

North American Display & Steel Products, Inc. and International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, CLC. Cases 26-CA-15712, 26-CA-15728, and 26-CA-15746

October 29, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon charges and an amended charge filed by International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, CLC, the Union, on August 26, 1993, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint against North American Display & Steel Products, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. Although properly served copies of the charges and amended consolidated complaint, the Respondent failed to file an answer.

On September 27, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 1, 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 amended consolidated 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 amended consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the amended consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 10, 1993, notified the Respondent that unless an answer was received by September 20, 1993, a Motion for Summary Judgment would be filed.¹

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.

¹This letter was sent by regular and certified mail. The General Counsel's Motion for Summary Judgment states that no return receipt has been received on this letter. The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

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 Madisonville, Kentucky, is engaged in the fabrication of wire, metal, and tubular display products. During the 12-month period ending July 31, 1993, the Respondent sold and shipped goods valued in excess of \$50,000 directly to points located outside the State of Kentucky and purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Kentucky. 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

About July 26, 1993, the Respondent created an impression among its employees that their union activities were under surveillance by the Respondent; told its employees that they would have to leave the Respondent's facility until the Respondent determined if they were involved in activities on behalf of the Union; threatened to discharge its employees if it determined that they were involved in activities on behalf of the Union; told its employees that they had been suspended so that it could determine which of them were involved in union activities; instructed its employees to tell other employees that it did not want its employees to be represented by a union; instructed its employees to tell other employees it would close its facility if employees selected the Union; and told its employee that it would pay that employee for time that it had previously refused to pay for, promised its employees increased benefits if they refrained from union organizational activities.

About July 26, 1993, the Respondent suspended its employees Jim Higley and Norris Vandygriff, and transferred its employee Norris Vandygriff. About July 27, 1993, the Respondent promoted and raised the pay of its employee Norris Vandygriff. The Respondent took these actions because the employees assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

About July 27, 1993, in a posted written announcement, the Respondent promised its employees that a profit sharing plan and 50 percent of the Respondent's stock would be available to employees if they refrained from union organizational activity.

About August 2, 1993, the Respondent threatened employees with unspecified reprisals because of the number of employee signatures the Respondent obtained in a poll of its employees' union sympathies and desires; polled its employees concerning their union

sympathies and desires by requesting its employees to sign a statement indicating that they did not support the Union; threatened its employees with loss of jobs if employees selected the Union; and, in a telephone call to an employee's home, told its employee that it was holding a meeting on August 3, 1993, to decide whether employees wanted to work or have a union.

About August 3, 1993, the Respondent partially closed its facility for 1 day because the employees assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities; disparaged an employee for coming to an employee meeting because the employee had filed charges with the Board and promised its employees a stock option plan and health insurance if they refrained from union organizational activity; threatened its employees with loss of jobs if they voted for the Union; interrogated its employees about their union activities and the union activities of other employees; and threatened to reduce the pay of employees to minimum wage if employees selected the Union.

About August 4, 1993, the Respondent implied to its employees that employees filing charges with the Board were the cause of the Respondent not improving working conditions. About August 9, 1993, the Respondent threatened its employees that it would file for bankruptcy because employees were engaging in union organizational activity; and threatened to convert its employees to contract laborers because employees were engaging in union organizational activity.

About August 11, 1993, the Respondent told its employees that other employees had been discharged because of their union activity; in the presence of its employees, called employees whom it had discharged disparaging names because those employees had engaged in union organizational activity; threatened its employees that it would file for bankruptcy because its employees were engaging in union organizational activity; and threatened to convert its employees to contract laborers because they were engaging in union organizational activity.

