

MRS Printing, Inc. and United Paperworkers International Union, AFL-CIO, CLC, Local Union No. 551. Cases 3-CA-15989 and 3-CA-15994

August 23, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On May 10, 1991, Administrative Law Judge Joel A. Harmatz issued the attached decision. The General Counsel filed an exception and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exception and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order, as modified.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, MRS Printing, Inc., Watertown and Gouverneur, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and reletter the subsequent paragraph.

“(b) Failing to answer the Union’s repeated requests for contract renewal negotiations.”

2. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs starting with the second paragraph.

“(c) Meet with the Union as the bargaining representative of employees in the appropriate units described above at reasonable times and places to negotiate a collective-bargaining agreement.”

3. Substitute the attached notice for that of the administrative law judge.

¹ We find merit in the General Counsel’s exception that the judge inadvertently failed to provide in the recommended Order and notice portions of his decision an appropriate remedy for his finding that the Respondent unlawfully refused to respond to the Union’s repeated requests for contract renewal negotiations. We, accordingly, amend the recommended Order and notice portions of his decision to reflect the violation he found.

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 abide by and adhere to our collective-bargaining agreement by unilaterally failing to maintain the health benefit program required on behalf of employees described below:

All production and maintenance employees employed by us at our Gouverneur, New York facility, excluding all office clerical employees, sales employees, professional employees, guards, and supervisors as defined by the Act.

All office clerical employees employed by us at our Watertown and Gouverneur, New York facilities, excluding all production and maintenance employees, sales employees, professional employees, guards, and supervisors as defined by the Act.

WE WILL NOT fail to answer the Union’s repeated requests for contract renewal negotiations.

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 reinstate the health insurance program that covered the aforescribed employees immediately prior to May 1, 1990.

WE WILL make whole the above employees, with interest, for losses they sustained by reason of our failure to maintain health insurance coverage, including costs of alternative care such as actual medical expenses and premiums; and WE WILL provide restitution for premiums paid to us by those employees which we did not remit to the insurance carrier.

WE WILL meet with the Union as the bargaining representative of employees in the appropriate units de-

scribed above at reasonable times and places to negotiate a collective-bargaining agreement.

MRS PRINTING, INC.

Robert Ellison, Esq., for the General Counsel.

H. Thomas Swartz, Esq., of Watertown, New York, for the Respondent.

Jennifer Clark, Esq. (Blitman & King), of Syracuse, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge. This case was tried in Watertown, New York, on April 16, 1991, on an original unfair labor practice charge filed on October 31, 1990, and a complaint issued on December 4, 1990, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act, first, by repudiating the health insurance provisions of the collective-bargaining agreement, and, thereafter, by refusing, on request of the Union, to meet for the purpose of negotiating a successor agreement. In its answer the Respondent denied that any unfair labor practices were committed. All parties waived the right to file posthearing briefs.

On the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, has been engaged in the publishing, printing, and distribution of local newspapers and related materials from its facilities in Watertown, New York, and Gouverneur, New York, respectively. In the course of those operations, the Respondent annually derives revenues exceeding \$250,000 in value, and purchases and receives at its Gouverneur facility goods and materials valued in excess of \$50,000 which are shipped directly from points located outside the State of New York. The complaint alleges, the Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent admits, and I find that United Paperworkers International Union, AFL-CIO, CLC, Local Union No. 551 (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

This case involves an Employer's abnegation of both contractual employment terms and its continuing obligation to bargain in good faith as its cash position deteriorated. Though still operating on a limited basis, the Company, since January 1991, has been managed by a debtor in possession under auspices of Chapter 11 Bankruptcy.

Employees at each of the Respondent's locations in Watertown and Gouverneur have been represented for purposes of collective bargaining since 1980. In that year, the Union was certified in a single unit of office clericals at both locations, as well as a separate unit of production and maintenance em-

ployees at the Gouverneur facility. The most recent collective-bargaining agreement covering both units had a term of 2 years, with a scheduled expiration date of October 31, 1990. (G.C. Exh. 2.) There is no dispute as to the continuing appropriateness of the units covered by that contract, nor is there challenge to the presumption of the Union's majority status evoked by that agreement.

Article XVI of that contract¹ extended health protection to the aforesaid employees in accord with the following formula:

Section 2. The Company will continue in effect for employees and their dependents the present Medical Insurance Program, including Major Medical. . . . Employees will be responsible for the following weekly premium payments for said coverage, the remainder of which will be paid for by the Company.

Individual Coverage, \$ 1.00 per week.

Family Coverage, \$3.00 per week.

Section 3. Until such time as the Company and the Union change carriers to Blue Cross and Blue Shield, including Major Medical, the above Section 2 will be in effect. After changing Carriers, employees will share on a 50/50 basis with the Company on increased monthly premiums over the following monthly rates.

