

Environmental Consultants, a Division of P.M.E.C., Inc. and Local 200-D, Service Employees' International Union, AFL-CIO. Case 2-CA-25984

April 26, 1993

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

Upon a charge filed by Local 200-D, Service Employees' International Union, AFL-CIO, the Union, on October 5, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Environmental Consultants, a Division of P.M.E.C., 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 and complaint, the Respondent has failed to file an answer.

On February 12, 1993, the General Counsel filed a Motion for Summary Judgment. On February 19, 1993, 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 timely 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 of the allegations in the Complaint shall be deemed 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 letters dated January 5 and 25, 1993, notified the Respondent that unless an answer was received by close of business on January 19 and February 8, 1993, respectively, a Motion for Summary Judgment would be 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, a corporation with an office and place of business in Valhalla, New York, has been engaged in the provision of cleaning and maintenance

services to corporate customers. Annually, the Respondent provides services valued in excess of \$50,000 for IBM, an enterprise within the State of New York, which enterprise is directly engaged in interstate commerce and meets a Board standard for the assertion of jurisdiction exclusive of indirect inflow or outflow. 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 building cleaning and maintenance workers employed by the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The Union has been the designated exclusive collective-bargaining representative of the employees in the unit and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of 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.

The Respondent has unilaterally modified the terms of the collective-bargaining agreement by (a) since on or about May 1, 1992, failing to calculate vacation moneys owed to unit employees according to the provisions of the contract; (b) since on or about May 19, 1992, failing to provide the Union with timely monthly reports on remittances of union dues deducted from the wages of unit employees; (c) since on or about June 1, 1992, failing to remit to the Union dues deducted from the wages of unit employees; and (d) since on or about June 20, 1992, failing to remit monetary contributions to the Union's Health Benefit Fund and Pension Fund. These subjects relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the consent of the Union.

About June 19, 1992, the Union requested that the Respondent process its grievances regarding bonus and vacation pay. Since that date, the Respondent has failed and refused to process the grievances filed by the Union relating to bonus and vacation pay.

CONCLUSIONS OF LAW

1. By failing to honor the terms of its contract with the Union by failing to calculate vacation moneys owed to unit employees pursuant to the provisions of the contract; failing to provide the Union with timely monthly reports on remittances of union dues deducted from the wages of unit employees; failing to remit to the Union dues deducted from the wages of unit em-

ployees; and failing to remit monetary contributions to the Union's Health Benefit Fund and Pension Fund, 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.

2. By failing to process the grievances filed by the Union relating to bonus and vacation pay, 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 failing to calculate vacation moneys owed unit employees pursuant to the provisions of the contract and failing to remit monetary contributions to the Union's Health Benefit Fund and Pension 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. 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), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, we shall require that the Respondent provide the Union with timely monthly reports on remittances of union dues deducted from the wages of unit employees and that it remit to the Union dues deducted from the wages of unit employees since on or about June 1, 1992, with interest as prescribed in *New Horizons*, supra.

Finally, we shall require that the Respondent process the Union's grievances relating to bonus and vacation pay.

ORDER

The National Labor Relations Board orders that the Respondent, Environmental Consultants, a Division of P.M.E.C., Inc., Valhalla, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms of its contract with the Union by failing to calculate vacation moneys owed to unit employees pursuant to the provisions of the contract; failing to provide the Union with timely monthly reports on remittances of union dues deducted from the wages of unit employees; failing to remit to the Union dues deducted from the wages of unit employees; and failing to remit monetary contributions to the Union's Health Benefit Fund and Pension Fund.

(b) Failing to process the Union's grievances regarding bonus and vacation pay.

(c) 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 contract with the Union by making its employees whole with interest and in the manner prescribed in the remedy section of this decision for its failure to calculate vacation moneys owed to unit employees pursuant to the provisions of the contract; failure to provide the Union with timely monthly reports on remittances of union dues deducted from the wages of unit employees; failure to remit to the Union dues deducted from the wages of unit employees; and failure to remit monetary contributions to the Union's Health Benefit Fund and Pension Fund.

(b) Process the Union's grievances regarding bonus and vacation pay.

(c) 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.

(d) Post at its facility in Valhalla, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 2, 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.

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 honor the terms of our contract with Local 200-D Service Employees' International Union, AFL-CIO, the exclusive representative of our building cleaning and maintenance employees by failing to calculate vacation moneys owed to unit employees pursuant to the provisions of the contract; failing to provide the Union with timely monthly reports on remittances of union dues deducted from the wages of unit employees; failing to remit to the Union dues deducted from the wages of unit employees; and failing to remit monetary contributions to the Union's Health Benefit Fund and Pension Fund.

WE WILL NOT fail and refuse to process the grievances of the Union relating to bonus and vacation pay.

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 contract and make our employees whole, with interest, for our failure to calculate vacation moneys owed to unit employees pursuant to the provisions of the contract; failing to provide the Union with timely monthly reports on remittances of union dues deducted from the wages of unit employees; failing to remit to the Union dues deducted from the wages of unit employees; and failing to remit monetary contributions to the Union's Health Benefit Fund and Pension Fund.

WE WILL process the grievances of the Union relating to bonus and vacation pay.

ENVIRONMENTAL CONSULTANTS, A DIVISION OF P.M.E.C., INC.