

Educational Food Management and United Industry Workers Local 424, a Division of United Industry Workers District Council 424. Case 29-CA-16704

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a second amended charge filed by the Union on August 24, 1992,¹ the General Counsel of the National Labor Relations Board issued a complaint on August 27, 1992, and an order amending complaint on September 14, 1992, alleging that Educational Food Management, the Respondent, has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the second amended charge, complaint, and order amending complaint, the Respondent failed to file an answer.

On December 28, 1992, the General Counsel filed a Motion for Summary Judgment with the Board. On January 5, 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. The complaint states that unless an answer is filed within 14 days of service, "all the allegations of the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated October 21, 1992, notified the Respondent that unless an answer was received by close of business on November 4, 1992, a Motion for Summary Judgment would be filed. To date no answer has been filed by or on behalf of Respondent.²

¹The original charge in this case was filed by the Union on July 13, 1992, followed by a first amended charge filed on August 19, 1992.

²The Respondent's answer was due on September 11, 1992. The Respondent failed to respond to the complaint, or as noted, to the General Counsel's letter of October 21. However, on December 24, 1992, the Regional Director received a letter and "reply affidavit" dated December 20, 1992, which purports to be an answer. The Regional Director rejected these documents as untimely and as failing to meet the requirements of Secs. 102.20 and 102.21 of the Board's Rules and Regulations. We agree with the Regional Director that the Respondent's purported answer must be rejected for the reasons relied on by the Regional Director. We further note the Respondent did not challenge the decision of the Regional Director or in any manner respond to the Notice to Show Cause issued in this case.

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, a New York corporation with its principal office located at 125 Jericho Turnpike, Suite 100, Jericho, New York, and with other places of business in Lindenhurst School District No. 4, Lindenhurst, New York, has been engaged in providing food and service to Lindenhurst School District No. 4. During the year preceding issuance of the complaint, which period is representative of its annual operations generally, the Respondent, in the course and conduct of its business operations, purchased and received at its Lindenhurst facilities products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of New York. 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 full-time and regular part-time food service employees, cooks and assistant cooks employed at Lindenhurst School District No. 4, Lindenhurst New York, but excluding all office clerical employees, guards and supervisors as defined in the Act.

At all times material, United Industry Workers Local 424, a Division of United Industry Workers District Council 424 (the Union) has been recognized as the exclusive collective-bargaining representative of the unit of the Respondent's employees. The recognition has been embodied in a series of collective-bargaining agreements between the Respondent and the Union, the most recent of which is effective by its terms for the period from September 1, 1989, to August 31, 1992.

At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees.

The collective-bargaining agreement described above contains, inter alia, provisions which require the Respondent to remit to the Union's welfare fund each month contributions for the employees in the unit cov-

ered by the agreement, and to remit to the Union each month dues deducted from the wages of employees in the unit covered by the agreement, pursuant to check-off authorizations timely executed by the employees.

Since on or about April 10, 1992, the Respondent has unilaterally failed and refused to remit the monthly contributions to the Union's welfare fund for employees and to remit to the Union the monthly dues it deducted from the wages of the employees in the unit covered by the agreement.

The Respondent engaged in the acts and conduct above without prior notice to the Union, and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and conduct and the effects thereof.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has refused to bargain collectively with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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 therefrom 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 since April 10, 1992, to remit monthly contributions to the Union's welfare fund for the unit employees as required by the collective-bargaining agreement, we shall order the Respondent to make all required contributions that have not been made and make whole its unit employees for its failure to remit such contributions as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1979), 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), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has failed since the same date to remit deducted dues to the Union as required by the agreement, we shall order the Respondent to remit the dues to the Union, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Educational Food Management, Jericho and Lindenhurst, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to remit monthly contributions to the Union's welfare fund for unit employees as required by the collective-bargaining agreement.

(b) Failing and refusing to remit to the Union the monthly dues it deducts from the wages of unit employees as required by the agreement.

(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) Make all required contributions to the Union's welfare fund that have not been made since April 10, 1992, and make the unit employees whole for its failure to make such contributions, in the manner set forth in the remedy section of this Decision and Order.

(b) Remit to the Union the monthly dues it has deducted from the wages of the unit employees since April 10, 1992, as required by the agreement, in the manner set forth in the remedy section of this Decision and Order.

(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 amounts due under the terms of this Order.

(d) Post at its facility in Jericho and Lindenhurst, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29, 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.

³ 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."

(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. 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

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 remit monthly contributions to the United Industry Workers Local 424, a Division of United Industry Workers District Council 424 welfare fund as required by our collective-bargaining agreement with the Union.

WE WILL NOT fail and refuse to remit to the Union the monthly dues we have deducted from the wages of employees as required by the 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 all required contributions to the Union's welfare fund that have not been made since April 10, 1992, and make employees in the following unit whole for any losses they may have suffered as a result of the failure to make such payments.

All full-time and regular part-time food service employees, cooks and assistant cooks employed at Lindenhurst School District No. 4, Lindenhurst New York, but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL remit to the Union the monthly dues we have deducted from the wages of unit employees since April 10, 1992.

EDUCATIONAL FOOD MANAGEMENT