

CDO  
D-2102  
Gardena, CA

~~UNITED STATES OF AMERICA~~  
~~BEFORE THE NATIONAL LABOR RELATIONS BOARD~~

COMMERCIAL INTERIOR SPECIALIST, INC.  
aka COMMERCIAL INTERIOR SYSTEM, INC.

and

Case 21-CA-27647

GENERAL WAREHOUSEMEN, LOCAL 598,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS  
OF AMERICA, AFL-CIO.

July 12, 1991  
DECISION AND ORDER

By Members Cracraft, Devaney, and Oriatt  
Upon a charge filed by the Union on August 2, 1990, a first amended

charge filed on October 1, 1990, and a second amended charge filed on October 26, 1990, the General Counsel of the National Labor Relations Board issued a complaint on January 31, 1991, 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 charges and complaint, the Company has failed to file an answer.

On March 15, 1991, the General Counsel filed a Motion for Summary Judgment. On March 18, 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.

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Ruling on Motion for Summary Judgment

① 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 said complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated February 26, 1991, notified the Respondent that unless an answer was received by close of business March 5, 1991, a Motion for Summary Judgment would be filed.

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

- ① ② Findings of Fact
- ① ② Jurisdiction

The Respondent, a California corporation, at all times material has been engaged in the refurbishing, manufacturing, and selling of modular office panels and operates a facility in Gardena, California. Annually, the Respondent purchases and receives goods and products valued in excess of \$50,000 directly from suppliers located outside the State of California. 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.

~~2514~~ II. Alleged Unfair Labor Practices

(11) Since at least 1985, the Union has been designated the exclusive collective-bargaining representative of the Respondent's employees in the unit,<sup>1</sup> and since at least 1985, the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period January 17, 1988, to January 31, 1991. By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the employees in the bargaining unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

A. Since about April 1, 1990, the Respondent unilaterally modified the terms and conditions of the collective-bargaining agreement when it failed and refused to deduct dues for employees who signed dues-checkoff authorizations and to remit the dues to the Union and failed and refused to make trust fund contributions as required by the collective-bargaining agreement. Also, since July 25, 1990, Respondent unilaterally modified the terms and conditions of the collective-bargaining agreement when it implemented its own employees' health insurance program. The terms and conditions of the agreement which the Respondent unilaterally modified relate to mandatory subjects of bargaining. The Respondent engaged in these actions without the consent of the Union during the term of the agreement. Thereafter, from about July 1 to 24, 1990,

(512) <sup>1</sup> The following employees of the Respondent constitute the appropriate unit: All production and maintenance, shipping, receiving, warehouse, service, truck driver and helper employees, general utility and installer employees employed by Respondent at 18101 South Figueroa Street, Gardena, California; excluding confidential employees, guards and supervisors as defined in the Act.

the exact date being unknown, the Respondent negotiated directly with employees who were members of the unit concerning wages, hours, and working conditions. On July 25, 1990, the Respondent negotiated directly with employees who were members of the unit concerning wages, hours, and working conditions. By these actions, the Respondent repudiated the contract it had with the Union.

(11) We find that by the above acts and conduct the Respondent repudiated the parties' contract and has refused to bargain collectively with the Union and has thereby violated Section 8(a)(5) and (1) of the Act.

B. During the period from about July 1 to 24, 1990, the exact date being unknown, the Respondent threatened employees with closure of the facility if they continued to be represented by the Union. About July 25, 1990, the Respondent directed employees <sup>2</sup> who were members of the unit to sign a document stating that they wished to withdraw from the Union. By these actions, the Respondent violated Section 8(a)(1) of the Act.

(05) (74) Conclusions of Law

1. By unilaterally modifying the terms and conditions of the collective-bargaining agreement when it failed and refused to deduct and remit dues for employees who had signed dues-checkoff authorizations, when it refused to make trust fund contributions, when it unilaterally implemented its own employees' health insurance program; and by negotiating directly with employees who were members of the unit concerning wages, hours, and working conditions, 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.

