

Sun Chevrolet, Inc., d/b/a Sun Oldsmobile, Inc.,
and Sun Chevrolet, Inc. and Automobile Me-
chanics Local 701, International Association of
Machinists and Aerospace Workers, AFL-CIO.
Cases 13-CA-31324 and 13-CA-31325

March 9, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon charges filed by the Union on November 16, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Sun Chevrolet, Inc., d/b/a Sun Oldsmobile, Inc., and Sun Chevrolet, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) 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 February 12, 1993, the General Counsel filed a Motion for Summary Judgment and, on the same date, 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 letter dated January 14, 1993, counsel for the General Counsel notified the Respondent that unless an answer was received by January 21, 1993, 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, a Delaware corporation with offices and places of business located at 4825 N. Broadway and 4849 N. Broadway in Chicago, Illinois, has been engaged in the retail sale and service of automobiles and related products. During the calendar year ending July 31, 1992, a representative period, the Respondent, in the course and conduct of its operations, derived gross revenues in excess of \$500,000, and, during the same period, purchased and received at its facilities products, goods, and materials valued in excess of \$50,000 directly from points located 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

Since at least 1991 and at all material times, the Union, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, and has, since then, been recognized as such by the Respondent. The Respondent's recognition of the Union has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 10, 1991, through July 31, 1994. The appropriate bargaining unit consists of:

All mechanics, bodymen, painters, apprentices, lube rack attendants, and semi-skilled workers employed by Sun Chevrolet, Inc., d/b/a Sun Oldsmobile, Inc., and Sun Chevrolet, Inc. at its facilities located at 4825 N. Broadway, Chicago, Illinois and 4849 N. Broadway, Chicago, Illinois, excluding all other employees and guards and supervisors as defined in the Act.

Since about May 20, 1992, and continuing to date, the Respondent, without the Union's consent, has failed to continue in full force and effect all the terms and conditions of its agreement with the Union by failing to remit contributions on behalf of unit employees to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds, as required by articles XI and XII of that agreement. The above relate to the wages, hours, and other terms and conditions of employment of unit employees, and constitute mandatory subjects of bargaining. We find that by engaging in such conduct, the Respondent has failed and refused and is failing and refusing to bargain collectively with the Union as the unit employees' exclusive

bargaining representative within the meaning of Section 8(d), and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing to remit contributions on behalf of unit employees to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds, as required by articles XI and XII of its agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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 remit on behalf of unit employees the contributions to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds that have not been made since about May 20, 1992,¹ and shall be required to make whole unit employees for any expenses they may have incurred because of the Respondent's failure to make such contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), 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, Sun Chevrolet, Inc., d/b/a Sun Oldsmobile, Inc., and Sun Chevrolet, Inc., Chicago, Illinois, 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 of its collective-bargaining agreement with Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO, which is the designated exclusive bargaining representative of the Respondent's employees in an appropriate unit, by failing to make contributions on behalf of unit employees to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds, as required by articles XI and XII of that agreement. The appropriate bargaining unit consists of:

All mechanics, bodymen, painters, apprentices, lube rack attendants, and semi-skilled workers employed by Sun Chevrolet, Inc., d/b/a Sun Oldsmobile, Inc., and Sun Chevrolet, Inc. at its facilities located at 4825 N. Broadway, Chicago, Illinois and 4849 N. Broadway, Chicago, Illinois, excluding all other employees and guards and supervisors as defined in the Act.

(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 to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds the contributions that have not been made on behalf of unit employees since about May 20, 1992, and make whole unit employees for any expenses they may have incurred because of the Respondent's failure to make such contributions, with interest as set forth in the remedy section of this decision.

(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 others records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facilities in Chicago, Illinois, copies of the attached notice marked "Appendix."² 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.

(d) 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 and refuse to continue in effect all the terms and conditions of our collective-bargain-

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

ing agreement with Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO, which is the designated exclusive bargaining representative of our employees in an appropriate unit, by failing to remit on behalf of our unit employees contributions to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds, as required by articles XI and XII of that agreement. The appropriate bargaining unit consists of:

All mechanics, bodymen, painters, apprentices, lube rack attendants, and semi-skilled workers employed by Sun Chevrolet, Inc., d/b/a Sun Oldsmobile, Inc., and Sun Chevrolet, Inc. at its facilities located at 4825 N. Broadway, Chicago, Illinois and 4849 N. Broadway, Chicago, Illinois, excluding all other employees and 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 remit on behalf of our unit employees the contributions to the Automobile Mechanics Local No. 701 Union and Industry Welfare and Pension Funds that have not been made since about May 20, 1992, and WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure to make such contributions, with interest.

SUN CHEVROLET, INC., D/B/A SUN
OLDSMOBILE, INC., AND SUN CHEV-
ROLET, INC.