

303 NLRB No., 99

SDR
D--2099
San Francisco, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CERVETTO BUILDING MAINTENANCE CO.

and

THEATER AND AMUSEMENT JANITORS UNION
LOCAL 9, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL--CIO; WINDOW
CLEANERS UNION LOCAL 44, SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL--CIO; SERVICE EMPLOYEES
UNION LOCAL 87, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL--CIO;
BUILDING SERVICE EMPLOYEES PENSION
TRUST; BUILDING SERVICE HEALTH AND
WELFARE TRUST

Case 20--CA--22296

THEATER AND AMUSEMENT JANITORS UNION
LOCAL 9 SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL--CIO; BUILDING
SERVICE HEALTH AND WELFARE TRUST

Case 20--CA--23061

CERVETTO BUILDING MAINTENANCE CO.
d/b/a LITTLE GIANT WINDOW CLEANING CO., INC.

and

WINDOW CLEANERS UNION LOCAL 44, SERVICE
EMPLOYEES INTERNATIONAL UNION, AFL--CIO;
BUILDING SERVICE EMPLOYEES PENSION TRUST

Cases 20--CA--22355
20--CA--22451
20--CA--22480

CERVETTO BUILDING MAINTENANCE CO. d/b/a
LITTLE GIANT BUILDING SERVICES, INC.

and

SERVICE EMPLOYEES UNION LOCAL 87, SERVICE
EMPLOYEES INTERNATIONAL UNION, AFL--CIO;
BUILDING SERVICE EMPLOYEES PENSION TRUST

Case 20--CA--22500

④5 July 5, 1991

④5 DECISION AND ORDER

④5 ④74 By Chairman Stephens and Members Devaney and Raudabaugh

11 Upon charges filed by the Unions and their pension and health and welfare trusts,¹ the Acting General Counsel issued an amended complaint in Case 20--CA--22296 and a consolidated complaint in Cases 20--CA--22355, 20--CA--22451, 20--CA--22480, and 20--CA--22500 on April 27, 1989, and the General Counsel issued an amendment to the amended complaint in Case 20--CA--22296 on March 6, 1990, and a complaint in Case 20--CA--23061 and an order consolidating all cases on March 15, 1990. The complaints and amended complaint allege that Cervetto Building Maintenance Co., Cervetto Building Maintenance Co. d/b/a Little Giant Window Cleaning Co., Inc., and Cervetto Building Maintenance Co. d/b/a Little Giant Building Services, Inc. (collectively the Respondent), have violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of all charges, complaints, and the amended complaint, the Respondent has failed to file an answer.

On April 8, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On April 10, 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 Company 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.

¹ The charge in Case 20--CA--22296 was filed on November 2, 1988. The charge in Case 20--CA--22355 was filed on December 6, 1988. The charge in Case 20--CA--22451 was filed on January 24, 1989. The charge in Case 20--CA--22480 was filed on February 3, 1989. The charge in Case 20--CA--22500 was filed on February 14, 1989. The charge in Case 20--CA--23061 was filed on December 20, 1989.

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. Each of the several complaints and the amended complaint in this consolidated proceeding 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 the Regional Attorney for Region 20, by letter dated February 21, 1991, notified the Respondent that unless an answer was received within 7 days from receipt of the letter a Motion for Summary Judgment would be filed. The Respondent signed a postal receipt for this letter on February 22, 1991, but it has yet to file an answer.

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 California corporation with an office and place of business in San Francisco, California, is engaged as a janitorial contractor, providing janitorial services and related services. During each calendar year from 1987 through 1989, the Respondent, in the course and conduct of its operations, provided services valued in excess of \$50,000 to other enterprises within the State of California which meet the Board's standards for the assertion of jurisdiction based on direct interstate commerce. In addition, at all times material, the Respondent has been a member of the San Francisco

Building Maintenance Contractors Association (the Association). The Association is composed of janitorial employers and exists, inter alia, for the purpose of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations. The Respondent has authorized the Association to negotiate collective-bargaining agreements on its behalf. During 1987 and 1989, the employer-members of the Association, in the course and conduct of their business operations, collectively provided services valued in excess of \$50,000 to enterprises within the State of California, which meet the Board's standards for the assertion of jurisdiction based on direct interstate commerce. 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 Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent (the Theater and Amusement Unit) constitute a unit appropriate for bargaining within the meaning of Section 9(b) of the Act:

All employees performing work covered by the terms of the collective-bargaining agreement between Respondent and Local 9, effective February 15, 1988, through February 14, 1991.

