

Mays Corporation d/b/a Tri-County Commercial Laundry and District 1199, the Health Care and Social Service Union, Service Employees International Union, AFL-CIO and Judy Bush.
Cases 9-CA-29385 and 9-CA-29438

December 7, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and amended charge filed by District 1199, the Health Care and Social Service Union, Service Employees International Union, AFL-CIO (the Union), and upon a charge and amended charge filed by Judy Bush, an individual, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on April 22, 1992, against Mays Corporation d/b/a Tri-County Commercial Laundry, 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 charges, amended charges, and complaint, the Respondent has failed to file a timely answer.

On June 23, 1992, the General Counsel filed a Motion for Summary Judgment. On June 26, 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 a request for extension of time within which to respond and was granted an extension until July 15, 1992. Thereafter, the Respondent filed a response.

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 consolidated 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 Region, by letter dated May 26, 1992, notified the Respondent that unless an answer was received immediately a Motion for Summary Judgment would be filed.

As a response to the Notice to Show Cause, the Respondent on July 14, 1992, filed a letter with the Board answering the unfair labor practice allegations of the complaint. The letter contains no explanation of why the Respondent failed to answer the complaint de-

spite appropriate notice and a warning that if no answer was forthcoming by the given date, a Motion for Summary Judgment would be filed. The Respondent's attack on the complaint's factual allegations, while appropriate in a timely answer, simply came too late when included for the first time in the response to the Notice to Show Cause. See generally *Middle Eastern Bakery*, 243 NLRB 503, 504 fn. 1 (1979); *Petitto Bros., Inc.*, 291 NLRB No. 139, slip op. at 2-3 (Nov. 30, 1988) (not reported in Board volumes).

We find that the Respondent has not shown good cause for its failure to file a timely answer. In accordance with the Rules set forth above, the allegations in the complaint are deemed to be admitted to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the operation of a commercial laundry at Louisa, Kentucky. During the 12 months preceding the issuance of the consolidated complaint, the Respondent provided services valued in excess of \$50,000 for Our Lady of Bellefonte Hospital, a corporation engaged in the operation of a hospital providing in-patient medical care at Ashland, Kentucky. During the 12 months preceding the issuance of the consolidated complaint, Our Lady of Bellefonte Hospital derived gross revenues in excess of \$250,000. During the 12 months preceding the issuance of the consolidated complaint, Our Lady of Bellefonte Hospital purchased and received goods at its Ashland, Kentucky facility valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky. 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

About February 28, 1992, the Respondent gave false information to M.E.B., Inc. d/b/a J.J. Jordan Geriatric Center (M.E.B.), another employer, concerning an alleged medical problem of a prior employee of the Respondent who was currently employed by M.E.B. because the employee intended to file unfair labor practice charges with the Board and because of the employee's grievance-filing activities while in the employ

¹Contrary to his colleagues, Member Devaney in the particular circumstances of this case would accept the Respondent's letter as a timely filed answer to the complaint. Accordingly, and because he finds the answer substantively sufficient, Member Devaney would deny the General Counsel's Motion for Summary Judgment.

of the Respondent. This false information led to the employee's discharge by M.E.B.

About May 1, 1990, the Respondent entered into a lease with an option to purchase from M.E.B. the Louisa Seven Day Laundry which had been operated by M.E.B. At that time, the employees of M.E.B. were represented by the Union and were covered by a contract between M.E.B. and the Union effective by its terms from July 1, 1989, through June 30, 1992. When the Respondent entered into the lease purchase agreement with M.E.B., the Respondent agreed to assume any and all obligations arising under the contract between the Union and M.E.B. and to apply the terms of that contract to its employees in the following unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full and part-time employees employed by Respondent at its Louisa, Kentucky facility, excluding all confidential employees, office clerical employees, guards and supervisors as defined in the Act.

About July 15, 1990, the Respondent and the Union entered into a memorandum of agreement in which the Respondent recognized the Union as the representative of the employees in the unit and adopted and agreed to apply the contract to the employees in the unit. At all times since July 15, 1990, the Union has been the exclusive collective-bargaining representative of the employees in the unit within the meaning of Section 9(a) of the Act.

About January 2, 1992, the Respondent repudiated the contract and at all times thereafter the Respondent has failed and refused to apply the terms of the contract to the employees in the unit.

CONCLUSIONS OF LAW

1. By providing false information to another employer about its former employee because of the employee's intent to file unfair labor practice charges with the Board and because of the employee's grievance-filing activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By repudiating its contract with 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 adhere to the terms of the contract.²

The Respondent shall also make its employees whole for any losses attributable to its failure to adhere to the contract, as set forth in *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, Mays Corporation d/b/a Tri-County Commercial Laundry, Louisa, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Providing false information regarding any former employee because of the employee's intent to file unfair labor practice charges with the Board and because of the employee's grievance-filing activities.

(b) Failing and refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of its unit employees by repudiating its collective-bargaining agreement with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain in good faith with the Union as the representative of its employees in the following appropriate bargaining unit:

All full and part-time employees employed by Respondent at its Louisa, Kentucky facility, excluding all confidential employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Honor all the terms and conditions of employment of the collective-bargaining agreement.

(c) Make its employees whole, with interest, for any losses attributable to its failure to honor the provisions of the collective-bargaining agreement, as provided by the remedy section of this decision.

(d) Post at its facility in Louisa, Kentucky, copies of the attached notice marked "Appendix."³ Copies of

² Any provisions of employee benefit fund agreements are variable and complex. To the extent that these are present in the repudiated agreement, 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).

³ 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."

the notice, on forms provided by the Regional Director for Region 9, 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) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payments records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(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 provide false information regarding any former employee because of the employee's intent to file unfair labor practice charges with the Board and because of the employee's grievance-filing activities.

WE WILL NOT fail and refuse to bargain in good faith with District 1199, the Health Care and Social Service Union, Service Employees International Union, AFL-CIO, the exclusive representative of our employees in the following unit, by failing and refusing to honor the terms and conditions of employment set forth in our contract with the Union. The unit is:

All full and part-time employees employed by Respondent at its Louisa, Kentucky facility, excluding all confidential employees, office clerical employees, guards and supervisors as defined in the Act.

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 honor our collective-bargaining agreement with the Union and make our employees whole for losses, if any, which they have suffered as a result of our refusal to honor the agreement.

MAYS CORPORATION D/B/A TRI-COUNTY
COMMERCIAL LAUNDRY