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~~D--2152~~
~~Detroit, MI~~

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SHIELD TOOL & ENGINEERING CO., INC.

and

Cases ~~7-CA-29656~~ and
~~7-CA-29832~~

LOCAL LODGE DS-110, DISTRICT 60,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

and

SHIELD TOOL & ENGINEERING COMPANY, INC.
SHOP COMMITTEE

Party to the Contract

August 15, 1991

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Oviatt

Upon a charge filed by Local Lodge DS-110, District 60, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) September 7, 1989, and an amended charge filed October 23, 1989,¹ in Case ~~7-CA-29656~~, and on a charge filed by the Union October 25, 1989, in Case ~~7-CA-29832~~, the General Counsel of the National Labor Relations Board on October 26, 1989, issued a complaint in Case ~~7-CA-29656~~, and on December 1, 1989, issued a complaint in Case ~~7-CA-29832~~. On January 16, 1990, the General Counsel issued an order consolidating cases. Thereafter, an informal settlement agreement was entered into by the Respondent and the Union and approved by the Regional Director on July 27, 1990.

¹ The amended charge attached to the Motion for Default Judgment has an incorrect case number. The correct number is Case ~~7-CA-29832~~.

Because the Respondent failed to comply with the terms of the settlement agreement, the Regional Director on March 28, 1991, reinstated the complaints and issued an order setting aside settlement agreement and consolidating complaints, consolidated complaint, compliance specification, order consolidating consolidated complaint and compliance specification, and notice of consolidated hearing (the consolidated complaint and compliance specification) against Shield Tool & Engineering Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint and compliance specification, the Respondent has failed to file an answer.²

On June 6, 1991, the General Counsel filed a Motion for Default Judgment. On June 11, 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 Default 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 notice of consolidated hearing states that unless an answer is

² The attempts at service by certified mail were unsuccessful because the Respondent failed to claim the certified mail. The Respondent's failure to claim certified mail does not defeat the purposes of the Act. Fletcher Oil Co., 299 NLRB No. 77 fn. 2 (Aug. 23, 1990).

filed within 14 days of service, "all of the allegations in the Consolidated Complaint shall be deemed to be admitted true and may be so found by the Board."

Section 102.56 of the Board's Rules and Regulations provides that if an answer is not filed within 21 days from the service of the compliance specification, the Board may find the specification to be true. The notice of consolidated hearing states that the Respondent shall file an answer within 21 days from the date of service of the specification, and that if the answer fails to deny the specification's allegations in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, the allegations shall be deemed to be admitted to be true.

Further, the undisputed allegations in the Motion for Default Judgment disclose that the Regional attorney for Region 7, by letter dated April 19, 1991, notified the Respondent that unless an answer to the compliance specification was filed by May 3, 1991, a Motion for Default 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 Default Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Michigan corporation, has been engaged in the manufacture, nonretail sale, and distribution of tools and dies and related products at its facility in Detroit, Michigan. During the year ending December 31, 1989, a period representative of its operations during all times material, the Respondent manufactured, sold, and distributed at its Detroit, Michigan place of business products valued in excess of \$50,000, which were shipped

directly to points located outside the State of Michigan. During the year ending December 31, 1989, the Respondent also caused to be manufactured, sold, and distributed at its Detroit, Michigan place of business products valued in excess of \$50,000 which were furnished to enterprises, each of which annually sells and distributes products valued in excess of \$50,000 from its facilities within the State of Michigan, directly to points outside the State of Michigan. During the year ending December 31, 1989, the Respondent purchased and caused to be transported and delivered to its Detroit, Michigan place of business goods and materials valued in excess of \$50,000 which were transported and delivered to its place of business in Detroit, Michigan, directly from points outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union and the Shield Tool & Engineering Company, Inc. Shop Committee (Shop Committee) are labor organizations 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 collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent at its place of business located at 23261 Fenkell, Detroit, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

At all times material and at least since 1972, the Shop Committee has been recognized by the Respondent as the exclusive collective-bargaining representative of the Respondent's employees in the unit described above. Recognition has been embodied in a series of collective-bargaining agreements, the most recent of which was effective from June 1, 1989, through January 30, 1990. At all material times, the Shop Committee by virtue of Section 9(a) of

the Act has been, and is, the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. The Unlawful Discharges

Beginning about August 9, 1989, certain of the Respondent's employees engaged in a protected concerted work stoppage and strike to protest the Respondent's alleged violation of its established layoff policy and practice and the collective-bargaining agreement between the Respondent and the Shop Committee. About August 14, 1989, the Shop Committee, by its representative Donald Cleveland, advised the Respondent that its striking employees unconditionally offered immediately to return to work. Since the unconditional offer to return to work, the Respondent has discharged and failed and refused to reinstate employees, including Donald Cleveland and James Polder, to their former, and then available, positions of employment because of their participation in these activities.

By the acts described above, the Respondent did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of its employees and has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights. Accordingly, we find that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act. We further find that the backpay due the unit employees is as stated in the computations in the compliance specification, and we shall order the Respondent to pay those amounts.

C. Changes in Terms and Conditions of Employment and Refusals to Bargain

Since about July 1, 1989, and continuing to date, the Respondent has changed the terms and conditions of employment of unit employees as follows:

(1) Since about July 1, 1989, the Respondent has failed to make premium payments to Blue Cross/Blue Shield for health insurance policy coverage of its employees.

