

76th West Corp. (Beacon Garage) and Garage Employees Union, Local 272, International Brotherhood of Teamsters, AFL-CIO. Case 2-CA-25928

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

Upon a charge filed by the Union on August 10, 1992, the General Counsel of the National Labor Relations Board issued a complaint against 76th West Corp. (Beacon Garage), 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 and complaint, the Respondent failed to file an answer.

On August 20, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On August 26, 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 counsel for the General Counsel, on April 22, 1993, sent a letter by certified and regular mail to the Respondent's owners, Barry Weinberg and Richard Cantarella, informing them that no answer to the complaint had been received and giving the Respondent a deadline of May 6, 1993, for the filing of an answer. The Respondent failed to claim the copy of the letter sent by certified mail.

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, 76th West Corp. (Beacon Garage), a corporation, has been engaged in the operation of a parking garage located at 210 West 76th Street, New York, New York. At all material times the Metropolitan Garage Owners Association (MGOA) has been an organization composed of various persons, firms, and

corporations owning or operating public garages and parking facilities in the boroughs of Manhattan and the Bronx, one purpose of which is to represent its members in negotiating and administering collective-bargaining agreements with the Union. At all material times the Respondent has been a member of MGOA and has authorized the Association to represent it in negotiating and administering collective-bargaining agreements with the Union, the latest of which was effective from February 6, 1989, through February 5, 1992 (the contract). Annually, in the course of conducting the business operations described above, the employer-members of the MGOA collectively derive gross revenues in excess of \$500,000. Annually, in conducting the business operations described above, the employer-members of the MGOA collectively provide services valued in excess of \$5000 to businesses which are in turn directly engaged in interstate commerce. 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 the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All working managers or working foremen, washers, floormen, Transporters, Cashiers employed by members of the MGOA who have authorized the MGOA to bargain on their behalf, including Respondent excluding all guards, supervisors and professional employees as defined in the Act.

About July 1990, the Respondent purchased the business of Garage Management Corporation (GMC) and since has continued to operate the business of GMC in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of GMC. Based on these operations, the Respondent has continued the employing entity and is a successor to GMC.

Sometime prior to July 1990, a majority of the unit employed by GMC designated and selected the Union as their representative for purposes of collective bargaining. Since about July 1990, based on the facts described above, the Union has been the designated exclusive bargaining representative of the unit. From some time prior to July 1990, the Union had been the exclusive collective-bargaining representative of the unit employed by GMC. At all times since about July 1990, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit. Since in or about July 1990, the Respond-

ent, by virtue of its collective-bargaining obligation set forth above, i.e., that the Respondent has been a member of the MGOA and has authorized the MGOA to represent it in negotiating and administering collective-bargaining agreements with the Union, the latest of which was effective from February 6, 1989, through February 5, 1992, is bound by article V, section 5 of the contract which provides in pertinent part the following:

In the . . . event the Employer takes over the operation of a garage covered by a Local 272 Contract, the contract shall remain [sic] in full force and effect

By virtue of this obligation and its status as a successor to GMC, the Respondent was bound to apply the contract described here to its newly acquired garage located at 210 West 76th Street, New York, New York.

Article XXV of the contract provides, among other things, that the parties maintain and continue the Welfare and Disability Insurance Plan (the Welfare Plan), and that each employer, including the Respondent, make monthly contributions to the Welfare Plan based on a formula set forth therein. Article XXVI of the contract provides, among other things, that the parties maintain and continue the Labor Management Pension Plan (the Pension Plan), and that each employer, including the Respondent, make monthly contributions to the Pension Plan based on a formula set forth therein. Articles XXV and XXVI respectively, set forth fees and penalties to be assessed against employers who are delinquent in the contractually required payments described above.

Since on or about March 4, 1992, and continuing to date, the Respondent has failed and refused to make the monthly contributions and to pay the fees and penalties described above. 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. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct. In or about April 1992, the Respondent, during conversation with representatives of the Union, reaffirmed its obligation to make payment pursuant to the contractual provisions described here.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby 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. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments for the Welfare Plan and the Pension Plan, 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, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), 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).

ORDER

The National Labor Relations Board orders that the Respondent, 76th West Corp. (Beacon Garage), New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees by failing and refusing to make monthly contributions, or to pay the fees and penalties for delinquent payments, required by the 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 unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required payments, including making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional fees or penalties required by the contract.

(b) 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.

(c) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 2, 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.

(d) 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 22, 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

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."

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 and refuse to bargain collectively with the Garage Employees Union, Local 272, International Brotherhood of Teamsters, AFL-CIO by failing and refusing to make monthly contributions, or to pay the fees and penalties for delinquent payments, required by the collective-bargaining agreement, on behalf of our unit employees. The unit employees include:

All working managers or working foremen, washers, floormen, Transporters, Cashiers employed by members of the MGOA who have authorized the MGOA to bargain on their behalf, including us, excluding all guards, supervisors and professional employees as defined in the Act.

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 make the contractually required payments, including making all payments that have not been made and that would have been made but for our unlawful failure to make them, including any additional fees or penalties required by the contract.

76TH STREET CORP. (BEACON GARAGE)