

**Plabell Rubber Products, Inc. and Teamsters,
Chauffeurs, Warehousemen and Helpers Union
Local No. 20 a/w International Brotherhood of
Teamsters, AFL-CIO. Case 8-CA-24156**

July 9, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by the Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20 a/w International Brotherhood of Teamsters, AFL-CIO (the Union) on December 6, 1991, and an amended charge filed on January 8, 1991, the General Counsel of the National Labor Relations Board issued a complaint on January 17, 1992, against Plabell Rubber Products, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) by failing to make contributions to the Union's health and welfare fund, remit union dues deducted from the wages of bargaining unit employees, remit credit union payments deducted from the wages of bargaining unit employees, reimburse bargaining unit employees for the coinsurance portion of their major medical health and welfare coverage, make required premium payments for employees' dental insurance coverage, and make cost-of-living adjustments, all as required in the parties' collective-bargaining agreement. Copies of the complaint and notice of hearing were served on the Respondent. The Respondent filed a timely answer admitting certain factual allegations. On February 14, 1992, the Respondent filed a notice of stay pursuant to a voluntary petition for bankruptcy filed November 22, 1991. By letter dated March 3, 1992, counsel for the General Counsel advised the Respondent that it is the Region's position that the automatic stay issued in the bankruptcy proceeding does not apply to the Board's administrative proceedings.

On March 11, 1992, the General Counsel filed a Motion to the National Labor Relations Board for Partial Summary Judgment.¹ On March 18, 1992, the Board issued an order transferring proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Respondent filed no response.

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

On the entire record, the Board makes the following

¹ The General Counsel does not seek summary judgment with respect to complaint par. 15, which alleges the failure to make cost-of-living adjustments. Indeed, he requests that we remand paragraph 15, and the conclusionary complaint allegations that pertain to it, to the Regional Director for Region 8 for further processing. We grant that request and shall remand that portion of the case.

Ruling on Motion for Summary Judgment

The Respondent's answer to the allegations in paragraph 10 of the complaint establishes that the Respondent was obligated under the terms of its collective-bargaining agreement with the Union, including article II, section 1, to deduct union dues from the pay of bargaining unit employees and remit the dues to the Union, and that from July 1 through November 1991, the Respondent has deducted the dues but has failed to remit them to the Union. The Respondent also admits that, as alleged in paragraph 11 of the complaint, it deducted from the pay of unit employees money which the employees had designated to be remitted to Toledo Teamsters Federal Credit Union, to be deposited in the employees' credit union accounts, and failed to remit the amounts deducted although obligated to do so by the provisions of the collective-bargaining agreement, including article II, section 2.² Similarly, the Respondent admits complaint paragraph 12's allegation that, commencing about September or October 1991, it failed to make monthly contributions for those 2 months to the Union's Health and Welfare Trust Fund, as required by the provisions of its collective-bargaining agreement with the Union, including article XVI, section 2, appendix C, and memorandum of agreement. The Respondent also admits that, as alleged in complaint paragraph 13, it failed since September 1991 to reimburse unit employees for the coinsurance portion of the major medical health and welfare coverage, as required by the collective-bargaining agreement, including article XVI, section 2, appendix C, and memorandum of agreement.³ The Respondent further admits the allegations of paragraph 14 of the complaint, i.e., that since about August or September 1991 it has failed to make dental insurance premium payments to Safeguard Insurance Company covering bargaining unit employees for August, September, October, and November 1991, although required to do so by the provisions of the collective-bargaining agreement, including article XIV, section 2, appendix C, and memorandum of agreement. Finally, the Respondent admits that it failed to comply with the above-described con-

² The complaint alleges that the Respondent deducted but failed to remit the credit union funds during October and November 1991. The Respondent's answer admits the allegation in part, stating that its "records indicate that Credit Union monies were not deposited for three weeks in November, 1991. At all other material times, Credit Union monies were remitted to the Toledo Teamsters Federal Credit Union." The exact amounts deducted from the employees' pay and not remitted to the credit union can be determined at the compliance stage of this proceeding consistent with the bankruptcy court's resolution of the Respondent's petition. *Can-Do, Inc.*, 279 NLRB 819, 820-821 (1986).

