

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MAURY HORTON, JR., d/b/a  
REFRIGERATED AIR SERVICES

and

Case 33-CA-9402

JOURNEYMEN AND APPRENTICES OF THE  
PLUMBING AND PIPEFITTING INDUSTRY,  
U.A. LOCAL 319

*September 30, 1991*

DECISION AND ORDER

*By Chairman Stephens and Members Devaney and Oviatt*  
Upon a charge filed by Journeymen and Apprentices of the Plumbing and

Pipefitting Industry, U.A. Local 319, the Union, March 28, 1991,<sup>1</sup> and amended May 9, the General Counsel of the National Labor Relations Board issued a complaint<sup>2</sup> against Maury Horton, Jr., d/b/a Refrigerated Air Services, 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, amended charge, complaint, and amendment to the complaint, the Respondent has failed to file an answer.

On July 18, the General Counsel filed a Motion for Summary Judgment. On July 22, 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.

<sup>1</sup> All dates hereafter are in 1991, unless specified otherwise.

<sup>2</sup> The complaint was subsequently amended to include a reference to the May 9, 1991 amended charge.

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 said Complaint shall be deemed to be admitted true and may be so found by the Board."

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 sole proprietor with an office and place of business in Oswego, Illinois, is engaged in the installation and repair of commercial refrigeration equipment. During the 12-month period preceding issuance of the complaint herein, the Respondent provided goods and services valued in excess of \$50,000 to Aldi Foods, an enterprise located within the State of Illinois which annually purchases and causes to be transported to its facilities within the State of Illinois goods valued in excess of \$50,000, directly from points located outside the State of Illinois. 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

Since about June 4, 1990, and at all times material, the Respondent has recognized the Union as the collective-bargaining representative of the employees in the bargaining unit described below and, since that date, such recognition has been embodied in a collective-bargaining agreement executed by the Respondent and the Union and effective by its terms until May 31, 1991. The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen and apprentice employees performing work within the craft and geographic jurisdiction of the Union; but excluding all supervisors, clericals and other employees.

At all times material, the Union, by virtue of Section 8(f) of the Act, has been and is the limited exclusive representative of the unit employees for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. See John Deklewa & Sons, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir. 1988).

### B. The Violations

Since about October 1, 1990, and continuously thereafter, the Respondent has failed and refused to make contractually required contributions to fringe benefit funds for health, welfare and pension; failed and refused to remit to the Union dues, fees, and working assessments, including but not limited to a building fund assessment, as required by the collective-bargaining agreement; repudiated the collective-bargaining agreement; and repudiated its collective-bargaining relationship with the Union and withdrawn recognition from the Union during the term of the collective-bargaining agreement. By these acts, the Respondent has failed and refused, and is failing and refusing, to bargain

in good faith with its employees' representative, the Union, in violation of Section 8(a)(5) and (1) of the Act.

#### Conclusions of Law

By failing and refusing to continue in full force and effect all the terms of its collective-bargaining agreement with the Union, by failing and refusing to make contractually required contributions to fringe benefit funds for health, welfare and pension; by failing and refusing to remit to the Union dues, fees, and working assessments, including but not limited to a building fund assessment, as required by the collective-bargaining agreement; by repudiating its collective-bargaining agreement with the Union; and by repudiating its collective-bargaining relationship with the Union and by withdrawing recognition from the Union during the term of the collective-bargaining agreement, 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 that the Respondent make the fringe benefit fund contributions as required by the collective-bargaining agreement for the period from October 1, 1990, through May 31, 1991, with any additional amounts computed as provided in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse its employees for any expenses ensuing from its unlawful failure to pay such amounts, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in New Horizons for the Retarded, 283

NLRB 1173 (1987). Further, the Respondent shall remit to the Union all dues, fees, and working assessments, including but not limited to the building fund assessment, for the period from October 1, 1990, through May 31, 1991, as set forth in the collective-bargaining agreement, with interest as provided in New Horizons, supra. The Respondent shall make whole all unit employees for any loss of wages and other benefits resulting from the Respondent's repudiation of the collective-bargaining agreement with the Union and from its withdrawal of recognition during the contract's term, with interest as provided in New Horizons, supra. In accordance with Deklewa, supra, we shall not extend this make-whole remedy beyond the May 31, 1991 expiration date of the collective-bargaining agreement.

