

**Sun Cadillac Buick Sterling, Inc. and Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO.** Case 13-CA-30931

September 9, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

Upon a charge filed by the Union on April 9, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Sun Cadillac Buick Sterling, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 10, 1992, the General Counsel filed a Motion to Transfer Proceedings to the Board and Motion for Summary Judgment. On August 12, 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 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 a Board attorney, by letter dated June 5, 1992, notified the Respondent that unless an answer was received by close of business on June 19, 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

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Illinois corporation, with an office and place of business in Chicago, Illinois, has been engaged in the retail sale and service of auto-

mobiles and related products. During the year preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its Chicago, Illinois facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Illinois. 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 (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All mechanics, bodymen, painters, apprentices, lube rack attendants and semi-skilled workers employed by Respondent excluding guards and supervisors as defined in the Act.

Since at least 1980 and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of the unit and since that time period the Union has been recognized as such representative by the Respondent. Such 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 June 30, 1992.

At all times since at least 1980, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about December 1, 1991, and continuing to date, Respondent failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement described above by failing to remit contributions, on behalf of employees in the unit to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds as required under articles XI and XII of the agreement.

The terms and conditions of the agreement the Respondent failed to continue in full force and effect are terms and conditions of employment of employees in the unit and are mandatory subjects of bargaining.

The Respondent engaged in the conduct described above without the consent or agreement of the Union at times when such was required pursuant to the provisions of Section 8(d) of the Act.

CONCLUSION OF LAW

By failing since December 1, 1991, to remit contractually required contributions to the welfare and pension

funds, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and the Respondent thereby has been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), 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. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments for welfare and pension benefits, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Sun Cadillac Buick Sterling, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreement by failing to remit contractually required contributions to the welfare and pension funds.

(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) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the unit described below with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment:

All mechanics, bodymen, painters, apprentices, lube rack attendants and seim-skilled workers em-

ployed by Respondent excluding guards and supervisors as defined in the Act.

(b) Make all required contributions to the welfare and pension funds that have not been made since December 1, 1991, and make the unit employees whole for any losses they may have suffered as a result of the failure to make such payments, as set forth in the remedy section of this decision.

(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 Chicago, Illinois, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, 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.

<sup>1</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 to continue in full force and effect all the terms and conditions of the collective-bargaining agreement by failing to remit contributions on behalf of employees in the unit to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds as required under articles XI and XII of the agreement.

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, on request, bargain in good faith with the Union as the exclusive collective-bargaining represent-

ative of employees in the unit described below with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment:

All mechanics, bodymen, painters, apprentices, lube rack attendants and semi-skilled workers employed by us excluding guards and supervisors as defined in the Act.

WE WILL make all required contributions to the welfare and pension funds that have not been made since December 1, 1991, and make the unit employees whole for any losses they may have suffered as a result of the failure to make such payments, with interest.

SUN CADILLAC BUICK STERLING, INC.