About August 11, 1993, certain employees of the Respondent ceased work concertedly and engaged in a strike. The Respondent has failed and refused to reinstate its employees who had engaged in the strike, William Thomas Dixon and Darren Scott McElroy since about August 13, 1993, and Allen Leonard Baggett since about August 16, 1993, to their former positions of employment by informing them of their discharge when these employees reported to work at their regular scheduled times and made unconditional offers to return to their former positions of employment. The Respondent took this action because the employees assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

About August 11, 1993, the Respondent discharged its employees James Green, Jim Higley, and Norris Vandygriff because the employees assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities and because they were named in or otherwise participated in charges filed under the Act. About August 13, 1993, the Respondent discharged its employees William Thomas Dixon and Darren Scott McElroy and about August 16, 1993, the Respondent discharged its employee Allen Leonard Baggett because the employees assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has violated Section 8(a)(1), (3), and (4) of the Act, and has thereby engaged in unfair labor practices affecting 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. Specifically, having found that the Respondent has unlawfully discriminated against certain of its employees in violation of the Act by unlawful refusal to reinstate, suspension, transfer, partial closure and/or discharge, we shall order the Respondent to make these employees whole for any loss of earnings and other benefits suffered as a result of the unlawful action to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to offer those employees who were unlawfully discharged, suspended, transferred, or not reinstated, immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. The Respondent shall also be required to expunge from its files any and all references to these unlawful actions, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, North American Display & Steel Products, Inc., Madisonville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating an impression among its employees that their union activities were under surveillance by the Respondent.

(b) Telling its employees that they would have to leave the Respondent's facility until the Respondent determined if they were involved in activities on behalf of the Union.

(c) Threatening to discharge its employees if it determined they were involved in union activities.

(d) Telling its employees that they had been suspended so that the Respondent could determine which employees were involved in union activities.

(e) Instructing its employees to tell other employees that the Respondent did not want its employees to be represented by a union.

(f) Instructing its employees to tell other employees that it would close its facility if the employees selected the Union.

(g) Telling its employee that it would pay the employee for time that it had previously refused to pay for and promising its employees increased benefits if they refrained from union organizational activity.

(h) Threatening employees with unspecified reprisals because of the number of employee signatures obtained in a poll of employees' union sympathies and desires.

(i) Posting a written announcement promising its employees that a profit sharing plan and 50 percent of its stock would be available to employees if they refrained from union organizational activity.

(j) Disparaging an employee for coming to an employee meeting because the employee had filed charges with the Board.

(k) Promising its employees a stock option plan and health insurance if they refrained from union organizational activity.

(l) Implying to its employees that employees filing charges with the Board were the cause of its not improving working conditions.

(m) Telling employees that other employees had been discharged because of their activity on behalf of the Union.

(n) In the presence of its employees, calling employees whom it had discharged disparaging names because those employees had engaged in union organizational activity.

(o) Threatening its employees that it would file for bankruptcy because its employees were engaging in union organizational activity.

(p) Threatening to convert its employees to contract laborers because employees were engaging in union organizational activity.

(q) Polling its employees concerning their union sympathies and desires by requesting its employees to sign a statement indicating that they did not support the Union.

(r) Threatening its employees with loss of jobs if they voted for the Union.

(s) Telling its employee that it was holding a meeting to decide whether employees wanted to work or have a union.

(t) Interrogating its employees about their union activities and the union activities of other employees.

(u) Threatening to reduce the pay of employees to minimum wage if employees selected the Union.

(v) Partially closing its facility for 1 day because its employees assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

(w) Discharging its employees and failing and refusing to reinstate its employees who unconditionally offer to return from strike to their former positions of employment by informing them of their discharges because they ceased work concertedly and engaged in a strike and because they assisted the Union and engaged in concerted activities and to discourage employees from engaging in these and other concerted acts.

(x) Suspending, transferring, promoting and raising pay, and/or discharging its employees because they assisted the Union and engaged in concerted activities and to discourage employees from engaging in these or other concerted activities

(y) Discharging its employees because they were named in or otherwise participated in charges filed under the Act.