(5) (11) <sup>2</sup> The complaint indicates the Respondent "[d]irectly [sic] employees . . . " Given the context of the allegation and the section of the Act that the complaint states the Respondent thereby violated, we find the complaint allegation should have read "Directed employees . . . "

2. By threatening employees with closure of the facility if they continued to be represented by the Union, and by directing employees who were members of the bargaining unit to sign a document stating that they wished to withdraw from the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

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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 bargain, on request, with the Union as the exclusive representative of all the unit employees with respect to wage rates, fringe benefits, hours of employment, and other terms and conditions of employment, and to remit to the Union on the unit employees' behalf dues, with interest to be computed in the manner prescribed in New Horizons for the Retarded,<sup>3</sup> that should have been deducted from their paychecks, as well as contributions to the trust funds as required by the parties' collective-bargaining agreement.<sup>4</sup> We shall also order the Respondent to reinstate the

<sup>3</sup> 283 NLRB 1173 (1987).

<sup>4</sup> Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for interest at a fixed rate and on fund payments due as part of a 'make whole' remedy. We therefore leave to further proceedings the question of any additional amounts the Respondent must pay into benefit funds to satisfy our remedy here. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds involved and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

The Respondent shall also reimburse, with interest, its employees for any expenses ensuing from its failure to make various trust fund

(Footnote continued)

employees' health insurance program in the parties' agreement and to reimburse, with interest, its employees for any expenses ensuing from its implementation of its own employees' health insurance program. See Kraft Plumbing, supra at footnote 4.

## ORDER

The National Labor Relations Board orders that the Respondent, Commercial Interior Specialist, Inc. aka Commercial Interior System, Inc., Gardena, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with General Warehousemen, Local 598, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All production and maintenance, shipping, receiving, warehouse, service, truck driver and helper employees, general utility and installer employees employed by the Respondent at 18101 South Figueroa Street, Gardena, California; excluding confidential employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to deduct and remit dues for employees who had signed dues-checkoff authorizations.

(c) Failing and refusing to make trust fund contributions as required by the contract.

(d) Implementing its own employees' health insurance program.

(e) Negotiating directly with employees who were members of the bargaining unit concerning wages, hours, and working conditions.

(f) Repudiating the contract.

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contributions. Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Interest shall be computed in accordance with the Board's decision in New Horizons for the Retarded, supra.

(g) Threatening employees with closure of the facility if they continued to be represented by the Union.

(h) Directing employees who were members of the bargaining unit to sign a document stating that they wished to withdraw from the Union.

(i) 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) On request, bargain with the above-named labor organization as the exclusive representative of all employees in the unit described above with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) Remit in full on the unit employees' behalf, with interest, any dues to the Union which should have been deducted from their paychecks.

(c) Make trust fund contributions as set forth in the collective-bargaining agreement, and reimburse 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.

(d) Reinstate the employees' health insurance program set out in the parties' agreement and reimburse with interest its employees for any expenses ensuing from its implementation of its own employees' health insurance program.



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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with General Warehousemen, Local 598, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All production and maintenance, shipping, receiving, warehouse, service, truck driver and helper employees, general utility and installer employees employed by us at 18101 South Figueroa Street, Gardena, California; excluding confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to deduct and remit dues for employees who signed dues-checkoff authorizations.

WE WILL NOT fail and refuse to make trust fund contributions as required by the contract.

WE WILL NOT implement our own employees' health insurance program.

WE WILL NOT negotiate directly with employees who were members of the bargaining unit concerning wages, hours, and working conditions.

WE WILL NOT repudiate the contract.

WE WILL NOT threaten employees with closure of the facility if they continued to be represented by the Union.

WE WILL NOT direct employees who were members of the bargaining unit to sign a document stating that they wished to withdraw from the Union.

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, on request, bargain with the above-named labor organization as the exclusive representative of all employees in the unit described above with

respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. WE WILL remit in full on the unit employees' behalf, with interest, any dues to the Union which should have been deducted from their paychecks.

WE WILL make trust fund contributions as set forth in the collective-bargaining agreement, and reimburse unit employees for any expenses ensuing from our failure to make such payments.

WE WILL reinstate the employees' health insurance program set out in the parties' agreement and reimburse with interest, our employees for any expenses ensuing from the implementation of our own employees' health insurance program.

COMMERCIAL INTERIOR  
SPECIALIST, INC.  
aka COMMERCIAL  
INTERIOR SYSTEM, INC.

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(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, 811 Wilshire Boulevard, Los Angeles, California 90017-2803, Telephone 213--894--5229.