

Rhode Island Associate Suppliers, d/b/a Kerr Wallpaper and Local 328, United Food and Commercial Workers Union, AFL-CIO. Case 1-CA-29392 and 1-CA-29547

October 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by Local 328, United Food and Commercial Workers Union, AFL-CIO, the Union, in Case 1-CA-29392, the General Counsel of the National Labor Relations Board issued a complaint on July 1, 1992, against Rhode Island Associate Suppliers, d/b/a Kerr Wallpaper, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint in Case 1-CA-29392, the Respondent has failed to file an answer.

Upon a charge filed by the Union in Case 1-CA-29547, the General Counsel of the National Labor Relations Board issued a complaint against the Respondent on August 13, 1992, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint in Case 1-CA-29547, the Respondent has failed to file an answer.

By order of September 11, 1992, the General Counsel consolidated Cases 1-CA-29392 and 1-CA-29547. On October 2, 1992, the General Counsel filed a Motion for Summary Judgment in these cases. On October 6, 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 complaints each state 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 Acting Regional Attorney, by letters dated September 10, 1992, notified the Respondent that unless answers were received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file timely answers, 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 corporation with an office and place of business in Fall River, Massachusetts, has been engaged in the retail sale of paint, wallpaper, and related products. Annually, the Respondent derives gross revenues in excess of \$500,000. Annually, the Respondent purchases and receives goods and materials valued in excess of \$5,000 directly from points located outside the Commonwealth of Massachusetts. 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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Respondent at its Fall River, Massachusetts facility who are engaged in the work of handling or selling merchandise, or in performing other services incidental or related thereto, including demonstrators and employees of all licensed departments, but excluding seasonal employees, professional employees, guards, and supervisors as defined in the Act.

The Union has been the designated exclusive collective-bargaining representative of the employees in the unit at all material times and has been so recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, including the agreement which was effective from January 1, 1989 to December 31, 1991, and the most recent agreement which is effective from January 1, 1992, to December 31, 1994. Based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit at all material times.

Since about November 20, 1991, the Respondent has failed to honor all the terms and conditions of the 1989-1991 agreement and the 1992-1994 agreement by refusing to remit Union dues. Since about March 1, 1992, the Respondent has failed to honor all the terms and conditions of the 1992-1994 agreement by failing and refusing to make payments to the United Food & Commercial Workers Interstate Health and Welfare Fund as required by article 10 of the 1992-1994 agreement. The Respondent engaged in this conduct without the Union's consent. These subjects relate to wages,

hours, and other terms and conditions of employment of the employees in the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

1. By failing to honor the terms of its 1989–1991 agreement and the 1992–1994 agreement by refusing to remit Union dues, 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.

2. By failing to honor the terms of its 1992–1994 agreement by failing and refusing to make payments to the United Food & Commercial Workers Interstate Health and Welfare Fund as required by article 10 of the 1992–1994 agreement, 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.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments to the United Food & Commercial Workers Interstate Health and Welfare Fund, 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.* 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).

Further, we shall order that the Respondent remit all union dues pursuant to its contracts with interest as prescribed in *New Horizons*, *supra*. Respondent shall also reimburse any unit employees who suffered expenses as a result of its failure to remit all union dues pursuant to its contracts, as set forth in *Kraft Plumbing*, *supra*, computed in the manner set forth in *Ogle Protection Service*, *supra*.

ORDER

The National Labor Relations Board orders that the Respondent, Rhode Island Associate Suppliers, d/b/a Kerr Wallpaper, Fall River, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms of its 1989–1991 and 1992–1994 contracts by failing to remit union dues and failing to honor the terms of its 1992–1994 contract by failing to make payments to the United Food & Commercial Workers Interstate Health and Welfare Fund.

(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) Remit all Union dues pursuant to the terms of its contracts in the manner prescribed in the remedy section of this decision.

(b) Make all contractually required payments to the United Food & Commercial Workers Interstate Health and Welfare Fund in the manner prescribed in the remedy section of this decision.

(c) Make its employees whole for its failure to remit union dues and its failure to make contractually required payments to the United Food & Commercial Workers Interstate Health and Welfare Fund in the manner prescribed 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 amounts due under the terms of this Order.

(e) Post at its facility in Fall River, Massachusetts, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 1, 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.

(f) 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 refuse to honor the terms of our 1989-1991 contract or our 1992-1994 contract by failing to remit union dues.

WE WILL NOT refuse to honor the terms of our 1992-1994 contract by failing to make payments to the United Food & Commercial Workers Interstate Health and Welfare Fund.

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 the terms of our 1989-1991 and our 1992-1994 contract by remitting union dues.

WE WILL honor the terms of our 1992-1994 contract by making all contractually required payments to the United Food & Commercial Workers Interstate Health and Welfare Fund.

WE WILL make our employees whole for our failure to remit union dues and our failure to make contractually required payments to the United Food & Commercial Workers Interstate Health and Welfare Fund.

RHODE ISLAND ASSOCIATE SUPPLIERS,
D/B/A KERR WALLPAPER