

**Northern Homes, Inc. and United Steel Workers of America, Local 12770, AFL-CIO, CLC.** Case 3-CA-17752

July 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on April 1, 1993 (amended May 12, 1993), the General Counsel of the National Labor Relations Board, on May 14, 1993, issued a consolidated complaint and compliance specification against Northern Homes, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and the consolidated complaint and compliance specification, the Respondent failed to file an answer.<sup>1</sup>

On June 18, 1993, counsel for the General Counsel filed a Motion for Summary Judgment with the Board. On June 22, 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. Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification shall be deemed admitted if an answer is not filed within 21 days from the service of the specification. In addition, the consolidated complaint and compliance specification affirmatively notes that unless an answer is filed within 21 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated June 7, 1993, counsel for the General Counsel notified the Respondent that unless an answer was received by the close of business June 11, 1993, a Motion for Summary Judgment would be filed.<sup>2</sup> To date, no answer has been filed by the Respondent.

ment would be filed.<sup>2</sup> 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 is a New York corporation with its principal office and place of business located at 337 Main Street, in Hudson Falls, New York, where it has been engaged in the manufacture of panelized homes and, at various locations within the State of New York, in the operation of retail building supply stores. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent, in the conduct of its operations, derived gross revenues in excess of \$1 million and purchased and received goods and materials valued in excess of \$50,000 that were shipped to its facilities located within the State of New York directly from points and places located outside the State of New York. 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 on or about the early 1980's, the exact date being unknown, and at all material times, the Union, pursuant to 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 in successive collective-bargaining agreements, the most recent of which is effective from July 1, 1991, to June 30, 1993. The appropriate bargaining unit consists of:

All those employees at the Respondent's Manufacturing Division and Retail Division who are now or may hereafter become production, maintenance or service employees, but excluding all executives, foremen, office and clerical employees, designers, salespeople, and watchmen.

<sup>1</sup> Attorney John Carusone, brother of the Respondent's former president Joe Carusone, filed a notice of appearance with the Board on behalf of the Respondent and, in a letter dated April 20, 1993, advised the Regional Director that the Respondent had filed for Chapter 7 bankruptcy on April 14, that the Company was closed some weeks prior to the filing, that he was inexperienced in labor relations matters and was appearing only because the Respondent has no assets and no means with which to pay a lawyer, and that the letter was being submitted to ensure that Joe Carusone "doesn't violate some unique statute of the Federal law."

<sup>2</sup> By letter dated June 8, 1993, John Carusone responded that the Respondent was bankrupt, that its president had left the State to find employment, that there was no money to proceed, and that the Board should take "whatever action you feel necessary as there is no one to object." The institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *Id.*

Since about March 6, 1993, the Respondent, without the Union's consent, has failed to continue in effect all the terms and conditions of its current agreement with the Union by failing to abide by article IV (wage rates) and article XVII (vacations) of that agreement, which are mandatory subjects of bargaining. By engaging in such conduct, we find that the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the Union as the exclusive bargaining representative of the unit employees within the meaning of Section 8(d), and has violated Section 8(a)(5) and (1) of the Act, as alleged. We also find that as a result of the Respondent's unfair labor practices, the following individuals sustained the losses set forth next to their names, as alleged in the compliance specification:

	WAGES	VACATIONS	TOTAL
Darius Goodemote	\$723.60 (weeks of 3/6 & 3/13/93)	\$402 (5 days)	\$1,125.60
James Parker	386.80 (week of 3/6/93)		386.80
Michael Ruby	416.80 (week of 3/6/93)	500.16 (6 days)	916.96
Richard Wilson	820.43 (weeks of 3/6 & 3/13/93)	502.84 (6-1/2 days)	1,323.27
Tim Wood	259.20 (week of 3/6/93)	432 (5 days)	691.20

#### CONCLUSION OF LAW

By failing, without the Union's consent, to abide by article IV (wage rates) and article XVII (vacations) of its collective-bargaining agreement with the Union, the Respondent has failed and refused to bargain collectively with Union as the unit employees' exclusive bargaining representative within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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 abide by article IV (wage rates) and article XVII (vacations) of its collective-bargaining agreement with the Union, and to make whole employees Darius Goodemote, James Parker, Michael Ruby, Richard Wilson, and Tim Wood for losses sustained by them as a result of the Respondent's unlawful conduct as set forth in the compliance specification,

with interest on such amounts to be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Northern Homes, Inc., Hudson Falls, New York, 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 United Steel Workers of America, Local 12770, AFL-CIO, CLC, which is the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, by failing to abide by article IV (wage rates) and article XVII (vacations). The appropriate unit consists of:

All those employees at the Respondent's Manufacturing Division and Retail Division who are now or may hereafter become production, maintenance or service employees, but excluding all executives, foremen, office and clerical employees, designers, salespeople, and watchmen.

(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 IV (wage rates) and article XVII (vacations) of its collective-bargaining agreement with the Union, which it has not done since about March 6, 1993, and make whole the following employees by paying them the amounts set forth next to their names, with interest in the manner described in the remedy section of this decision:

	WAGES	VACATIONS	TOTAL
Darius Goodemote	\$723.60 (weeks of 3/6 & 3/13/93)	\$402 (5 days)	\$1,125.60
James Parker	386.80 (week of 3/6/93)		386.80
Michael Ruby	416.80 (week of 3/6/93)	500.16 (6 days)	916.96
Richard Wilson	820.43 (weeks of 3/6 & 3/13/93)	502.84 (6-1/2 days)	1,323.27
Tim Wood	259.20 (week of 3/6/93)	432 (5 days)	691.20

(b) Mail to its employees at their homes copies of the attached notice marked "Appendix."<sup>3</sup> Copies of

<sup>3</sup> 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

the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall also be posted, if appropriate, 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.

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

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-bargaining agreement with United Steel Workers of America, Local 12770, AFL-CIO, CLC, which is the exclusive collective-bargaining representative of our employees in an appropriate bargaining unit, by refusing to abide by article IV (wage rates) and article XVII (vacations) of that agreement. The appropriate bargaining unit consists of:

All of our employees at the Manufacturing Division and Retail Division who are now or may hereafter become production, maintenance or service employees, but excluding all executives, foremen, office and clerical employees, designers, salespeople, and watchmen.

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 IV (wage rates) and article XVII (vacations) of our collective-bargaining agreement with the Union, which we have not done since about March 6, 1993, and WE WILL make whole the following employees by paying them the amounts set forth next to their names, with interest:

	WAGES	VACATIONS	TOTAL
Darius Goodemote	\$723.60 (weeks of 3/6 & 3/13/93)	\$402 (5 days)	\$1,125.60
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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."

NORTHERN HOMES, INC.