(z) In any other 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) Offer its employees listed below immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision:

William Thomas Dixon
Darren Scott McElroy
Allen Leonard Baggett
Jim Higley
Norris Vandygriff
James Green

(b) Make all employees whole for any loss of earnings or other benefits suffered as a result of the partial closure in the manner set forth in the remedy section of this decision.

(c) Expunge from its files any and all references to the unlawful discrimination of the above employees,

and notify the employees, in writing, that this has been done.

(d) 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.

(e) Post at its facility in Madisonville, Kentucky, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 26, 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.

(f) 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. October 29, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If 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 create an impression among our employees that their union activities are under surveillance.

WE WILL NOT tell our employees that they would have to leave our facility until we determined if they were involved in activities on behalf of the Union.

WE WILL NOT threaten to discharge our employees if we determine they were involved in union activities.

WE WILL NOT tell our employees that they have been suspended so that we can determine which employees were involved in union activities.

WE WILL NOT instruct our employees to tell other employees that we did not want our employees to be represented by a union.

WE WILL NOT instruct our employees to tell other employees that we would close our facility if the employees selected the Union.

WE WILL NOT tell our employee that we would pay the employee for time that we had previously refused to pay for and promise our employees increased benefits if they refrained from union organizational activity.

WE WILL NOT threaten employees with unspecified reprisals because of the number of employee signatures obtained in a poll of employees' union sympathies and desires.

WE WILL NOT post a written announcement promising our employees that a profit sharing plan and 50 percent of our stock would be available to employees if they refrained from union organizational activity.

WE WILL NOT disparage an employee for coming to an employee meeting because the employee had filed charges with the Board.

WE WILL NOT promise our employees a stock option plan and health insurance if they refrain from union organizational activity.

WE WILL NOT imply to our employees that employees filing charges with the Board were the cause of our not improving working conditions.

WE WILL NOT tell employees that other employees were discharged because of their activity on behalf of the Union.

WE WILL NOT, in the presence of our employees, call employees whom we had discharged disparaging names because those employees had engaged in union organizational activity.

WE WILL NOT threaten our employees that we would file for bankruptcy because our employees were engaging in union organizational activity.

WE WILL NOT threaten to convert our employees to contract laborers because employees were engaging in union organizational activity.

WE WILL NOT poll our employees concerning their union sympathies and desires by requesting our employees to sign a statement indicating that they did not support the Union.

WE WILL NOT threaten our employees with loss of jobs if they voted for the Union.

WE WILL NOT tell our employee that we were holding a meeting to decide whether employees wanted to work or have a union.

WE WILL NOT interrogate our employees about their union activities and the union activities of other employees.

WE WILL NOT threaten to reduce the pay of employees to minimum wage if employees selected the Union.

WE WILL NOT partially close our facility because our employees assisted the Union and engaged in concerted activities and to discourage employees from engaging in these or other concerted activities.

WE WILL NOT fail and refuse to reinstate employees who unconditionally offer to return from strike to their former positions of employment by informing them of their discharges because they ceased work concertedly and engaged in a strike and to discourage employees from engaging in these and other concerted acts.

WE WILL NOT suspend, transfer, promote and raise pay, and/or discharge our employees because they assisted the Union and engaged in concerted activities or because they ceased work concertedly and engaged in a strike and to discourage employees from engaging in these or other concerted activities.

WE WILL NOT discharge our employees because they were named in or otherwise participated in charges filed under the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer the employees listed below full and immediate reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and WE WILL make them whole, with interest, for any loss of earnings and other benefits suffered due to our unlawful discrimination:

William Thomas Dixon
Darren Scott McElroy
Allen Leonard Baggett
Jim Higley
Norris Vandygriff
James Green

WE WILL notify each of the above employees that we have removed from our files any reference to their discharges, suspensions, or transfers and that we will not use these actions against them in any way.

NORTH AMERICAN DISPLAY & STEEL
PRODUCTS, INC.