

B & F Enterprises, Inc. and District 17, United Mine Workers of America. Case 39-CA-29565

October 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Union on May 5, 1992 (amended June 12, 1992), the General Counsel of the National Labor Relations Board issued a complaint against B & F Enterprises, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of 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 October 5, 1992, the General Counsel filed a Motion for Summary Judgment. 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 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 by letters dated September 10 and 11, 1992, counsel for the General Counsel notified the Respondent that unless an answer was received by close of business September 17, 1992, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

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 is a corporation engaged in the contract mining of coal in the vicinity of Danville, West Virginia. During the 12-month period ending March 31, 1991, a representative period, the Respondent, in

the conduct of its operations, performed services valued in excess of \$50,000 for Sharples Coal Corporation. During the same period, Sharples Coal Corporation, which has been engaged in the mining and processing of coal near Danville, West Virginia, sold and shipped from its West Virginia facility goods valued in excess of \$50,000 directly to customers outside the State of West Virginia. 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

Since March 28, 1989, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit consisting of the employees described in the National Bituminous Coal Wage Agreement of 1988. Such recognition has been embodied in a collective-bargaining agreement between the Respondent and the International Union, United Mine Workers of America, on behalf of its locals and districts, including the Union, which is effective by its terms through February 1, 1993. At all times since March 28, 1989, the Union, by virtue of Section 9(a) of the Act, has been the exclusive bargaining representative of the Respondent's unit employees.

Since about November 1991, the Respondent, without the Union's consent, has failed to continue in effect all the terms and conditions of its current agreement with the Union by failing to make the required payments to the United Mine Workers of America Health and Retirement Fund, and by refusing, since about April 29, 1992, to accept and process a grievance. The above terms and conditions of employment constitute mandatory subjects of bargaining. We find that by engaging in the above conduct, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union within the meaning of Section 8(d), in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By not continuing in effect all the terms and conditions of its agreement with the Union through its failure to make required payments to the United Mine Workers of America Health and Retirement Fund and its failure to accept and process a grievance, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and 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.

The Respondent shall be ordered to continue in effect all the terms and conditions set forth in its current agreement with the Union, and to make the required payments to the United Mine Workers of America Health and Retirement Fund that have not been made since about November 1991.¹ We shall also order the Respondent to accept and process the grievance that it has failed and refused to accept and process since about April 29, 1992. Finally, the Respondent shall be required to make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure and refusal to maintain in effect all the terms of its agreement, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon 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, B & F Enterprises, Inc., Danville, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect all the terms and conditions set forth in its collective-bargaining agreement with District 17, United Mine Workers of America, which is the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit as described in article IA of the National Bituminous Coal Wage Agreement of 1988, by failing to make required payments to the United Mine Workers of America Health and Retirement Fund, and refusing to accept and process a grievance.

(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) Adhere to all the terms and conditions of its collective bargaining agreement with the Union, make the required payments to the United Mine Workers of America Health and Retirement Fund that have not been made since about November 1991, and accept and process the grievance that it has refused to accept since about April 29, 1992.

¹ Any additional amounts applicable to these payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(b) Make whole unit employees for any expenses they may have incurred because of the Respondent's failure to continue in effect all the terms of its agreement with the Union, with interest, 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, time-cards, 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 Danville, West Virginia, copies of the attached notice marked "Appendix."² Copies of 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) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² 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 effect all the terms and conditions of our collective-bargaining agreement with District 17, United Mine Workers of America, which is the designated exclusive bargaining representative of our employees in an appropriate unit as described in article IA of the National Bituminous Coal Wage Agreement of 1988, by failing to make required payments to the United Mine Workers of America Health and Retirement Fund, and failing to accept and process a grievance.

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 give effect to all terms and conditions of our collective bargaining agreement with the Union, WE WILL make all required payments to the United

Mine Workers of America Health and Retirement Fund that have not been made since about April 29, 1992, and WE WILL accept and process the grievance that we have refused to accept and process since about April 29, 1992.

WE WILL make unit employees whole for any expenses they may have incurred because of our failure

to continue in effect all the terms and conditions of our agreement with the Union, with interest.

B & F ENTERPRISES, INC.