At all times material, SEIU Local 9 has been the exclusive collective-bargaining representative of the Theater and Amusement Unit. The Respondent's recognition of Local 9's representative status has been embodied in a collective-bargaining agreement, which was effective from February 15, 1988, through February 14, 1991. Sections 9 and 10 of this agreement respectively required the Respondent to make contributions on behalf of unit employees to the Building Service Health and Welfare Trust and the Building Service Employees Pension Trust.

The following employees of the Respondent (the Window Cleaners Unit--A) constitute a unit appropriate for bargaining within the meaning of Section 9(b) of the Act:

All employees performing work covered by the terms of the collective-bargaining agreement between the Association and Local 44, effective June 1, 1985, through May 31, 1988.

At all times material, SEIU Local 44 has been the exclusive collective-bargaining representative of the Window Cleaners Unit--A. The Respondent's recognition of Local 44's representative status has been embodied in a collective-bargaining agreement which was effective from June 1, 1985, through May 31, 1988. This agreement required the Respondent to make contributions on behalf of unit employees to the Building Service Employees Pension Trust.

The following employees of the Respondent (the Window Cleaners Unit--B) constitute a unit appropriate for bargaining within the meaning of Section 9(b) of the Act:

All employees of Cervetto Building Maintenance Co., d/b/a Little Giant Window Cleaning Co., Inc., performing work covered by the terms of the collective-bargaining agreement between Little Giant Building Service, Inc. and Local 44 effective April 1, 1988, through May 31, 1988.

At all times material, SEIU Local 44 has been the exclusive collective-bargaining representative of the Window Cleaners Unit--B. The Respondent's recognition of Local 44's representative status has been embodied in a collective-bargaining agreement which was effective from April 1 through May 31, 1988. This agreement required the Respondent to make contributions on behalf of unit employees to the Building Service Employees Pension Trust.

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

All employees performing work covered by the terms of the collective-bargaining agreement between the Association and Local 87, effective July 15, 1985, through February 28, 1988.

At all times material, SEIU Local 87 has been the exclusive collective-bargaining representative of the Retail Store Unit. The Respondent's recognition of Local 87's representative status has been embodied in a collective-bargaining agreement which was effective from July 15, 1985, through February 28, 1988. This agreement required the Respondent to make contributions on behalf of unit employees to the Building Service Employees Pension Trust.

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

All employees of Cervetto Building Maintenance Co., d/b/a Little Giant Building Services, Inc. performing work covered by the terms of the collective-bargaining agreement between the Little Giant Building Services, Inc. and Local 87, effective March 4, 1986, through February 28, 1988.

At all times material, SEIU Local 87 has been the exclusive collective-bargaining representative of the Building Service Unit. The Respondent's recognition of Local 87's representative status has been embodied in a collective-bargaining agreement, which was effective from July 15, 1985, through February 28, 1988. This agreement required the Respondent to make contributions on behalf of unit employees to the Building Service Employees Pension Trust.

On about August 1, 1988, the Respondent ceased making contributions to the Pension Trust on behalf of employees in the Window Cleaning Units--A and B and in the Retail Store Unit. Also in August 1988, the Respondent ceased making contractually required contributions to the Pension Trust on behalf of employees in the Theater and Amusement Unit. On October 1, 1988, the

Respondent ceased making contributions to the Pension Trust on behalf of employees in the Building Service Unit. In May 1989, the Respondent ceased making contractually required contributions to the Health and Welfare Trust on behalf of employees in the Theater and Amusement Unit.

The Respondent's cessation of contributions to the Pension Trust on behalf of employees in the Theater and Amusement Unit entailed a midterm modification of the terms of the collective-bargaining agreement then in effect for that unit. In each of the other aforementioned instances in which the Respondent ceased making benefit fund payments, it acted unilaterally with respect to a mandatory subject of bargaining without affording the unit employees' exclusive collective-bargaining representative notice and an opportunity to negotiate and bargain with respect to the Respondent's conduct and its effects. Accordingly, we find that the Respondent has violated Section 8(a)(5) and (1) of the Act.

