

Educational Food Management Services, Inc. and Local 32E, Service Employees' International Union, AFL-CIO. Cases 3-CA-16644 and 3-CA-17699

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon charges filed on October 15, 1991, and March 12, 1993, by Local 32E, Service Employees' International Union, AFL-CIO (the Union), the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on April 12, 1993, against Educational Food Management Services, 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 charges and consolidated complaint, the Respondent failed to file an answer.

On May 14, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On May 18, 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 response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide 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. Further, the consolidated complaint specifically notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Finally, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 30, 1993, notified the Respondent that unless an answer was received by the close of business on May 7, 1993, 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

At all material times, the Respondent, a New York corporation with its principal office and place of business located at 990 South Second Street, Ronkonkoma, New York, and a facility located at Minisink Valley Central School District, Slate Hill, New York (the

Minisink Valley facility), has been engaged in providing school food services. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations derived in excess of \$50,000 from providing services to other enterprises, including the Minisink Valley Central School District, which are directly engaged in interstate commerce.

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 (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regularly scheduled full time and part time employed food service workers of Respondent at Minisink Valley School District, Slate Hill, New York; excluding all supervisory and clerical personnel.

Since on or about October 9, 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement which is effective from September 1, 1991, to June 30, 1993.

At all times since October 9, 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about the dates set forth below, and continuing thereafter, the Respondent has failed to continue in effect all the terms and conditions of the 1991-1993 agreement referred to above by failing to abide by the following provisions:

Article 6 (Payroll Dues Deductions) November 1, 1992

Article 21 (Insurance Benefits) January 1, 1992

Although such terms and conditions are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively 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), 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 violated Section 8(a)(5) and (1) by failing, since November 1, 1992, to abide by the Payroll Dues Deductions provision of the 1991-1993 agreement, we shall order the Respondent to comply with that provision and to make the Union whole for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has also violated Section 8(a)(5) and (1) by failing, since January 1, 1992, to abide by the Insurance Benefits provision of the agreement, we shall order it to abide by that provision, and to make the unit employees whole for its failure to do so by making all insurance benefit payments that have not been made and that would have been made but for the Respondent's failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979), and by reimbursing the employees for any expenses ensuing from its failure to make such 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*, 182 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Educational Food Management Services, Inc., Ronkonkoma, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Local 32E, Service Employees' International Union, AFL-CIO, as the exclusive representative of the employees in the unit described below by failing to abide by article 6 (Payroll Dues Deductions) and article 21 (Insurance Benefits) of the 1991-1993 collective-bargaining agreement:

All regularly scheduled full time and part time employed food service workers of Respondent at Minisink Valley School District, Slate Hill, New York; excluding all supervisory and clerical personnel.

(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) Abide by article 6 (Payroll Dues Deductions) and article 21 (Insurance Benefits) of the 1991-1993 collective-bargaining agreement.

(b) Make the Union and the unit employees whole for its failure to abide by article 6 (Payroll Dues Deductions) and article 21 (Insurance Benefits) of the 1991-1993 agreement since November 1 and January 1, 1992, respectively, 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 Jericho, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 3, 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.

Dated, Washington, D.C. June 14, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 and refuse to bargain collectively with Local 32E, Service Employees' International Union, AFL-CIO, as the exclusive representative of the employees in the unit described below, by failing to abide by the provisions in article 6 (Payroll Dues Deductions) and article 21 (Insurance Benefits) of the 1991-1993 collective-bargaining agreement:

All regularly scheduled full time and part time employed food service workers at Minisink Valley School District, Slate Hill, New York; excluding all supervisory and clerical personnel.

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 abide by article 6 (Payroll Dues Deductions) and article 21 (Insurance Benefits) of the 1991-1993 collective-bargaining agreement.

WE WILL make the Union and the unit employees whole for our failure to abide by article 6 (Payroll Dues Deductions) and article 21 (Insurance Benefits) since November 1 and January 1, 1992, respectively.

EDUCATIONAL FOOD MANAGEMENT
SERVICES, INC.