

**Cambridge Machine Products Corporation and Local Lodge No. 264, District Lodge No. 38, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 1-CA-27506**

March 9, 1992

**DECISION AND ORDER**

**BY CHAIRMAN STEPHENS AND MEMBERS  
OVIATT AND RAUDABAUGH**

Upon a charge filed by the Union on July 30, 1990, as amended on September 19, 1990, the General Counsel of the National Labor Relations Board issued a complaint against Cambridge Machine Products Corporation, 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 and complaint, the Respondent has failed to file an answer.

On December 11, 1991, the General Counsel filed a Motion for Summary Judgment. On December 18, 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**

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 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 General Counsel, by letter dated February 11, 1991, notified the Respondent that unless an answer was received by the close of business on February 19, 1991, a Motion for Summary 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 Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, has an office and place of business in Somerville, Massachusetts, and has been engaged in the manufacture of machine products and related items. During the year ending December 31, 1989, the Respondent, in the course and conduct of its operations, sold and shipped from its Somerville facility products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts, and purchased and received at its Somerville facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. 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 collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees including group leaders employed at the Respondent's Somerville facility but excluding all office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act.

**B. The Refusal to Bargain**

On October 20, 1969, the Union was certified as the exclusive collective-bargaining representative of the employees in the unit. About February 1, 1990, the Respondent and the Union entered into a collective-bargaining agreement, which by its terms is effective for the period February 1, 1990, through January 31, 1991. The Union continues to be the exclusive representative under Section 9(a) of the Act.

About the dates stated below the Respondent failed to continue in full force and effect all the terms and conditions of the 1990-1991 agreement by the following actions:

(a) About May 15, 1990, the Respondent laid off employees without adhering to the seniority provisions of article 10.

(b) Since about June 1, 1990, the Respondent has failed and refused to pay the following benefit amounts that have become due:

(1) Paid vacation leave—article 12

(2) Paid sick leave—article 14

(c) Since about February 1, 1990, but unknown to the Union until about July 1, 1990, the Respondent has failed and refused to pay health and life insurance premiums that have become due under article 15.

(d) About June 1, 1990, the Respondent closed its Somerville facility. Since about June 7, 1990, the Respondent has failed and refused to bargain concerning severance pay pursuant to article 29 of the collective-bargaining agreement regarding the Respondent's closing of its Somerville facility. The Respondent closed its facility without prior notice to the Union and without having offered the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to the effect of such acts and conduct.

We find that the Respondent, by this conduct, has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

By failing to comply with and continue in full force and effect the terms and conditions of the parties' collective-bargaining agreement, including by failing to adhere to the seniority provisions, the paid vacation leave provisions, the paid sick leave provisions, the health and life insurance provisions, and the severance pay provisions, and by closing the Somerville facility about June 1, 1990, without giving timely notice to the Union and without affording the Union an opportunity to bargain with respect to the effect of the closing on unit employees, 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 the Respondent to cease its failure and refusal to comply with and continue in full force and effect the terms and conditions of the parties' collective-bargaining agreement. We shall further order the Respondent to make its employees whole by paying the health and life insurance premiums owing since February 1, 1990, and for any loss of earnings and benefits they may have suffered as a result of its failure to comply with the agreement, in accordance with the Board's deci-

sions in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>1</sup>

Because of the Respondent's unlawful failure to bargain with the Union about the effects of the decision to close the Somerville facility, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed. Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union, on request, about the effects of the closure on the unit employees, and shall accompany our Order with a limited backpay requirement designed both to make the employees whole for losses suffered as a result of the Respondent's failure to bargain, and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so in this case by requiring that the Respondent pay backpay to unit employees in a manner similar to that required in *Transmarine Corp.*, 170 NLRB 389 (1968). The Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant closure on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within the 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.

In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they

<sup>1</sup> Interest on any payments unlawfully withheld from employee benefit fund agreements shall be computed in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

#### ORDER

The National Labor Relations Board orders that the Respondent, Cambridge Machine Products Corporation, Somerville, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to comply with and continue in full force and effect the terms and conditions of its collective-bargaining agreement with Local Lodge No. 264, District Lodge No. 38, International Association of Machinists and Aerospace Workers, AFL-CIO, including failing to adhere to the seniority provisions, the paid vacation leave provisions, the paid sick leave provisions, the health and life insurance provisions, and the severance pay provisions.

(b) Closing its facility without giving timely notice to the Union and without affording the Union an opportunity to bargain as the exclusive representative of the unit employees with respect to the effects of the closing on the unit employees. The appropriate unit is:

All production and maintenance employees including group leaders employed at the Respondent's Somerville facility but excluding all office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act.

(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) Adhere to all the terms and conditions of its collective-bargaining agreement with the Union.

(b) On request, bargain in good faith with the Union as the exclusive representative of the unit employees regarding the effects of the closing of the Somerville facility.

(c) Make whole the employees in the bargaining unit for any losses they may have suffered because of the Respondent's unfair labor practices, in the manner 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 copy-

ing, 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.

(e) Post at its facility in Somerville, Massachusetts, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, 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) Mail a copy of the attached notice marked "Appendix" to all employees who were employed by the Respondent prior to the closing of the Somerville facility. Copies of the notice, on forms provided by the Regional Director, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

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

<sup>2</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."

#### 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 fail and refuse to comply with and continue in full force and effect the terms and conditions of our collective-bargaining agreement with Local Lodge No. 264, District Lodge No. 38, International Association of Machinists and Aerospace Workers, AFL-CIO, including failing to adhere to the seniority provisions, the paid vacation leave provisions, the paid sick leave provisions, the health and life insurance provisions, and the severance pay provisions.

WE WILL NOT close our facility without giving timely notice to the Union as the exclusive repre-

sentative of all employees in the appropriate unit and WE WILL NOT fail and refuse to bargain collectively with the Union about the effects of the closing of the facility on the unit employees. The appropriate unit is:

All production and maintenance employees including group leaders employed at the Employer's Somerville facility but excluding all office clerical employees, professional employees, guards, watchmen 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 adhere to the terms and conditions of our collective-bargaining agreement with the Union.

WE WILL, on request, bargain collectively with the Union with respect to the effects of closing our facility on the employees in the above-described unit.

WE WILL make whole the employees in the bargaining unit for any losses they have suffered because of our unlawful conduct and WE WILL pay the employees who were employed at the facility on the date of the closing their normal wages for a period of time as required in the Decision and Order of the National Labor Relations Board.

CAMBRIDGE MACHINE PRODUCTS  
CORP.