Individual Coverage, \$70.00 monthly premium

Family Coverage, \$170.00 monthly premium

By stipulation entered at the hearing, the parties agreed that article XV, section 3 became operable in January 1990, when as contemplated, Blue Cross/Blue Shield replaced "The Travelers" as the carrier. On April 11, 1990, the Respondent notified the employees of an increase in their contributions as authorized in section 3 above. (G.C. Exh. 4.) However, on May 1, 1990, Blue Cross/Blue Shield cancelled the Respondent's policy for nonpayment of premiums. Employees did not learn of this cancellation until August 1990. Subsequently a union representative inquired of and was informed by Blue Cross/Blue Shield that coverage had been terminated. During the interim after May 1, 1990, despite its default, the Respondent continued to deduct from wages, and retain, without reimbursement, employee health insurance contributions.

On the foregoing, it is concluded that the Respondent's failure to remit premiums, both its own and contributions withheld from employees, as agreed in article XV, section 3, was a midterm modification of a contract, effected without union assent, and offensive to Section 8(d) of the Act. The Respondent thereby violated Section 8(a)(5) and (1) of the Act. See, e.g., *Flood City Brass*, 296 NLRB No. 28 (1989).

With respect to the alleged refusal to meet, the parties agreed that, by letter dated August 24, the Union through Allyn Turck, wrote David Alteri, the Respondent's general manager, requesting negotiating dates in connection with scheduled expiration of the subsisting agreement on October

¹The transcript inadvertently identifies the above provision as "Article XVI." Coincidentally this numeric reference is omitted from the collective-bargaining agreement. See G.C. Exh. 2, pp. 16-17. The transcript is corrected to identify the relevant provision as "Article XV."

31, 1990. (G.C. Exh. 3(a).)² Thereafter on about four occasions Turck telephoned Alteri leaving messages, which a secretary acknowledged as delivered to Alteri. There was no response on behalf of the Respondent to any of these contacts. Under Section 8(d) "to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith." In that spirit, the Board has deemed unlawful mere delays by a party in responding to a timely request for renegotiation of a collective-bargaining agreement. See *Hassett Maintenance Corp.*, 260 NLRB 1211, 1216 (1982). It follows that the total frustration of such negotiations, caused by a failure, in any fashion, to acknowledge or reply to a bargaining request, as evidenced by the Respondent's conduct in this case, violates Section 8(a)(5) and (1) of the Act. I so find.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the Union has been the exclusive certified bargaining agent of the following employees:

All production and maintenance employees employed by Respondent at its Gouverneur, New York facility excluding all office clerical employees, sales employees, professional employees, guards, and supervisors as defined in the Act.

All office clerical employees employed by the Respondent at both its Watertown and Gouverneur, New York facilities, excluding all production and maintenance employees, sales employees, professional employees, guards, and supervisors as defined by the Act.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by, since May 1, 1990, failing to maintain health insurance coverage, through a failure to make premium payments, including contributions deducted from employees' pay, thereby repudiating provisions of the subsisting collective-bargaining agreement.

5. The Respondent violated Section 8(a)(5) and (1) of the Act by failing, on and after August 24, 1990, to answer the Union's repeated requests for contract renewal negotiations.

6. The above unfair labor practices are unfair labor practices having an effect on commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it shall be recommended that it be ordered to cease and desist therefrom, and to take certain affirmative action deemed necessary to effectuate the policies of the Act.

Having caused cancellation of the health insurance protection for employees in the collective-bargaining units described above, it shall be recommended that the Respondent be ordered to reestablish the contractual health insurance pro-

² It was agreed by the parties that this request was received by the Respondent on or about August 29. G.C. Exh. 3(c).

gram, and, until such restoration, to make the above employees whole for medical expenses personally and directly incurred by reason of the conduct, including reimbursement for any health insurance premiums they have made to either Blue Cross/Blue Shield or third party carriers in order to obtain alternative coverage. See *Bottom line Enterprises*, 302 NLRB 373 (1991). It shall be recommended further that the Respondent be ordered to refund to employees all moneys withheld from their pay as premium contributions, which the Respondent failed to remit to Blue Cross/Blue Shield. Finally, it is recommended that all moneys due under the terms of this recommended Order shall include interest as authorized in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, MRS Printing, Inc., Watertown and Gouverneur, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to abide by and adhere to its collective-bargaining agreement by unilaterally failing to maintain the health benefit program required on behalf of the following employees, constituting appropriate units within the meaning of Section 9(a) of the Act:

All production and maintenance employees employed by the Respondent at its Gouverneur, New York facility excluding all office clerical employees, sales employees, professional employees, guards, and supervisors as defined by the Act.

All office clerical employees employed by the Respondent at its Watertown and Gouverneur, New York facilities, excluding all production and maintenance employees, sales employees, professional employees, guards, and supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reinstate the health insurance program that covered employees in the aforescribed collective-bargaining units as it existed prior to May 1, 1990.

(b) Make whole employees, with interest, as set forth in the remedy section of this decision, for losses they sustained by reason of the failure to maintain health insurance coverage, including costs of alternative care such as actual medical expenses and premiums; and provide restitution for premiums paid to the Respondent by employees which were not remitted to the insurance carrier.

(c) 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

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

(d) Post at its facilities in Watertown and Gouverneur, New York, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Re-

⁴If 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."

spondent'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.

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