

**Adams Pakkawood Corp. and Local 254, Service
Employees International Union, AFL-CIO.
Case 1-CA-28250**

January 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Union May 6, 1991, and amended charges filed May 13, and June 21, 1991, the Acting Regional Director for Region 1 of the National Labor Relations Board issued a complaint June 24, 1991, against Adams Pakkawood Corp., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although served copies of the charges and complaint, the Respondent has failed to file an answer.¹

On November 18, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On November 21, 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 September 30, 1991, notified the Respondent that unless an answer was received by the close of business on October 14, 1991, a Motion for Summary Judgment would be filed. Additionally, the General Counsel, by letter dated October 23, 1991, notified the Respondent that it was being given an additional opportunity to respond, and that unless an answer was received by the close of business on

November 5, 1991, a Motion for Summary Judgment would be filed. To date, the Respondent has failed to file an answer and has failed to file a response to the Notice to Show Cause.

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 with an office and place of business in Holyoke, Massachusetts, has been engaged in the manufacture of kitchen utensils. Annually, the Respondent, in the course and conduct of its business operations, purchases goods and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts and ships products valued in excess of \$50,000 directly to 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

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 employed by Respondent at its Holyoke, Massachusetts facility, excluding office and factory clerical employees, timekeepers, professional employees, watchpersons/guards and all supervisors as defined in the Act.

Since about 1986, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit described above, and the Union has been recognized as the representative by the Respondent. Recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period July 1, 1989, to July 1, 1992.

Since about January 1991, the Respondent has refused to abide by the provisions of the above-described collective-bargaining agreement by failing to remit to the Union the union dues and initiation fees deducted from the pay of its unit employees, failing and refusing to pay the health insurance premiums on behalf of its unit employees, and failing

¹ Regarding the General Counsel's allegation that the first amended charge was not claimed by the Respondent, we note that a respondent's refusal or failure to claim certified mail does not defeat the purposes of the Act. *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). In any event, the Respondent does not contest this allegation or the complaint.

and refusing to pay to its unit employees accrued vacation pay, which are required by articles 3, 22, and 8, respectively, of the collective-bargaining agreement and are mandatory subjects of bargaining. Additionally, on about March 22, 1991, the Respondent permanently laid off all of its unit employees and closed its Holyoke facility. The Respondent engaged in this conduct without giving prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's unit employees regarding the effects of this conduct.

Based on the above, we find that the Respondent has failed and refused to bargain collectively with the Union as the exclusive representative of the unit employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By unilaterally failing to remit to the Union the union dues and initiation fees deducted from the pay of its unit employees and by failing to pay health insurance premiums on behalf of unit employees and accrued vacation pay to unit employees, all of which are required by the collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

2. By refusing to bargain with the Union regarding the effects of its closure of the Holyoke, Massachusetts facility, 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 remit to the Union any withheld payments of authorized dues and initiation fees. We shall also order the Respondent to make whole unit employees by making such payments of accrued vacation pay as are provided for in the collective-bargaining agreement to be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970). We shall also order the Respondent to make whole unit employees by making all health insurance payments, as provided in the collective-bargaining agreement,

that have not been paid,² and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). All payments to the Union for dues and initiation fees withheld and for reimbursement to the employees shall be made with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Additionally, we shall order the Respondent, on request, to bargain with the Union about the effects of the closure of the Respondent's facility. We shall accompany the bargaining order with a limited backpay requirement similar to that required in *Transmarine Corp.*, 170 NLRB 389 (1968). Thus, we shall order the Respondent to pay the employees in the unit 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 closure of the Respondent's facility on the employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 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; but in no event shall the sum paid to any of these employees exceed the amount which that employee would have earned as wages from the date on which the Respondent closed its facility to the time that employee 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 these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all such sums shall be paid in the manner described in *New Horizons for the Retarded*, above.

Finally, in view of the Respondent's closure of its Holyoke, Massachusetts facility, we shall order the Respondent to mail copies of the notice to all unit employees who were employed at the Holyoke, Massachusetts facility immediately prior to its closing.

² Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into any benefit fund in order to satisfy our "make-whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Adams Pakkawood Corp., Holyoke, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 254, Service Employees International Union, AFL-CIO by unilaterally failing to remit to the Union authorized union dues and initiation fees deducted from the pay of its employees as required by the collective-bargaining agreement, and by failing and refusing to pay accrued vacation benefits to unit employees and failing and refusing to pay health insurance premiums on behalf of unit employees as required by the collective-bargaining agreement.

(b) Refusing to bargain by failing and refusing to give the Union an opportunity to bargain about the effects of the closure of its Holyoke, Massachusetts facility on unit employees.

(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) Remit to the Union any withheld payments of authorized dues and initiation fees, with interest, in the manner set forth in the remedy section of this decision.

(b) Make whole unit employees by paying accrued vacation pay and health insurance premiums, as provided in the collective-bargaining agreement, that have not been paid, in the manner set forth in the remedy section of this decision.

(c) On request, bargain with the Union over the effects of the closure of the Holyoke, Massachusetts facility on the unit employees and pay limited backpay 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 copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Mail a copy of the attached notice marked "Appendix"³ to the last known addresses of all unit employees who were employed at its Holyoke, Massachusetts facility immediately prior to the Respondent's closure of that facility or at the time of

any of the Respondent's unfair labor practices. 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 mailed immediately upon receipt.

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

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 collectively with Local 254, Service Employees International Union, AFL-CIO by unilaterally failing to remit to the Union the union dues and initiation fees deducted from the pay of our employees as required by the collective-bargaining agreement, and by failing and refusing to pay accrued vacation benefits to unit employees and failing and refusing to pay health insurance premiums on behalf of unit employees as required by the collective-bargaining agreement.

WE WILL NOT refuse to bargain by failing and refusing to give the Union an opportunity to bargain about the effects of the closure of our Holyoke, Massachusetts facility on unit employees.

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 remit to the Union any withheld payments of dues and initiation fees, with interest.

WE WILL make whole our unit employees by paying accrued vacation pay and health insurance premiums, as provided in the collective-bargaining agreement, that have not been paid, and by reimbursing our unit employees, plus interest, for any expenses ensuing from our unlawful failure to make such payments.

WE WILL, on request, bargain collectively with the Union regarding the effects of the closure of our Holyoke, Massachusetts facility on the unit employees.

WE WILL pay our employees who were employed at the time of our closure of the Holyoke, Massachusetts facility their normal wages for a period of time required by the National Labor Relations Board.

³If 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."