Conclusion of Law

By unilaterally ceasing payments on behalf of unit employees into the Building Service Employees Pension Trust and the Building Service Health and Welfare Trust, the Respondent has engaged in unfair labor practices 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. Having found that the Respondent unlawfully ceased making benefit fund payments on behalf of unit employees, we shall order it to make whole unit employees for any expenses ensuing from its unlawful failure to make the required payments. Such sums shall be computed in the manner set forth in Kraft Plumbing &

Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). We shall also order the Respondent to resume all benefit fund payments and to make whole the Building Service Employees Pension Trust and the Building Service Health and Welfare Trust for all contributions the Respondent unlawfully failed to make.²

ORDER

The National Labor Relations Board orders that the Respondent, Cervetto Building Maintenance Co.; Cervetto Building Maintenance Co. d/b/a Little Giant Window Cleaning Co., Inc.; Cervetto Building Maintenance Co. d/b/a Little Giant Building Services, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally ceasing contributions to the Building Service Employees Pension Trust on behalf of employees represented by various locals of Service Employees International Union, AFL--CIO in the following appropriate units:

All employees performing work covered by the terms of the collective-bargaining agreement between the Association and Local 44, effective June 1, 1985, through May 31, 1988.

All employees of Cervetto Building Maintenance Co., d/b/a Little Giant Window Cleaning Co., Inc., performing work covered by the terms of the collective-bargaining agreement between Little Giant Building Service, Inc. and Local 44, effective April 1, 1988, through May 31, 1988.

All employees performing work covered by the terms of the collective-bargaining agreement between the Association and Local 87, effective July 15, 1985, through February 28, 1988.

² Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for the payment of a fixed rate of interest on unlawfully withheld fund payments at the adjudicatory stage of a proceeding. 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. Such additional amounts shall be determined in the manner set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

All employees of Cervetto Building Maintenance Co., d/b/a Little Giant Building Services, Inc. performing work covered by the terms of the collective-bargaining agreement between the Little Giant Building Services, Inc. and Local 87, effective March 4, 1986, through February 28, 1988.

(b) Failing to make contractually required contributions to the Building Service Employees Pension Trust and unilaterally ceasing contributions to the Building Service Health and Welfare Trust on behalf of employees represented by Local 9, Service Employees International Union, AFL--CIO in the following appropriate unit:

All employees performing work covered by the terms of the collective-bargaining agreement between Respondent and Local 9, effective February 15, 1988, through February 14, 1991.

(c) 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) Make unit employees whole, in the manner set forth in the remedy section of this Decision and Order, by reimbursing them, with interest, for any expenses they incurred as a result of the Respondent's failure to make benefit fund payments.

(b) Resume contributions on behalf of unit employees to the Building Service Employees Pension Trust and the Building Service Health and Welfare Trust, and make these benefit funds whole, in the manner set forth in the remedy section of this Decision and Order, for any payments the Respondent has unlawfully failed to make.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment

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 unilaterally cease making contributions to the Building Service Employees Pension Trust on behalf of our employees represented by various locals of Service Employees International Union, AFL--CIO in the following appropriate units:

All employees performing work covered by the terms of the collective-bargaining agreement between the Association and Local 44, effective June 1, 1985, through May 31, 1988.

All employees of Cervetto Building Maintenance Co., d/b/a Little Giant Window Cleaning Co., Inc., performing work covered by the terms of the collective-bargaining agreement between Little Giant Building Service, Inc. and Local 44 effective April 1, 1988, through May 31, 1988.

All employees performing work covered by the terms of the collective-bargaining agreement between the Association and Local 87, effective July 15, 1985, through February 28, 1988.

All employees of Cervetto Building Maintenance Co., d/b/a Little Giant Building Services, Inc. performing work covered by the terms of the collective-bargaining agreement between the Little Giant Building Services, Inc. and Local 87, effective March 4, 1986, through February 28, 1988.

WE WILL NOT unilaterally cease making contributions to the Building Service Employees Pension Trust and the Building Service Health and Welfare Trust on behalf of our employees represented by Local 9, Service Employees International Union, AFL--CIO in the following appropriate unit:

All employees performing work covered by the terms of the collective-bargaining agreement between Respondent and Local 9, effective February 15, 1988, through February 14, 1991.

WE WILL NOT in any like or related manner interfere with, restrain, or coercing you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse, with interest, our employees for any losses suffered due to our unlawful failure to make benefit fund payments.

WE WILL resume contributions on behalf of unit employees to the Building Service Employees Pension Trust and the Building Service Health and Welfare

Trust, and WE WILL make these benefit funds whole for any payments that we have unlawfully failed to make.

CERVETTO BUILDING MAINTENANCE CO.
CERVETTO BUILDING MAINTENANCE CO.
d/b/a LITTLE GIANT WINDOW CLEANING
CO., INC.; CERVETTO BUILDING
MAINTENANCE CO. d/b/a LITTLE GIANT
BUILDING SERVICES, 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, 901 Market Street, Room 400, San Francisco, California 94103-1735, Telephone 415--744--7808.