

Frederick Iron and Steel, Inc. and Steven Yommer.
Case 5-CA-21063

June 25, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Steven Yommer March 21, 1990, the General Counsel of the National Labor Relations Board issued a complaint on June 27, 1990, against Frederick Iron and Steel, 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 complaint, the Respondent has failed to file an answer.

On March 25, 1991, the General Counsel filed a Motion to Transfer Proceeding to the Board and for Summary Judgment against the Respondent,¹ with exhibits attached. On March 28, 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 letter dated February 7, 1991, notified the Respondent and Stephen F. Fruin,² that pursuant to

¹In his Motion for Summary Judgment, the General Counsel states that the motion does not seek an order establishing the liability of the Party-in-Interest, Frederick Foundry and Machine, Inc., which the complaint alleges is a successor of the Respondent. As noted by the General Counsel, the Party-in-Interest may litigate any issues regarding its liability as a successor in compliance proceedings. See *National Transit*, 299 NLRB 453 fn. 4 (1990). In agreement with the General Counsel, we note that the response contained in a letter dated July 9, 1990, from the Party-in-Interest does not constitute an answer to the complaint within the meaning of Sec. 102.20 of the Board's Rules and Regulations in that it does not specifically admit, deny, or explain each allegation of the complaint. We also note that the Party-in-Interest does not purport to answer on the Respondent's behalf.

²In response to the letter from the Regional Director transmitting the charge, Attorney Stephen F. Fruin, by letter dated April 19, 1990, informed the Regional Director that he had been appointed "Assignee for the Benefit of Creditors by the Circuit Court of Frederick County on November 22, 1989," and that "[a]ny claim which you or the employee may have should be immediately filed in the insolvency proceedings as those proceedings encompass all assets of Frederick Iron and Steel." Thereafter, by letter dated

Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent's answer to the complaint was due on July 11, 1990, and that to date no answer had been received. This letter further notified the Respondent that unless an answer was received by close of business February 15, 1991, a motion for summary judgment would be filed. By letter to counsel for the General Counsel dated February 16, 1991, the Respondent's President Robert G. Smith stated that he had "no authorization to receive service or notice of documents or correspondence" for the Respondent and that Fruin was "winding up the business affairs" of the Respondent and that all future correspondence should be directed to Fruin.³

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 an office and place of business in Frederick, Maryland, has been engaged in the manufacture and nonretail sale and distribution of pump and other iron castings. During the calendar year 1989, a representative period, the Respondent sold and shipped products, goods, and materials valued in excess of \$50,000 directly to points located outside the State of Maryland. 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*

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 full-time and regular part-time employees of Respondent employed in its foundry operations at 701 East Seventh Street, Frederick, Maryland, ex-

May 9, 1990, Fruin, responding to a letter from a Board agent to the Respondent's president, Richard G. Smith, requesting the Respondent's evidence in this case, referred the Board agent to the circuit court insolvency proceedings.

The Respondent's claim of bankruptcy will not operate as a stay of the unfair labor practice charges against it. It is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Cardinal Services*, 295 NLRB 933 fn. 2 (1989); *Phoenix Co.*, 274 NLRB 995 (1985); *Aries Construction*, 290 NLRB No. 64 fn. 1 (July 29, 1988) (unpublished). Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. See *Phoenix Co.*, supra, and cases cited therein.

³This letter does not constitute an answer to the complaint within Sec. 102.20 of the Board's Rules and Regulations as it does not specifically admit, deny, or explain each of the facts alleged in the complaint.

cluding machinists, assemblers, and all truck drivers, janitors, craters and warehousemen who are assigned to the machine shop, office clerical employees, watchmen, guards and supervisors as defined in the Act.

B. *The Refusal to Bargain*

Since about 1946, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since such date, the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements between the Respondent and the Union, the most recent of which was effective by its terms to November 22, 1989.

Commencing about August 1, 1989, to about November 22, 1989, the Respondent, without notice to and bargaining with the Union and without the Union's agreement, failed to continue in full force and effect all the terms and conditions of the most recent collective-bargaining agreement, by failing to maintain group hospital, surgical, and major medical plans covering employees in the unit. 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 all 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.

CONCLUSION OF LAW

By failing and refusing to continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union, which was effective by its terms to November 22, 1989, by failing to maintain group hospital, surgical, and major medical plans covering employees in the unit, commencing about August 1, 1989, to about November 22, 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.

Accordingly, we shall order the Respondent to pay the group hospital, surgical, and major medical coverage for employees in the unit that have become due pursuant to the terms of its collective-bargaining agreement with the Union, commencing about August 1,

1989, to about November 22, 1989, with interest and other sums applicable.⁴

We shall also order the Respondent to make its employees whole for any losses they may have suffered as a result of the Respondent's failure to make the contractually required benefit fund payments in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 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 ceased making the benefit fund payments. *Concord Metal*, 295 NLRB 1164, 1166 (1989). Interest on any money due and owing employees shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Frederick Iron and Steel, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Glass, Molders, Pottery, Plastics and Allied Workers International Union, Local No. 237B, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit by failing and refusing from about August 1, 1989, to about November 22, 1989, to pay group hospital, surgical, and major medical plan payments as required by the collective-bargaining agreement.

(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) Pay the group hospital, surgical, and major medical plan payments that have become due under the collective-bargaining agreement from about August 1, 1989, to about November 22, 1989, with interest, as set forth in the remedy section of this decision.

(b) Make whole unit employees for any losses they may have suffered because of the Respondent's failure to pay the group hospital, surgical, and major medical plan payments that have become due under the collective-bargaining agreement, with interest, as 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, time-

⁴Because the provisions of employee benefit fund agreements are variable and complex the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed sum on unlawfully withheld fund payments. Any additional amounts owed with respect to the funds will be determined in accordance with the procedure set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

cards, personnel records and reports, and all other records necessary to analyze the amount of money due under the terms of this Order.

(d) Post at its facility in Frederick, Maryland, copies of the attached notice marked "Appendix."⁵ 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.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁵If 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 the Glass, Molders, Pottery, Plastics and Allied Workers International Union, Local 237B, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit by failing and refusing from about August 1, 1989, to about November 22, 1989, to maintain group hospital, surgical, and major medical plan payments as required by the collective-bargaining agreement.

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 pay the group hospital, surgical, and major medical plan amounts that have become due under the collective-bargaining agreement from about August 1, 1989, to about November 22, 1989, with interest.

WE WILL make you whole, with interest, for any losses to you resulting from our failure to pay group hospital, surgical, and major medical plan amounts that have become due from about August 1, 1989, to about November 22, 1989.

FREDERICK IRON AND STEEL, INC.