Superior Technology, Inc. *and* International Brotherhood of Electrical Workers, Local 2192, affiliated with International Brotherhood of Electrical Workers, AFL–CIO, CLC. Case 16–CA–14961

December 13, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on March 21, 1991, the General Counsel of the National Labor Relations Board issued a complaint on May 30, 1991, and an amended complaint on September 13, 1991, against Superior Technology, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Subsequently, the Respondent filed answers to the complaint and amended complaint, admitting all the material allegations in the amended complaint.

On September 30, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. The General Counsel submits that there is no genuine issue about any material fact and that summary judgment should be granted. The General Counsel requests that the Board find that the Respondent has violated Section 8(a)(5) and (1) of the Act and that the Board issue an appropriate order to effectuate the policies of the Act. On October 4, 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

The General Counsel alleges that the Respondent, since about February 28, 1991, unilaterally discontinued the payment of unit employees' health insurance premiums and unilaterally canceled health insurance coverage, life insurance benefits, and short-term disability coverage for unit employees. Further, the General Counsel alleges that since about April 18, 1991, the Respondent unilaterally failed to pay the contractually mandated increase in its contributions to the pension plan. The General Counsel alleges that these changes were made without affording the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees.

The Respondent admits all the allegations contained in paragraphs 1 through 12 of the amended complaint and presents no defense to these allegations. The Respondent neither admits nor denies the allegations contained in paragraph 13, the only remaining paragraph of the complaint, which is the conclusionary paragraph in which the General Counsel alleges that the allegations contained in paragraphs 10 and 12 constitute unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

The Respondent, by admitting all the allegations contained in paragraphs 1 through 12 of the amended complaint, has admitted all the elements which constitute a violation of Section 8(a)(5) and (1) of the Act. Although the Respondent did not admit the allegation contained in paragraph 13, that paragraph simply sets forth the legal conclusion to be drawn from the allegations contained in paragraphs 1 through 12. Moreover, under Section 102.20 of the Board's Rules and Regulations, if "any allegation in the complaint [is] not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, [the allegation] shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown." Accordingly, 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 wholly owned subsidiary of Electric and Gas Technology, Inc., a Texas corporation, operates a facility located in Paris, Texas, where it is engaged in the manufacture of electrical components. During the 12 months preceding issuance of the complaint, a representative period, the Respondent sold and shipped goods and products valued in excess of $50,000 directly from its Paris, Texas facility to points located outside the State of Texas. 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 collec-

tive bargaining within the meaning of Section 9(b) of the Act:

Included: All production and maintenance workers (including receiving and shipping personnel, tool and die makers, machinists, inspectors, and factory janitors) engaged on jobs in the Employer's Paris, Texas plant and at no other geographic location.

Excluded: Superintendents, supervisors, assistant supervisors, foremen, group leaders, all office employees, office janitors, professional employees, draftsmen, engineers, office clerks, chemists, technicians, all other laboratory personnel, all timekeepers, all plant protection personnel, and truckdrivers.

B. *The Refusal to Bargain*

At all times material, the Union has been the recognized exclusive collective-bargaining representative of the unit. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from May 16, 1989, to April 21, 1992.

Commencing about February 28, 1991, and continuing, the Respondent, without negotiating and bargaining with the Union as the exclusive representative of the Respondent's employees, failed to continue in full force and effect all the terms and conditions of the most recent collective-bargaining agreement, by unilaterally discontinuing the payment of unit employees' health insurance premiums; by unilaterally canceling health insurance coverage, life insurance benefits, and short-term disability coverage for unit employees; and commencing about April 18, 1991, and continuing, by unilaterally failing to pay the cost of an agreed-upon increase in pension benefits. 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.

Conclusions 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 from May 16, 1989, to April 21, 1992, by unilaterally discontinuing the payment of unit employees' health insurance premiums, and by unilaterally canceling health insurance coverage, life insurance benefits, and short-term disability coverage for unit employees, commencing about February 28, 1991, and continuing, and by unilaterally failing to pay the cost of a contractually agreed-upon increase in pension benefits, commencing about April 18, 1991, and continuing, 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 continue its health insurance coverage, life insurance benefits, and short-term disability coverage for unit employees, and to pay the health insurance premiums for unit employees that have become due pursuant to the terms of its collective-bargaining agreement with the Union, commencing about February 28, 1991, and continuing, and to pay the cost of the contractually agreed-upon increase in pension benefits, commencing about April 18, 1991, and continuing, with interest and other sums applicable.[1]

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 and for any loss of pension plan credits or benefits resulting from the Respondent's failure to make the required pension plan contributions, in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 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 required benefit fund payments. *Concord Metal*, 295 NLRB No. 94, slip op. at 8–9 (June 30, 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).

[1] Because 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).

ORDER

The National Labor Relations Board orders that the Respondent, Superior Technology, Inc., Paris, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with International Brotherhood of Electrical Workers, Local 2192, affiliated with International Brotherhood of Electrical Workers, AFL–CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit by unilaterally discontinuing the payment of unit employees' health insurance premiums, and by unilaterally canceling its health insurance coverage, life insurance benefits, and short-term disability coverage for unit employees from about February 28, 1991, and continuing, and by unilaterally failing to pay the cost of a contractually agreed-upon increase in pension benefits from about April 18, 1991, and continuing.

(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 health insurance coverage, life insurance benefits, short-term disability coverage, and health insurance premium payments that have become due under the collective-bargaining agreement from about February 28, 1991, and continuing, with interest, as set forth in the remedy section of this decision.

(b) Pay the contractually agreed-upon increase in pension benefits that have become due under the collective-bargaining agreement from about April 18, 1991, and continuing, with interest, as set forth in the remedy section of this decision.

(c) Make whole unit employees for any losses they may have suffered because of the Respondent's failure to pay the health insurance coverage, life insurance benefits, short-term disability coverage, health insurance premium payments, and the contractually agreed-upon increase in pension benefits that have become due under the collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(d) 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.

(e) Post at its facility in Paris, Texas, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 16, 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.

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

[2] 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."

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 International Brotherhood of Electrical Workers, Local 2192, affiliated with the International Brotherhood of Electrical Workers, AFL–CIO, CLC as the exclusive representative of the employees in the bargaining unit by unilaterally discontinuing the payment of unit employees' health insurance premiums, by unilaterally canceling health insurance coverage, life insurance benefits, and short-term disability coverage for our unit employees from about February 28, 1991, and continuing, and by unilaterally failing to pay the cost of a contractually agreed-upon increase in pension benefits from about April 18, 1991, and continuing, 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 health insurance coverage, life insurance benefits, short-term disability coverage, and the health insurance premiums for unit employees that have become due from about February 28, 1991, and continuing, with interest; and WE WILL

pay the cost of the contractually agreed-upon increase in pension benefits from about April 18, 1991, and continuing, with interest.

WE WILL make you whole, with interest, for any losses to you resulting from our failure to pay for health insurance coverage, life insurance benefits, short-term disability coverage, and health insurance premiums that have become due from about February 28, 1991, and continuing; and WE WILL make you whole, with interest, for any losses to you resulting from our failure to pay the cost of a contractually agreed-upon increase in pension benefits from about April 18, 1991, and continuing.

SUPERIOR TECHNOLOGY, INC.