Alvin Thomas d/b/a Alvin Thomas Enterprises *and* Local 100, Service Employees International Union, AFL–CIO. Case 15–CA–11870

January 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

Upon a charge and amended charge filed by the Union on July 21 and October 13, 1992, respectively, the General Counsel of the National Labor Relations Board issued a complaint on October 14, 1992, against Alvin Thomas d/b/a Alvin Thomas Enterprises, the Respondent, alleging that it has violated 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 failed to file an answer.

On December 14, 1992, the General Counsel filed a Motion for Summary Judgment and for Issuance of Board Decision and Order and Memorandum in Support. On December 16, 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 Region, by letter dated November 13, 1992, notified the Respondent that unless an answer was received by close of business November 27, 1992, a Motion for Summary Judgment would be filed. To date, no answer has been filed.

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, with an office and place of business in Carville, Louisiana, has been engaged in providing janitorial services to the United States Government's Department of Health and Human Services. Based on a projection of its operations since about February 1, 1992, at which time the Respondent commenced its operations, the Respondent will annually provide janitorial services valued in excess of $50,000 to the United States Government. During this period the Respondent will purchase and receive at its facility goods valued in excess of $5000 directly from points outside the State of Louisiana. 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 1, 1992, the Respondent assumed a contract for janitorial services at the Hansen's Disease Center in Carville, Louisiana, previously performed by Suburban, Inc., and since then has continued to perform the same services as Suburban in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Suburban. Based on the foregoing operations, the Respondent has continued the employing entity and is a successor to Suburban.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and part-time employees employed at Respondent's facility, but excluding office and clerical employees, professional employees, confidential managerial employees and guards and supervisors, as defined in the Act.

From about February 1, 1991, until about February 1, 1992, based on Section 9(a) of the Act, Local 100, Service Employees International Union, AFL–CIO (the Union) had been the exclusive collective-bargaining representative of the unit employed by Suburban, Inc., and during that period of time the Union had been recognized as such representative by Suburban, Inc. This recognition has been embodied in a collective-bargaining agreement which was effective from February 1, 1991 to January 31, 1994.

Since about February 1, 1992, based on the facts described above, the Union has been the designated exclusive bargaining representative of the unit.

About March 26, 1992, the Union and the Respondent entered into a collective-bargaining agreement with respect to the terms and conditions of employment of the unit, which agreement was to remain in effect until January 31, 1995.

The Respondent has failed to continue in effect all the terms and conditions of the agreement without the Union's consent by inter alia:

1. Failing to make pension fund contributions to the Local 100 retirement fund as required by its collective-bargaining agreement with the Union since about April 15, 1992.

2. Failing to forward to the Union money deducted from the wages of unit employees for union dues and fees since about May 15, 1992.

3. Repudiating and refusing to implement all the terms of the collective-bargaining agreement since about July 8, 1992.

In addition, since about July 2, 1992, Respondent has refused to bargain collectively about the Union's July 2, 3, and 8, 1992 requests that the Respondent strike for arbitrators in regard to the grievances of Michael Montgomery, Jacqueline Wilson, and Joan Rodriguez concerning the termination of their employment.

Finally, since about July 8, 1992, the Respondent has also failed and refused to bargain collectively about the Union's July 8, 1992 request that the Respondent meet in regard to Gail Frazier's grievance concerning the termination of her employment.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment, and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the conduct described above the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby 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. Specifically, having found that the Respondent has unlawfully failed since April 15, 1992, to make contractually required pension fund contributions to the Local 100 retirement fund, and has unlawfully failed since July 8, 1992, to implement all the terms of its collective-bargaining agreement with the Union, we shall order the Respondent to make all required payments that have not been made and to make whole the unit employees for its failure to make such payments and to implement the terms and conditions of the agreement as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), including any additional amounts applicable to delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has unlawfully failed to forward to the Union money deducted from wages of unit employees for union dues and fees since May 15, 1992, we shall order the Respondent to forward such deducted dues moneys to the Union, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, as the General Counsel's memorandum in support of the Motion for Summary Judgment indicates that Respondent has ceased operations at the Carville, Louisiana facility, we shall order Respondent to mail copies of the notice to all employees who were employed by Respondent at the facility at the time Respondent ceased operations. See, e.g., *Print-Quic*, 262 NLRB 857, 862 (1972).

ORDER

The National Labor Relations Board orders that the Respondent, Alvin Thomas d/b/a Alvin Thomas Enterprises, Carville, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to make pension fund contributions to the Local 100 retirement fund as required by its collective-bargaining agreement with the Union.

(b) Repudiating and refusing to implement all the terms and conditions of the collective-bargaining agreement without the Union's consent.

(c) Failing to forward to the Union money deducted from the wages of unit employees for union dues and fees.

(d) 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) On request, bargain collectively with the Union in the unit described below about the Union's requests that the Respondent strike for arbitrators in regard to the grievances of Michael Montgomery, Jacqueline Wilson, and Joan Rodriguez, and that the Respondent meet in regard to Gail Frazier's grievance concerning the termination of their employment:

> All full-time and part-time employees employed at Respondent's facility, but excluding office and clerical employees, professional employees, confidential managerial employees and guards and supervisors, as defined in the Act.

(b) Make all required pension fund contributions to the Local 100 retirement fund that have not been made since April 15, 1992, and make the unit employees whole for any losses they may have suffered as a re-

sult of the failure to make such payments, as set forth in the remedy section of this decision.

(c) Make whole the unit employees for its failure to implement all the terms and conditions of the collective-bargaining agreement since July 8, 1992, as set forth in the remedy section of this decision.

(d) Forward to the Union all money deducted from the wages of unit employees for union dues and fees that has not been forwarded to the Union since May 15, 1992, as set forth in the remedy section of this decision.

(e) 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.

(f) Mail signed and dated copies of the attached notice marked "Appendix"[1] to all employees employed by Respondent at the Carville, Louisiana facility at the time Respondent ceased operations at that facility, at their last known address. Copies of the notice, on forms provided by the Regional Director for Region 15, shall be mailed by Respondent immediately upon receipt.

(g) 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 fail to make pension fund contributions to the Local 100 retirement fund as required by our collective-bargaining agreement with Local 100, Service Employees International Union, AFL–CIO.

WE WILL NOT fail to forward to the Union money deducted from the wages of unit employees for union dues and fees.

WE WILL NOT repudiate and refuse to implement all the terms and conditions of the collective-bargaining agreement without the Union's consent.

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, on request, bargain with the Union in the unit described below about its requests that we strike for arbitrators in regard to the grievances of Michael Montgomery, Jacqueline Wilson, and Joan Rodriguez, and that we meet in regard to Gail Frazier's grievance concerning the termination of their employment:

> All full-time and part-time employees employed at our facility, but excluding office and clerical employees, professional employees, confidential managerial employees and guards and supervisors, as defined in the Act.

WE WILL make all required contributions to the Local 100 retirement fund that have not been made since April 15, 1992, and make the unit employees whole for any losses they may have suffered as a result of our failure to make such payments.

WE WILL make whole the unit employees for our failure to implement all the terms and conditions of the collective-bargaining agreement since July 8, 1992.

WE WILL forward to the Union all money deducted from the wages of unit employees for union dues and fees that has not been forwarded to the Union since May 15, 1992.