(2) About September 2, 1989, the Respondent canceled health insurance policy coverage by Blue Cross/Blue Shield of its employees effective September 1, 1989.

(3) In early September 1989, and effective about September 1, 1989, the Respondent transferred its employees from Blue Cross/Blue Shield to American Community Mutual Insurance Company health insurance policy coverage with substantially less coverage.

(4) Since about September 1, 1989, the Respondent has failed to make premium payments to American Community Mutual Insurance Company for health insurance policy coverage of its employees.

The Respondent took the action described above unilaterally, without prior notice to and opportunity to bargain with, the Shop Committee. By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights. Accordingly, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. We further find that the employees' out-of-pocket medical expenses are as found in the compliance specification and we shall order the Respondent to pay that amount.

Conclusions of Law

1. By discharging and failing and refusing to reinstate employees, including Donald Cleveland and James Polder, to their former positions because of their protected concerted activities, the Respondent has discriminated against its employees and has interfered with, restrained, and coerced its employees and has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By unilaterally changing the terms and conditions of employment by changing and canceling its employees' health insurance policy coverage, without notice to and meaningful opportunity to bargain with the Shop Committee, the Respondent has refused to bargain collectively with the representative of its employees and 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.

We shall order the Respondent to offer immediate and full reinstatement to those discharged striking employees not yet reinstated to their former positions of employment, discharging their replacements if necessary, and make them whole for any losses suffered by reason of the Respondent's unlawful conduct. We shall order the Respondent to provide backpay to employees Donald Cleveland in the amount of \$29,172 and James Polder in the amount of \$34,652.80 as set forth in schedules A and B of the compliance specification, plus interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state law.

We shall order the Respondent to reinstate the Blue Cross/Blue Shield health insurance policy coverage for its unit employees and to reimburse employees for all medical expenses incurred as a result of the Respondent's conduct in changing and thereafter canceling health insurance policy coverage for its employees. We shall order the Respondent to pay employee Donald Cleveland the amount of \$3902.04 as set forth in schedule C of the compliance specification, plus interest as prescribed in New Horizons for the Retarded, supra.

In view of the allegation in the compliance specification that the Respondent has ceased operations, we shall also provide for mail notices to employees.

ORDER

The National Labor Relations Board orders that the Respondent, Shield Tool & Engineering Co., Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging and failing and refusing to reinstate employees, including Donald Cleveland and James Polder, to their former positions because of their protected concerted activities.

(b) Unilaterally changing the terms and conditions of employment of unit employees by changing and canceling employees' health insurance policy coverage.

(c) Failing and refusing to bargain with Shield Tool & Engineering Company, Inc. Shop Committee as the exclusive representative of its employees in the following unit:

All production and maintenance employees employed by Respondent at its place of business located at 23261 Fenkell, Detroit, Michigan; but

excluding all office clerical employees, guards and supervisors as defined in the Act.

(d) 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) Offer immediate and full reinstatement to those discharged striking employees not yet reinstated to their former positions, discharging their replacements if necessary, and make them whole for any losses suffered by reason of the Respondent's unlawful conduct, including paying to employees Donald Cleveland and James Polder backpay as provided in the remedy section of this decision: \$29,172 to Donald Cleveland and \$34,652.80 to James Polder plus interest as prescribed in New Horizons for the Retarded, supra.

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Reinstate the Blue Cross/Blue Shield health insurance policy coverage for unit employees retroactive to July 1, 1989, make all delinquent insurance premium payments necessary to do so, and reimburse unit employees for all medical expenses incurred as a result of the Respondent's unlawful conduct, including paying to employee Donald Cleveland the amount of \$3902.04 plus interest as provided in the remedy section of this decision.

(d) Post at any facility it may still have in Detroit, Michigan, and mail to unit employees, the attached notice marked "'Appendix.'"³ Copies of the

³ 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 (Footnote continued)"

notice, on forms provided by the Regional Director for Region 7, 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.

Dated, Washington, D.C. August 15, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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 discharge or fail and refuse to reinstate employees, including Donald Cleveland and James Polder, to their former positions because of their protected concerted activity.

WE WILL NOT unilaterally change the terms and conditions of employment of unit employees by changing or canceling their health insurance policy coverage.

WE WILL NOT refuse to bargain with the Shield Tool & Engineering Company, Inc. Shop Committee as the exclusive collective-bargaining representative of our employees in the following unit concerning the terms and conditions of their employment:

All production and maintenance employees employed by us at our place of business located at 23261 Fenkell, Detroit, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

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 offer immediate and full reinstatement to those discharged striking employees not yet reinstated to their former positions, discharging their replacements if necessary, and make them whole for any losses suffered by reason of our unlawful conduct, including paying employees Donald Cleveland and James Polder the appropriate amounts for backpay as set forth in the compliance specification.

WE WILL notify each of the discharged striking employees that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

WE WILL reinstate the Blue Cross/Blue Shield health insurance policy coverage for unit employees retroactive to July 1, 1989, make all delinquent insurance premium payments necessary to do so, and reimburse unit employees for all medical expenses incurred as a result of our conduct, including paying Donald

Cleveland the appropriate amount for out-of-pocket medical expenses as set forth in the compliance specification.

SHIELD TOOL & ENGINEERING
CO., 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, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226--3219.