

**R & R Service Corp. and Local 254, Service Employees International Union, AFL-CIO, CLC.**  
Case 1-CA-30547

November 9, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by the Union on May 28, 1993, and June 24, 1993,<sup>1</sup> respectively, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on July 9 against R & R Service Corp., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charges and complaint were duly served on the Respondent.

The complaint alleges in substance that the Respondent has failed and refused to continue in effect all the terms of its September 1, 1990-August 31, 1993 collective-bargaining agreement with the Union, by unilaterally, without the Union's consent, failing to remit union dues since on or about May 31 and to make payments to the group insurance and pension funds since on or about November 28, 1992, except for March 1993. The Respondent filed an answer to the complaint, admitting all of the allegations contained in the complaint.

On October 12, the General Counsel filed a motion to transfer proceeding to the Board and for summary judgment. The motion asserts that, because the Respondent has admitted all of the allegations in the complaint, the Board should grant the Motion for Summary Judgment and find that the Respondent has violated the Act as alleged in the complaint.

On October 12, the Board issued an order transferring 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 the Motion for Summary Judgment**

Because the Respondent's answer admits all of the allegations in the complaint, it raises no issues that would warrant a hearing. The Respondent has filed no response to the Notice to Show Cause. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is a corporation with an office and place of business in Lynnfield, Massachusetts, where it

<sup>1</sup> All dates are 1993, unless otherwise stated.

is engaged in the business of janitorial services and industrial cleaning.

Annually, in conducting its business operations, the Respondent provides services valued in excess of \$50,000 for United Parcel Service, an enterprise that is directly engaged in interstate commerce. The Respondent admits, and we find, that at all material times it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Representative Status of the Union**

At all material times, the Respondent has been an employer-member of the Maintenance Contractors of New England (Contractors), and has authorized the Contractors to represent it in negotiating and administering collective-bargaining agreements with the Union. The Contractors and the Union are parties to a September 1, 1990-August 31, 1993 collective-bargaining agreement. About January 1, 1991, the Respondent granted recognition to the Union as the exclusive collective-bargaining representative of all its employees as described in the job classifications contained in article III, Recognition, of the above agreement (the unit), by entering into an agreement which bound the Respondent to the terms and conditions of that collective-bargaining agreement. The Respondent admits that the above-described employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act and that at all times since January 1, 1991, based on Section 9(a) of the Act, the Union has been, and is, the exclusive collective-bargaining representative of the unit employees.

**B. Failure to Comply with the Contract**

The Respondent admits that it has failed and refused to continue in effect all the terms of its collective-bargaining agreement with the Union, by unilaterally, without the Union's consent, failing to remit union dues since on or about May 31 and to make payments to the group insurance and pension funds since on or about November 28, 1992, except for March 1993. The Respondent further admits that these contractual provisions are mandatory subjects for the purposes of collective bargaining. We find that the Respondent has failed and refused to bargain collectively with the representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By unilaterally failing to remit union dues since on or about May 31 and to make payments to the group

(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. November 9, 1993

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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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 collectively with Local 254, Service Employees International Union, AFL-CIO, CLC as the exclusive representative of the employees in the appropriate unit described below, by unilaterally failing to remit union dues and to make payments to the group insurance and pension funds, as required by the September 1, 1990-August 31, 1993 collective-bargaining agreement between the Union and the Maintenance Contractors of New England. The unit is all of our employees as described in the job classifications contained in article III, Recognition, of the above collective-bargaining 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 make whole our unit employees by making contributions to the group insurance and pension funds as required since on or about November 28, 1992, by the above collective-bargaining agreement, and WE WILL reimburse the unit employees, with interest, for any expenses ensuing from our failure to make such contributions.

WE WILL remit to the Union dues as required since on or about May 31, 1993, by the above collective-bargaining agreement, with interest.

R & R SERVICE CORP.

insurance and pension funds since on or about November 28, 1992, except for March 1993, 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 purposes and policies of the Act.

We shall order the Respondent to make whole its unit employees by making all unpaid group insurance and pension fund contribution payments since on or about November 28, 1992, as provided for by the September 1, 1990–August 31, 1993 collective-bargaining agreement between the the Contractors and the Union, to which the Respondent is bound,<sup>2</sup> and by reimbursing employees for any expenses ensuing from the Respondent's failure to make such contribution payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). We shall also order the Respondent to remit to the Union all union dues since on or about May 31, 1993, as required by the above collective-bargaining agreement. All payments to the Union and the employees shall be made 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, R & R Service Corp., Lynnfield, Massachusetts, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively with Local 254, Service Employees International Union, AFL–CIO, CLC, as the exclusive representative of the employees in the appropriate unit described below, by unilaterally failing to remit union dues and to make payments to the group insurance and pension funds, as required by the September 1, 1990–August 31, 1993

<sup>2</sup>Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

collective-bargaining agreement between the Union and the Maintenance Contractors of New England, to which agreement the Respondent is bound. The unit is all of the Respondent's employees as described in the job classifications contained in article III, Recognition, of the above collective-bargaining agreement.

(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) Make whole the unit employees by making contributions to the group insurance and pension funds as required since on or about November 28, 1992, by the September 1, 1990–August 31, 1993 collective-bargaining agreement between the Union and the Maintenance Contractors of New England and by reimbursing, with interest, the unit employees for any expenses ensuing from the failure to make such contributions, in the manner set forth in the remedy section of this decision.

(b) Remit to the Union dues as required since on or about May 31, 1993, by the collective-bargaining agreement referred to in paragraph 2(a) above, with interest, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination or copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of reimbursement due under the terms of this Order.

(d) Post at its Lynnfield, Massachusetts facility copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, 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.

<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 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."