

**Los Angeles Parkerizing Co., Inc. and Metal Polishers, Buffers, Platers and Allied Workers International Union, Local 67, AFL-CIO-CLC.**  
Case 21-CA-28507

June 17, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge filed by the Metal Polishers, Buffers, Platers and Allied Workers International Union, Local 67, AFL-CIO-CLC, the General Counsel of the National Labor Relations Board issued a complaint on March 30, 1992, against Los Angeles Parkerizing Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act.<sup>1</sup> Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On May 18, 1992, the General Counsel filed a Motion for Summary Judgment. On May 21, 1992, 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 considered 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 counsel for General Counsel, by letter dated April 14, 1992, notified the Respondent that unless an answer was received no later than the close of business April 21, 1992, 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

<sup>1</sup> On April 7, 1992, an erratum to the complaint was served on the Respondent. The erratum inserted the street address for the hearing which was scheduled for August 6, 1992.

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation with an office and place of business in Los Angeles, California, has been engaged in business as a specialist in the manufacture of paints and coatings for metal and metallic surfaces. During the fiscal year ending December 30, 1991, Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000. During this same period, Respondent sold and shipped from its Los Angeles facility, products, goods, and materials valued in excess of \$50,000 directly to points outside the State of California. 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 is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

Since on or before June 16, 1986, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the employees in the following unit which is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including shipping and receiving employees, truck drivers, and all lead persons employed by Los Angeles Parkerizing Co., Inc. at its facility located at 8205 South Alameda Street, Los Angeles, California; excluding office, clerical, supervisory, confidential employees, and guards as defined under the Act.

This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 16, 1991, to July 7, 1994. At all times since on or before June 16, 1986, the Union has been the exclusive collective-bargaining representative of the employees in the bargaining unit pursuant to Section 9(a) of the Act.

Since in or around the end of July 1991 or the beginning of August 1991, the Respondent has failed to continue in full force and effect all the terms and conditions of the agreement by failing to provide group insurance, failing to make payments to the pension fund and failing to honor grievances filed by the Union. These subjects relate to wages, hours, and other terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the above acts and conduct without prior notice to the Union and without having afforded the Union an opportunity to bargain with the Respondent.

ent with respect to this conduct and the effects of this conduct.

#### CONCLUSION OF LAW

By its failure on and after the end of July 1991 or the beginning of August 1991, to continue in full force and effect all the terms and conditions of the collective-bargaining agreement, as manifested in its failing to provide group insurance, failing to make payments to the pension fund, and failing to honor grievances filed by the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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 make all contractually required payments it failed to make since late July or early August 1991.<sup>2</sup>

The Respondent shall also make its employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, we shall order the Respondent to process all pending grievances filed by the Union.

#### ORDER

The National Labor Relations Board orders that the Respondent, Los Angeles Parkerizing Co., Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Metal Polishers, Buffers, Platers and Allied Workers International Union, Local 67, AFL-CIO-CLC, as the exclusive representative of its employees in the bargaining unit by failing to provide group insurance, failing to make payments to the pension fund and failing to honor grievances filed by the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex-

ercise 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) Continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the exclusive representative of the employees in the following appropriate unit:

All production and maintenance employees, including shipping and receiving employees, truck drivers, and all lead persons employed by Los Angeles Parkerizing Co., Inc. at its facility located at 8205 South Alameda Street, Los Angeles, California; excluding office, clerical, supervisory, confidential employees, and guards as defined under the Act.

(b) Make all payments required pursuant to the collective-bargaining agreement including contractually required group insurance and pension fund payments.

(c) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required group insurance and pension fund payments.

(d) On request, process grievances filed by the Union.

(e) 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.

(f) Post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, 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.

(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> 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 the benefit funds in order to satisfy our "make whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

<sup>3</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 refuse to bargain collectively with the Metal Polishers, Buffers, Platers and Allied Workers International Union, Local 67, AFL-CIO-CLC as the exclusive representative of the employees in the following bargaining unit:

All production and maintenance employees, including shipping and receiving employees, truck drivers, and all lead persons employed by Los Angeles Parkerizing Co., Inc. at its facility located at 8205 South Alameda Street, Los Angeles, California; excluding office, cler-

ical, supervisory, confidential employees, and guards as defined under the Act.

WE WILL NOT fail or refuse to continue in full force and effect all the terms of our agreement with the Union by failing to provide group insurance, failing to make payments to the pension fund, and failing to honor grievances filed by the Union.

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 continue in full force and effect all the terms and conditions of our collective-bargaining agreement with the Union.

WE WILL make all contractually required payments for group insurance and pension fund and process grievances filed by the Union.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required payments for group insurance and pension fund.

LOS ANGELES PARKERIZING CO., INC.