

Silco Specialties, Inc. and United Steelworkers of America, AFL-CIO-CLC. Cases 4-CA-21019 and 4-CA-21460

DECISION AND ORDER

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

Upon a charge filed by United Steelworkers of America, AFL-CIO-CLC (the Union) in Case 4-CA-21019 on August 28, 1992, and a charge filed by the Union in Case 4-CA-21460 on February 22, 1993, the General Counsel of the National Labor Relations Board issued a consolidated complaint against Silco Specialties, 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 consolidated complaint, the Respondent failed to file an answer.

On July 12, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On July 14, 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. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent, on May 10, 1993, was advised, by letter, via first class and certified mail, that its answer was overdue and that, unless Respondent filed its answer by May 20, 1993, a recommendation would be made to file a Motion for Summary Judgment.

Although the complaint indicates that, in or about April 1993, Respondent filed a petition for bankruptcy pursuant to Chapter 7 of the Bankruptcy Code, it is well established, that 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 provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

Accordingly, 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 Pennsylvania corporation with a plant located at 861 Barrett Street, Wilkes-Barre, Pennsylvania (the plant), has been engaged in the manufacture of ladies' handbags and belts. During the year ending April 22, 1993, in conducting its business operations, Respondent performed services valued in excess of \$50,000 for customers located outside the Commonwealth of Pennsylvania. 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 Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production, maintenance, shipping and receiving employees employed at the Plant, excluding all office clerical employees, part-time employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and the Union has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which (the agreement) is effective from May 1, 1990, through April 30, 1993.

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

Since on or about March 1, 1992, Respondent has failed to continue in effect all the terms and conditions of the agreement by failing to remit to the Union dues and fees deducted from the wages of its unit employees as required by article 3 of the agreement, and by failing to pay accrued vacation pay to its unit employees as required by article 14 of the agreement. In addition, since on or about December 17, 1992, Respondent has failed to continue in effect all the terms and conditions of the agreement by failing to participate in the selection of an arbitrator or designate dates for the arbitration of grievances filed by the Union under article 10 of the agreement. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining. Respondent engaged in this conduct without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and in violation of Section 8(a)(1) and (5) of the Act. These unfair labor practices affect commerce within the meaning of 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.

We shall order the Respondent to honor the terms of its agreement with the Union, to participate in the selection of an arbitrator and to designate dates for the arbitration of grievances filed by the Union under article 10 of the agreement, to remit to the Union the dues and fees deducted from the wages of the unit employees but not remitted to the Union since March 1, 1992, and to make the unit employees whole for its failure to pay employees accrued vacation pay since the same date in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Silco Specialities, Inc., Wilkes-Barre, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement with United Steelworkers of America, AFL-CIO-CLC, effective from May 1, 1990, through April 30, 1993. The following employees are within the unit:

All production, maintenance, shipping and receiving employees employed at the Plant, excluding all office clerical employees, part-time employees, guards and supervisors as defined in the Act.

(b) Failing to remit to the Union dues and fees deducted from the wages of its unit employees as required by article 3 of the agreement.

(c) Failing to pay accrued vacation pay to its unit employees as required by article 14 of the agreement.

(d) Failing to participate in the selection of an arbitrator or to designate dates for the arbitration of grievances filed by the Union under article 10 of the agreement.

(e) 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 the collective-bargaining agreement with the Union; participate in the selection of an arbitrator and designate dates for the arbitration of grievances filed by the Union under article 10 of the agreement; remit to the Union the dues and fees deducted from the wages of the unit employees but not remitted to the Union since March 1, 1992, with interest, as described in the remedy section of this decision; and make the unit employees whole for the failure to pay them accrued vacation pay, with interest, as described 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, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Wilkes-Barre, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, 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.

Dated, Washington, D.C. August 17, 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreement with United Steelworkers of America, AFL-CIO-CLC, effective from May 1, 1990, through April 30, 1993. The following employees are within the unit:

All production, maintenance, shipping and receiving employees employed at the Plant, excluding all office clerical employees, part-time employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to remit to the Union dues and fees deducted from the wages of our unit employees as required by article 3 of the agreement.

WE WILL NOT fail to pay accrued vacation pay to our unit employees as required by article 14 of the agreement.

WE WILL NOT fail to participate in the selection of an arbitrator or to designate dates for the arbitration of grievances filed by the Union under article 10 of the agreement.

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 the collective-bargaining agreement with the Union.

WE WILL participate in the selection of an arbitrator and designate dates for the arbitration of grievances filed by the Union under article 10 of the agreement.

WE WILL remit to the Union the dues and fees deducted from the wages of the unit employees but not remitted to the Union since March 1, 1992, with interest.

WE WILL make the unit employees whole for our failure to pay employees accrued vacation pay, since March 1, 1992, with interest.

SILCO SPECIALTIES, INC.