

**Signage Systems, Inc. and Curtis Krone.** Case 18-CA-12606

October 29, 1993

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by Curtis Krone, an individual, on March 24, 1993, and April 7, 1993, respectively, the General Counsel of the National Labor Relations Board issued a complaint on May 7, 1993, against Signage Systems, Inc., the Respondent, alleging that it violated Section 8(a)(1) and (3) of the National Labor Relations Act. On May 19, 1993, the Respondent filed an answer denying the complaint's unfair labor practice allegations.

Thereafter, on June 23, 1993, the Regional Director for Region 18 approved an informal settlement agreement, executed by Respondent's president and the Charging Party on June 15 and 21, 1993, respectively, disposing of the allegations in the complaint. On August 4, 1993, however, the Regional Director issued an order revoking approval and vacating and setting aside the settlement agreement on the ground that the Respondent had subsequently taken the position that it would not make any payments toward the backpay amount due the alleged discriminatee under the terms of the settlement. The same day, the Regional Director also issued another complaint against the Respondent likewise setting forth Respondent's failure to comply with the settlement agreement and realleging the same allegations contained in the prior complaint.

Although properly served with copies of the August 4, 1993 complaint, Respondent failed to file an answer thereto. Accordingly, on September 29, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 4, 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 August 4, 1993 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 Region, by letters dated August 19 and 23, 1993, notified the Respondent that unless an answer was received by extended dead-

line of August 26, 1993, a Motion for Summary Judgment would be filed.<sup>1</sup> Nevertheless, as indicated above, the Respondent failed to file an answer to the August 4, 1993 complaint.

Although the Respondent did file an answer to the original May 7, 1993 complaint, that answer was withdrawn by the explicit terms of the settlement agreement,<sup>2</sup> and was not thereafter revived by the Regional Director's order revoking approval and vacating and setting aside the settlement. Thus, as the Respondent's answer to the original complaint does not remain extant, it does not preclude summary judgment.<sup>3</sup>

Accordingly, in the absence of good cause being shown for the failure to file a timely answer to the August 4, 1993 complaint, 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 Minnesota corporation, with an office and place of business in Maple Grove, Minnesota, has been engaged in the manufacture and installation of signs and related products. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold products and performed services valued in excess of \$50,000 directly to customers outside the State of Minnesota. 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

On or about January 28 and February 1, 1993, respectively, the Respondent, acting through its president, Rick Ballantyne, at its Maple Grove facility, threatened an employee that the Respondent would have no work for the employee unless the employee signed a document abandoning the employee's pending grievances and waiving contract rights, and threatened an employee that if the employee did not abandon the employee's grievances, the employee would be out of a job.

<sup>1</sup> These letters were sent only to Respondent's president as Respondent's attorney had advised the Regional Office by letter dated August 10, 1993, that he was withdrawing as counsel for Respondent and that Respondent's president would be proceeding pro se in any further action before the Board.

<sup>2</sup> NLRB Form 4775, the settlement form used here, expressly provides that approval of the settlement agreement "shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response." (Emphasis added.)

<sup>3</sup> See *Orange Data, Inc.*, 274 NLRB 1018 (1985), and *Ofalco Properties*, 281 NLRB 84 (1986).

From January 19 to 29, 1993, the Respondent refused to recall employee Curtis Krone from layoff, and on or about February 1, 1993, the Respondent discharged Krone.

The Respondent engaged in the conduct described above because the named employee formed, joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

#### CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act and has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) 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 violated Section 8(a)(1) and (3) of the Act by refusing to recall employee Krone from layoff between January 19 and 29, 1993, and by discharging him on February 1, 1993, we shall order the Respondent to offer employee Krone immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him with backpay 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).

#### ORDER

The National Labor Relations Board orders that the Respondent, Signage Systems, Inc., Maple Grove, Minnesota, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Threatening employees that the Respondent would have no work for them unless they signed a

document abandoning their pending grievances and waiving their contract rights and/or that they would be out of a job if they did not abandon their grievances.

(b) Refusing to recall from layoff, discharging, or otherwise discriminating against employees because they formed, joined, supported, or assisted the Union or engaged in concerted activities, or to discourage employees from engaging in such activities.

(c) 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) Offer Curtis Krone immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge of Curtis Krone and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(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 amount of backpay due under the terms of this Order.

(d) Post at its facility in Maple Grove, Minnesota, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, 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.

<sup>4</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 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 threaten employees that we will have no work for them unless they signed a document abandoning their pending grievances and waiving their con-

tract rights and/or that they would be out of a job if they did not abandon their pending grievances.

WE WILL NOT refuse to recall, discharge, or otherwise discriminate against employees because they formed, joined, supported, or assisted the Union or engaged in concerted activities, or to discourage employees from engaging in such activities.

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 offer employee Curtis Krone immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, and WE WILL remove from our files any reference to his unlawful discharge and notify him in writing that this has been done and that the discharge will not be used against him in any way.

SIGNAGE SYSTEMS, INC.