³ The complaint alleges August 1991 (inadvertently designated as August 1992) as the date of the Respondent's failure to reimburse the employees for coinsurance coverage. The actual date of the Respondent's failure to reimburse the employees and the amounts involved shall be resolved at the compliance stage of this proceeding.

tractual obligations without prior notice to or the consent of the Union.

It is well settled that an employer that is a party to an existing collective-bargaining agreement violates Section 8(a)(5) and (1) of the Act when it modifies the terms and conditions of employment established by that agreement without obtaining the consent of the Union. *Rapid Fur Dressing*, 278 NLRB 905, 906 (1986). Here, the Respondent has admitted that it has unilaterally, at various times, discontinued satisfying its obligations under the contract. The Respondent asserts in defense that “[t]he financial condition of Respondent effected [sic] Respondent’s actions during material times.” Financial necessity, however, even if proven, does not constitute an adequate defense to an allegation that an employer has unlawfully failed to abide by the provisions of a collective-bargaining agreement embodying mandatory subjects of bargaining. *Tammy Sportswear Corp.*, 302 NLRB 860 (1991); *Raymond Prats Sheet Metal Co.*, 285 NLRB 194, 196 (1987); and *Oak Cliff-Golman Baking Co.*, 202 NLRB 614, 616 (1973).⁴ Moreover, it is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Board proceedings fall within 11 U.S.C. 362(b)(4) and (5), the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *Katco, Inc.*, 295 NLRB No. 92, slip op. at 2 (June 30, 1989) (not reported in bound volume).

Accordingly, the Respondent has admitted all the facts material to a resolution of the unfair labor practice issues raised by the complaint allegations contained in paragraphs 10 through 14 and has not raised an adequate defense to those allegations.

Because there are no material facts in dispute as to complaint paragraphs 10 through 14, and in the absence of any good cause to the contrary having been shown by the Respondent, we grant the General Counsel’s Motion for Partial Summary Judgment.

On the entire record, the Board makes the following

⁴ As Member Oviatt stated in *Tammy Sportswear Corp.*, supra, he is of the opinion that there may be limited circumstances in which an employer’s financial inability to pay may constitute a defense to an allegation that it unilaterally and unlawfully ceased contractually required payments to a union benefit fund. To make this defense successfully, an employer must establish that it continued to recognize—and did not repudiate—its contractual obligations. To satisfy this requirement, an employer must prove that its nonpayment was followed by its request to meet with the union to discuss and resolve the nonpayment problem. In so doing, an employer demonstrates its adherence to the contract and the bargaining process. In such circumstances, Member Oviatt would find that an employer’s nonpayment of contractually required benefit fund payments would not violate Sec. 8(a)(5) of the Act. Such circumstances, however, are not present in this case.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, both before and after it became a debtor-in-possession, has maintained its principal office and place of business at Toledo, Ohio, where it has been engaged in the manufacture and nonretail sale of molded and extruded mechanical rubber products and roll coverings. The Respondent annually has sold and shipped from its Toledo, Ohio facility goods valued in excess of \$50,000 directly to points outside the State of Ohio. Accordingly, 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

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, maintenance assistants and hourly rated plant employees of the Respondent, excluding all casual employees, home workers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

At all material times, the Union has been recognized as the designated exclusive collective-bargaining representative of the unit employees, within the meaning of Section 9(a) of the Act. Recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 20, 1989, through June 19, 1992.

