Litco, Division of R.V.L. Corporation *and* United Food and Commercial Workers Local No. 1099, AFL–CIO–CLC. Case 9–CA–30126

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

Upon a charge filed by the Union on November 4, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Litco, Division of R.V.L. Corporation, 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 failed to file an answer.

On April 12, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On April 15, 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.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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. 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 by letter dated March 29, 1993, counsel for the General Counsel notified the Respondent that unless an answer was received by close of business April 5, 1993, a Motion for Summary Judgment would be filed. 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, a corporation, has been engaged in metal stamping and fabrication work at its Dayton, Ohio facility. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its operations, sold and shipped from its Dayton, Ohio facility goods valued in excess of $50,000 to Spectron, Inc., a nonretail Ohio enterprise located in Dayton, Ohio. During the same period, Spectron, Inc., in the conduct of its operations, sold and shipped goods valued in excess of $50,000 directly from its Dayton, Ohio facility to points outside the State of Ohio. 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 about 1983, and at all material times, the Union, by virtue of Section 9(a) of the Act, has been the designated exclusive bargaining representative of the Respondent's employees in an appropriate unit, and has been recognized as such by the Respondent in successive collective-bargaining agreements, the most recent of which was effective from June 26, 1990, to June 27, 1992. The appropriate bargaining unit consists of:

> All of Litco, Division of R.V.L. Corporation's employees in its present and future shops located in Clark, Greene, Preble, Miami, Darke, Champaign, Logan, Shelby and Montgomery Counties, Ohio, excluding owner(s), confidential employees and supervisory employees as defined in the Labor Management Relations Act of 1947 as amended.

In about September or October 1992, the Respondent, through its president, Ranzie Virgil Lykins,[1] told employees that the Respondent would not negotiate with the Union and asked them what they wanted to do about their union dues. We find that by engaging in this conduct, the Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and violated Section 8(a)(1) of the Act, as alleged.

In about mid-June 1992, the Respondent, without the Union's consent and contrary to the provisions of the parties' most recent agreement, granted a 30-cent-per-hour wage increase to two unit employees and, from about May 4 until June 27, 1992, and without the Union's consent, failed to continue in effect all the terms and conditions of the parties' agreement by failing to remit to the Union dues and assessments deducted from employees' wages, as provided by article IV of that agreement. Further, by letter on or about April 13, 1992, and orally on about June 22 and July 1, 1992, the Union requested that the Respondent bargain collectively with it over the terms of a new collective-bargaining agreement. Since about June 22,

[1] The complaint alleges, and we find, that Lykins is a supervisor and agent of the Respondent within the meaning of Sec. 2(11) and (13) of the Act.

1992, the Respondent has failed and refused to do so. We find that by engaging in the above conduct, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the Union as the unit employees' collective-bargaining representative within the meaning of Section 8(d), and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSIONS OF LAW

1. By telling employees that it would not negotiate with the Union and asking them what they wanted to do about their union dues, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By granting a 30-cent-per-hour wage increase to two unit employees, by failing to remit to the Union dues and assessments deducted from employees' wages, and by refusing the Union's oral and written requests to bargain over the terms of a new contract, the Respondent has 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 will be ordered to remit to the Union the dues and assessments that were deducted from employees' wages, with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to bargain, on request, with the Union over the terms of a new collective-bargaining agreement for unit employees.[2]

ORDER

The National Labor Relations Board orders that the Respondent, Litco, Division of R.V.L. Corporation, Dayton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Local No. 1099, AFL–CIO–CLC, which is the designated exclusive bargaining representative of the Respondent's employees in an appropriate unit, over the terms of a new collective-bargaining agreement. The bargaining unit consists of:

> All of Litco, Division of R.V.L. Corporation's employees in its present and future shops located in Clark, Greene, Preble, Miami, Darke, Champaign, Logan, Shelby and Montgomery Counties, Ohio, excluding owner(s), confidential employees and supervisory employees as defined in the Labor Management Relations Act of 1947 as amended.

(b) Refusing to continue in effect the terms and conditions of its most recent collective-bargaining agreement by failing to remit to the Union dues and assessments deducted from the wages of unit employees as required by article IV of that agreement.

(c) Making changes in the wages of unit employees without the Union's consent, telling employees that it would not negotiate with the Union, and asking them what they wanted to do about their union dues.

(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 with the Union over the terms and conditions of a new collective-bargaining agreement for unit employees and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Remit to the Union the dues and assessments that were deducted from unit employees' wages, as required by article IV of its most recent agreement with the Union, and which have not been remitted for the period from about May 4 until June 27, 1992, with interest as described 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, timecards, 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 Dayton, Ohio, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 9, 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.

[2] Although the Respondent unlawfully granted two unit employees a 30-cent-per-hour wage increase, nothing in our Order is to be construed as requiring the Respondent to rescind any wage increase previously granted to employees.

[3] 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."

(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. May 13, 1993

James M. Stephens,	Chairman
Clifford R. Oviatt, Jr.,	Member
John Neil Raudabaugh,	Member

(SEAL) 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 with United Food and Commercial Workers Local No. 1099, AFL–CIO–CLC, which is the exclusive designated collective-bargaining representative of our employees in an appropriate unit, over the terms of a new collective-bargaining agreement. The appropriate unit consists of:

All of our employees in our present and future shops located in Clark, Greene, Preble, Miami, Darke, Champaign, Logan, Shelby and Montgomery Counties, Ohio, excluding owner(s), confidential employees and supervisory employees as defined in the Labor Management Relations Act of 1947 as amended.

WE WILL NOT fail to continue in effect all the terms and conditions of our most recent agreement with the Union by failing to remit to the Union dues and assessments deducted from the wages of unit employees, as required by article IV of that agreement.

WE WILL NOT, without the Union's consent, make changes in the wages of unit employees, and WE WILL NOT tell unit employees that we will not bargain with the Union or ask employees what they wanted to do about their union dues.

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 over the terms of a new contract and, if an understanding is reached, will embody that understanding in a signed agreement, and WE WILL remit to the Union the dues and assessments that were deducted from the unit employees' wages but which have not been remitted for the period from about May 4 until June 27, 1992, with interest.

LITCO, DIVISION OF R.V.L. CORPORATION