining agreement with the Union, including but not limited to, its provisions governing wages, union dues, and pension and health care benefits payments.

(b) Make whole its unit employees by making contractually required payments of all wages that the Respondent unlawfully failed to make, with interest in the manner set forth in the remedy section of this decision.

(c) Make the contractually required payments to the Union for deducted union dues that the Respondent unlawfully failed to remit, with interest in the manner set forth in the remedy section of this decision.

(d) Make whole its unit employees by making all health insurance and pension benefits payments that the Respondent unlawfully failed to make, and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make such payments, 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 amounts due under the terms of this Order.

(f) Mail a copy of the attached notice marked "Appendix."² to all employees who were employed by the Respondent immediately prior to the Respondent's cessation of operations. 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 mailed immediately upon receipt.

(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. April 11, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, 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 refuse to bargain with United Paperworkers International Union, AFL--CIO, CLC and its Local No. 1918 by failing and refusing to continue in full force and effect the terms and conditions of employment of our collective-bargaining agreement with the Union by failing to make contractually required payments for wages, health insurance benefits, and pension benefits, and failing to remit deducted union dues.

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 adhere to the terms and conditions of employment of our collective-bargaining agreement with the Union, including but not limited to, its provisions governing wages, union dues, and pension and health insurance benefits payments.

WE WILL make whole unit employees by making contractually required payments of all wages that we unlawfully failed to make, with interest.

WE WILL make contractually required payments to the Union for deducted union dues that we unlawfully failed to remit, with interest.

WE WILL make whole unit employees by making all contributions for health insurance and pension benefits payments that we unlawfully failed to make, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make such payments, with interest.

DECORATIVE COVERINGS, 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.