The parties’ collective-bargaining agreement requires the Respondent to deduct union dues from the pay of bargaining unit employees and remit the union dues to the Union. The agreement also requires the Respondent to deduct certain money from the employees’ pay and remit that money to the Toledo Teamsters Federal Credit Union, for deposit to the employees’ credit union accounts. In addition, the collective-bargaining agreement requires the Respondent to make contributions on behalf of its employees to the Teamsters Health and Welfare Trust Fund, to reimburse employees for the coinsurance portion of the major medical health and welfare coverage, and to make dental insurance premium payments to Safeguard Insurance Company covering bargaining unit employees. The Respondent admits that it has failed to abide by the above provisions, without the Union’s consent, as alleged in the complaint. Accordingly, we find that the Respondent has refused to bargain with the Union within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing to continue in full force and effect all the provisions of its collective-bargaining agreement with the Union, by failing to make contractually required contributions to the health and welfare fund, to reimburse employees for the coinsurance portion of the major medical health and welfare coverage, to make dental insurance premium payments, to remit money deducted from the employees' pay to the Toledo Teamsters Federal Credit Union, and to remit union dues deducted from the employees' pay to the Union, 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 make the contractually required contributions to the Teamsters Health and Welfare Trust Fund that unlawfully were not made, to pay the dental insurance premiums that unlawfully were not paid,⁵ to reimburse unit employees for the coinsurance portion of major medical health and welfare coverage that they are owed, to remit the money deducted from the employees' pay that was not turned over to the Toledo Teamsters Federal Credit Union for deposit into their accounts, and to make whole the unit employees for any expenses they incurred as a result of the Respondent's unlawful failure to make contributions to the health and welfare trust fund and to pay dental insurance premiums, in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to remit to the Union the unremitted dues that were deducted from the employees' wages, with interest as provided in *New Horizons*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Plabell Rubber Products, Inc., Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20 a/w International Brotherhood of Teamsters,

⁵Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit fund in order to satisfy our "make-whole" remedy. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

AFL-CIO by unilaterally discontinuing contributions to the Union's health and welfare fund, reimbursements to employees for the coinsurance portion of the major medical health and welfare coverage, dental insurance premium payments, remittance of money deducted from the employees' pay to the Toledo Teamsters Federal Credit Union, and remittance of union dues deducted from the employees' pay to the Union, as required by the parties' collective-bargaining agreement.

(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) Make all contributions to the Teamsters Health and Welfare Trust Fund, and make all dental insurance premium payments that have not been paid and that would have been paid in the absence of the Respondent's unlawful conduct, and make the employees whole for any expenses they incurred as a result of that conduct, in the manner prescribed in the remedy section of this decision.

(b) Reimburse unit employees for the coinsurance portion of major medical health and welfare coverage, and remit all money deducted from the employees' pay to the Toledo Teamsters Federal Credit Union for deposit into their accounts, in the manner set forth in the remedy section of this decision.

(c) Comply with the terms of the dues-checkoff provision in the collective-bargaining agreement and remit to the Union dues checked off pursuant to that provision and valid authorizations and required by the agreement to be turned over to the Union by the Respondent, 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 necessary to analyze the amount of backpay or monies due under the terms of this Order.

(e) Post at its Toledo, Ohio location copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 8 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 Re-

⁶If 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 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.

IT IS FURTHER ORDERED that the issues as to which summary judgment is not requested are remanded to the Regional Director for Region 8 for action consistent with this opinion.

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 in good faith with Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20 a/w International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the unit by unilaterally discontinuing contractually required contributions to the Teamsters Health and Welfare Trust Fund, or by failing to reimburse employees for the coinsurance portion

of the major medical health and welfare coverage, failing to make dental insurance premium payments, failing to remit money deducted from the employees' pay to the Toledo Teamsters Federal Credit Union, or failing to remit union dues deducted from the employees' pay to 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 make all contributions to the Teamsters Health and Welfare Trust Fund and all dental insurance premium payments that have not been paid and that would have been paid in the absence of our unlawful discontinuance of the payments, and WE WILL make unit employees whole for any expenses they incurred as a result of our failing to make those payments, with interest.

WE WILL reimburse unit employees for the coinsurance portion of major medical health and welfare coverage, and remit money deducted from the employees' pay to the Toledo Teamsters Federal Credit Union for deposit into their accounts, with interest.

WE WILL remit to the Union dues deducted pursuant to valid authorizations and the collective-bargaining agreement and required to be turned over to the Union by us, with interest.

PLABELL RUBBER PRODUCTS, INC.