

Gilbert Spruance Co., Inc. and Oil, Chemical and Atomic Workers International Union and its Local 8-398. Case 4-CA-21237

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union November 19, 1992, and a first amended charge filed February 8, 1993, the General Counsel of the National Labor Relations Board issued a complaint against Gilbert Spruance Co., 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, amended charge and complaint, the Respondent failed to file an answer.

On August 6, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On August 12, 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 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 on July 9, 1993, Respondent was advised, by letter, that its answer was overdue and that, unless Respondent filed its answer by July 19, 1993, a recommendation would be made to file the instant motion.

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, Gilbert Spruance Co., Inc., a New Jersey corporation with a facility located at Richmond and Tioga Streets, Philadelphia, Pennsylvania (the Philadelphia facility), was engaged in the manufacture of paint, varnish, lacquer, and stains. During the 12-month period ending October 27, 1992, Respondent, in conducting its business operations, sold and shipped products valued in excess of \$50,000 directly to points 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 hourly paid production and maintenance employees at the manufacturing plant of Respondent, Richmond and Tioga Street, Philadelphia, Pennsylvania, including truck drivers, working leaders, porters, plant production laboratory helpers, but excluding all executive and salaried personnel, foremen and assistant foremen, office clerical employees, laboratory assistant, personnel attached to the purchasing department, printer and printer's assistant, watchmen, and supervisors as defined in the Act.

Since on or about August 19, 1989, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since on or about August 19, 1989, the Union has been recognized as the representative by Respondent. This recognition has been embodied in a collective-bargaining agreement (the Agreement), effective from August 19, 1989, to August 18, 1993.

At all times since on or about August 19, 1989, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about October 27, 1992, Respondent failed to pay the unit vacation and severance benefits as provided in article III, section 3.6 and article V of the Agreement.

These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

On or about November 18, 1992, the Union, by letter, requested that Respondent bargain collectively with it about the effects of the shutdown of Respondent's Philadelphia facility. This subject is related to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

Since on or about October 27, 1992, Respondent has failed and refused to bargain collectively about the effects of the shutdown.

On or about November 18, 1992, the Union, by letter, requested that Respondent furnish the Union with certain information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since on or about October 27, 1992, Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By the above conduct, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) 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 violated Section 8(a)(5) and (1) by failing to make contractually required payments for vacation and severance benefits, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order Respondent to provide the requested information.

To remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the shutdown of its Philadelphia, Pennsylvania facility, we shall order it to bargain with the Union, on request, concerning the effects of that decision. Because of the Respondent's unlawful failure to bargain with the Union about the effects of the decision to shutdown its Philadelphia, Pennsylvania operations, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practice committed.

Accordingly, we deem it necessary in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to require not only that

the Respondent bargain with the Union, on request, about the effects of the shutdown, but we shall also accompany our order with a limited backpay requirement designed both to make the employees whole for losses as a result of the Respondent's failure to bargain, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by requiring the Respondent to pay backpay to unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

The Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the shutdown on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within the 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.

In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, supra.

Finally, in view of the Respondent's shutdown of its facility, we shall order the Respondent to mail copies of the notice to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Gilbert Spruance Co., Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to pay the unit vacation and severance benefits as provided in article III, section 3.6 and article V of the collective-bargaining agreement effective from August 19, 1989, to August 18, 1993, without affording Oil, Chemical and Atomic Workers International Union and its Local 8-398 an opportunity to bargain. The unit includes the following employees:

All hourly paid production and maintenance employees at the manufacturing plant of Respondent, Richmond and Tioga Street, Philadelphia, Pennsylvania, including truck drivers, working leaders, porters, plant production laboratory helpers, but excluding all executive and salaried personnel, foremen and assistant foremen, office clerical employees, laboratory assistant, personnel attached to the purchasing department, printer and printer's assistant, watchmen, and supervisors as defined in the Act.

(b) Failing to bargain collectively with the Union about the effects of the shutdown of Respondent's Philadelphia, Pennsylvania facility.

(c) Failing to provide the Union with requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(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) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to pay the contractually required unit vacation and severance benefits as set forth in the remedy section of this decision.

(b) On request, bargain collectively with the Union with respect to the effects on the unit employees of its decision to shut down its Philadelphia, Pennsylvania facility, and reduce to writing any agreement reached as a result of such bargaining.

(c) Pay the unit employees their normal wages for the period and in the manner set forth in the remedy section of this decision.

(d) Provide the Union with the information requested November 18, 1992, which information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(e) 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.

(f) Mail an exact copy of the notice attached hereto, marked "Appendix,"¹ to Oil, Chemical and Atomic Workers International Union and its Local 8-398, and to all employees who were employed at Respondent's

Philadelphia, Pennsylvania facility. 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 mailed immediately upon receipt thereof, as herein directed.

(g) 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.

September 17, 1993

James M. Stephens, Chairman

Dennis M. Devaney, 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.

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 pay the unit vacation and severance benefits as provided in article III, section 3.6 and article V of the collective-bargaining agreement effective from August 19, 1989, to August 18, 1993, without affording Oil, Chemical and Atomic Workers International Union and its Local 8-398 an opportunity to bargain. The unit includes the following employees:

All hourly paid production and maintenance employees at our manufacturing plant, Richmond and Tioga Street, Philadelphia, Pennsylvania, including truck drivers, working leaders, porters, plant production laboratory helpers, but excluding all executive and salaried personnel, foremen and assistant foremen, office clerical employees, labora-

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."

tory assistant, personnel attached to the purchasing department, printer and printer's assistant, watchmen, and supervisors as defined in the Act.

WE WILL NOT fail to bargain collectively with the Union about the effects of the shutdown of our Philadelphia, Pennsylvania facility.

WE WILL NOT fail to provide the Union with requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

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 our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to pay the contractually required unit vacation and severance benefits.

WE WILL, upon request, bargain collectively with the Union with respect to the effects on our unit employees of our decision to shut down our Philadelphia, Pennsylvania facility, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay our unit employees their normal wages for the period and in the manner set forth in a decision of the National Labor Relations Board.

WE WILL provide the Union with the information requested November 18, 1992, which information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

GILBERT SPRUANCE CO., INC.