

John White d/b/a White Installation and Carpenters' District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 6-CA-24016

April 20, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

Upon a charge and amended charge filed by the Union on October 25, 1991, and December 20, 1991, respectively, the General Counsel of the National Labor Relations Board issued a complaint against John White d/b/a White Installation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 18, 1992, the General Counsel filed a Motion for Summary Judgment. On March 20, 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 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 Respondent was served a letter dated January 9, 1992, by certified mail, reminding the Respondent of its obligation to file an answer under Section 102.20 of the Board's Rules and Regulations, and advising the Respondent that unless an answer was received by close of business on the third day following receipt of the letter or unless an extension of time to file the answer had been granted pursuant to the Board's Rules and Regulations, a Motion for Summary Judgment would be filed with the Board.

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 sole proprietorship with an office and place of business in Pittsburgh, Pennsylvania, has been a window installation contractor in the construction industry doing residential, commercial, and office construction. During the 12-month period ending September 30, 1991, the Respondent, in the conduct of its business operations provided services valued in excess of \$50,000 for Gem Products Company, an enterprise within the Commonwealth of Pennsylvania. Gem Products Company, a Pennsylvania corporation engaged in the manufacture and nonretail sale of windows, sold and shipped from its Pittsburgh, Pennsylvania facility goods valued in excess of \$50,000 directly to points located outside the Commonwealth of Pennsylvania. 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

1. About December 12, 1990, the Respondent, an employer engaged in the building and construction industry, granted recognition to the union as the exclusive collective-bargaining representative of certain employees (the Unit) by entering into a collective-bargaining agreement with the Union for the period December 12, 1990, to May 31, 1994, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act. The employees of the Respondent described in this collective-bargaining agreement (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. For the period of December 12, 1990, to May 31, 1994, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

2. Since about October 1, 1991, the Respondent repudiated the collective-bargaining agreement described above by failing and refusing to abide by the provisions of the collective-bargaining agreement at the Respondent's Bethlehem Middle School jobsite in Washington County, Pennsylvania.

3. About October 1, 1991, the Respondent withdrew recognition from the Union by acts and conduct including repudiation of the collective-bargaining agreement.

4. By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act.

CONCLUSIONS OF LAW

By withdrawing recognition about October 1, 1991, by acts and conduct including repudiation of the collective-bargaining agreement, and by virtue of that repudiation failing and refusing to abide by its provisions at the Respondent's Bethlehem Middle School jobsite in Washington County, Pennsylvania, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) 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 abide by the provisions of the collective-bargaining agreement for the period beginning October 1, 1991. The Respondent shall also make its employees whole for any losses attributable to its failure to abide by the provisions of the collective-bargaining agreement, as set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971); and *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 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).

ORDER

The National Labor Relations Board orders that the Respondent, John White d/b/a White Installation, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the Union and thereby refusing to bargain collectively and in good faith with Carpenters' District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the exclusive collective-bargaining representative of its employees in the appropriate unit covered by

the collective-bargaining agreement by repudiating the collective-bargaining agreement effective for the period December 12, 1990, to May 31, 1994, by failing and refusing to abide by the provisions of that 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 its employees whole, with interest, for any losses attributable to its failure to abide by the provisions of the collective-bargaining agreement, as provided by the remedy section of this Decision and Order.

(b) Continue in full force and effect all the terms and conditions of the collective-bargaining agreement effective for the period December 12, 1990, to May 31, 1994.

(c) 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.

(d) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 6, 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.

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

¹ 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 withdraw recognition from the Union and thereby refuse to bargain collectively and in good faith with Carpenters' District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the appropriate unit by repudiating the collective-bargaining agreement effective

for the period December 12, 1990, to May 31, 1994, by failing and refusing to abide by the provisions of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL continue in full force and effect all the terms and conditions of the collective-bargaining agreement effective for the period December 12, 1990, to May 31, 1994.

WE WILL make our employees whole, with interest, for any losses attributable to our failure to abide by the provisions of the collective-bargaining agreement.

JOHN WHITE D/B/A WHITE INSTAL-
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