## ORDER

The National Labor Relations Board orders that the Respondent, Maury Horton, Jr., d/b/a Refrigerated Air Services, Oswego, Illinois, his agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing and refusing to bargain collectively with Journeymen and Apprentices of the Plumbing and Pipefitting Industry, U.A. Local 319, as the limited exclusive representative of the employees in the bargaining unit and failing to continue in full force and effect all the terms of its collective-bargaining agreement with the Union, by failing and refusing to make contractually required contributions to fringe benefit funds for health, welfare and pension.

(b) Failing and refusing to bargain collectively with the Union as the limited exclusive representative of the employees in the bargaining unit and failing to continue in full force and effect all the terms of its collective-bargaining agreement with the Union, by failing and refusing to remit to the

Union dues, fees, and working assessments, including but not limited to a building fund assessment, as required by the collective-bargaining agreement.

(c) Failing and refusing to bargain collectively with the Union as the limited exclusive representative of the employees in the bargaining unit and failing to continue in full force and effect all the terms of its collective-bargaining agreement with the Union, by repudiating its collective-bargaining agreement with the Union.

(d) Failing and refusing to bargain collectively with the Union as the limited exclusive representative of the employees in the bargaining unit and failing to continue in full force and effect all the terms of its collective-bargaining agreement with the Union, by repudiating its collective-bargaining relationship with the Union and withdrawing recognition from the Union during the term of the collective-bargaining agreement.

(e) 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 the contributions to fringe benefit funds for health, welfare and pension, as required by the collective-bargaining agreement covering the employees in the bargaining unit described below, in the manner set forth in the remedy section of this decision:

All journeymen and apprentice employees performing work within the craft and geographic jurisdiction of the Union; but excluding all supervisors, clericals and other employees.

(b) Make whole the unit employees for any losses resulting from the Respondent's failure to contribute to fringe benefit funds for health, welfare and pension, as required by the agreement in the manner set forth in the remedy section of this decision.

(c) Remit to the Union dues, fees, and working assessments, including but not limited to a building fund assessment, as required by the collective-bargaining agreement in the manner set forth in the remedy section of this decision.

(d) Make whole the unit employees for any losses resulting from the Respondent's repudiation of the collective-bargaining agreement and from the Respondent's withdrawal of recognition from the Union during the agreement's term, 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 amount of backpay due under the terms of this Order.

(f) Post at its facility in Oswego, Illinois, copies of the attached notice marked "'Appendix.'"<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 33, 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.

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<sup>3</sup> 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.'"

(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. September 30, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

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 I violated the National Labor Relations Act and has ordered me to post and abide by this notice.

I WILL NOT fail or refuse to bargain collectively with Journeymen and Apprentices of the Plumbing and Pipefitting Industry, U.A. Local 319, as the limited exclusive representative of my employees in the bargaining unit and I WILL NOT fail to continue in full force and effect all the terms of my collective-bargaining agreement with the Union, by failing and refusing to make contractually required contributions to fringe benefit funds for health, welfare and pension.

I WILL NOT fail or refuse to bargain collectively with the Union as the limited exclusive representative of my employees in the bargaining unit and I WILL NOT fail to continue in full force and effect all the terms of my collective-bargaining agreement with the Union, by failing and refusing to remit to the Union dues, fees, and working assessments, including but not limited to a building fund assessment, as required by the collective-bargaining agreement.

I WILL NOT fail or refuse to bargain collectively with the Union as the limited exclusive representative of my employees in the bargaining unit and I WILL NOT fail to continue in full force and effect all the terms of my collective-bargaining agreement with the Union, by repudiating my collective-bargaining agreement with the Union.

I WILL NOT fail or refuse to bargain collectively with the Union as the limited exclusive representative of my employees in the bargaining unit and I WILL NOT fail to continue in full force and effect all the terms of my collective-bargaining agreement with the Union, by repudiating my collective-bargaining relationship with the Union and by withdrawing recognition from the Union during the term of the collective-bargaining agreement.

I 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.

I WILL make the contributions to fringe benefit funds for health, welfare and pension, as required by the collective-bargaining agreement covering my employees in the bargaining unit described below, with interest:

All journeymen and apprentice employees performing work within the craft and geographic jurisdiction of the Union; but excluding all supervisors, clericals and other employees.

