

Schien Body & Equipment Co., Inc. and United Steelworkers of America, Local No. 8557, AFL-CIO-CLC. Case 14-CA-22012

October 29, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge and amended charge filed by United Steelworkers of America, Local No. 8557, AFL-CIO-CLC, the Union, the General Counsel of the National Labor Relations Board issued a complaint on August 5, 1992, against Schien Body & Equipment Co., 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, amended 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 7, 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, by letter dated September 15, 1992, notified the Regional Director that it was withdrawing its letter of August 25, 1992, "Position with respect to allegations" and understood that the Region would thereafter move for summary judgment. Such a withdrawal has the same effect as a failure to file an answer; i.e., the allegations in the complaint must be deemed to be admitted to be true.¹ Accordingly, in the absence of good cause shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation with an office and place of business in Carlinville, Illinois, has been engaged in the manufacture of truck beds. During the 12-month period ending July 30, 1992, the Respondent sold and shipped from its Carlinville, Illinois facility goods valued in excess of \$50,000 directly to points outside the State of Illinois. 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 production and maintenance employees including warehouse and parts department employees employed at the Respondent's Carlinville, Illinois facility excluding office clerical employees, professional employees, plant clerical employees, salesmen, and driver salesmen, over-the-road truck drivers, guards and supervisors as defined in the Act.

Since at least 1987 the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from February 25, 1991, to February 27, 1994. At all times since at least 1987, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Article XX of the 1991-1994 agreement provides that the Respondent shall provide for insurance coverage for its employees in the unit and that should the Respondent elect to change the insurance coverage, the Respondent shall provide notice to the Union in writing and afford the Union an opportunity to object. About February 17, 1992, the Respondent failed to continue in effect all the terms and conditions of the 1991-1994 agreement by implementing a health insurance plan which provided for reduced coverage for its unit employees. These matters are mandatory subjects for the purpose of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union, without having afforded the Union an opportunity to object or to bargain over the plan, and without the Union's consent.

CONCLUSION OF LAW

By implementing a health insurance plan which provided for reduced coverage for its unit employees without prior notice to the Union or having afforded the Union an opportunity to object or to bargain over the plan and without the Union's consent, 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.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by implementing a health insurance plan which provided for reduced coverage, we shall order the Respondent to make whole its unit employees by reinstating its former insurance coverage and making all payments that have not been made and that would have been made but for the Respondent's unlawful unilateral reduction of coverage, including any additional amounts applicable to 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 such expenses ensuing from its unilateral reduction of coverage, 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, Schien Body & Equipment Co., Inc., Carlinville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms of its 1991-1994 contract by unilaterally reducing insurance coverage without prior notice to the Union, without having afforded the Union an opportunity to object or to bargain over the plan, and without the Union's consent.

(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) Honor the terms of its 1991-1994 agreement with the Union by reinstating its former insurance coverage and make its unit employees whole for the re-

duction in insurance coverage as set forth in the remedy section.

(b) 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.

(c) Post at its facility in Carlinville, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 14, 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.

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

²If 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 and refuse to honor the terms of our 1991-1994 collective-bargaining agreement with United Steelworkers of America, Local No. 8557, AFL-CIO-CLC by unilaterally reducing insurance coverage for our employees in the following bargaining unit:

All production and maintenance employees including warehouse and parts department employees employed at our Carlinville, Illinois facility excluding office clerical employees, professional employees, plant clerical employees, salesmen, and driver salesmen, over-the-road truck drivers, 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 the terms of our 1991-1994 collective-bargaining agreement with the Union by retroactively reinstating our former insurance coverage.

WE WILL make our employees whole for our unilateral reduction in insurance coverage.

SCHIEN BODY & EQUIPMENT Co., INC.