

**Oklahoma Aerotronics, Inc. and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW and its Local Union No. 1679. Case 17-CA-15738**

March 2, 1994

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

Upon a charge and an amended charge filed by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW and its Local Union No. 1679 (the Union) on August 1 and October 9, 1991, respectively, the Acting General Counsel of the National Labor Relations Board issued a complaint on December 6, 1993, against Oklahoma Aerotronics, Inc. (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act.<sup>1</sup> Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On February 2, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On February 4, 1994, 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 the Region, by letter dated January 3, 1994, notified the Respondent that unless an answer were received by close of business on January 10, 1994, a Motion for Summary Judgment would be filed.

<sup>1</sup>The General Counsel initially issued a consolidated complaint in both the instant case and another case (17-CA-16115) on July 9, 1992, against both Oklahoma Aerotronics, Inc., and its alleged successor, OAI, Inc., which allegedly purchased the business on December 16, 1991. OAI subsequently filed an answer to the consolidated complaint on behalf of both itself and Oklahoma Aerotronics. Thereafter, however, as part of a settlement of all issues pending against OAI, OAI withdrew its answer on behalf of Oklahoma Aerotronics, and the Regional Director issued an order severing the cases, withdrawing the consolidated complaint, approving the Union's withdrawal of the charge involving OAI, and closing that case. Thereafter, on December 6, 1993, the instant new complaint was issued solely against Oklahoma Aerotronics.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times the Respondent, a corporation, with an office and place of business in Hartshorne, Oklahoma, was engaged in the manufacture and assembly of electronic components. During the 12-month period ending September 30, 1991, the Respondent, in conducting its business operations, purchased and received at its Hartshorne, Oklahoma facility goods valued in excess of \$50,000 directly from points outside the State of Oklahoma, and also sold and shipped from the facility goods valued in excess of \$50,000 directly to points outside the State of Oklahoma. 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 employees working in the Hartshorne, Oklahoma facility of Respondent, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

On January 14, 1970, the Union was certified as the exclusive collective-bargaining representative of the unit employed by the Respondent.

At all times between January 14, 1970, and December 16, 1991, based on Section 9(a) of the Act, the Union was the exclusive collective-bargaining representative of the employees of the Respondent in the unit.

About November 11, 1988, the Respondent and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the unit, which agreement was to remain in effect until November 11, 1991.

About July 1, 1991, the Respondent failed, without the Union's consent, to continue in effect all the terms and conditions of the agreement by refusing to honor, inter alia, the union security, representation, grievance procedure, seniority, recall from layoff, insurance, and sick leave sections of the agreement.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

## CONCLUSION OF LAW

By the acts and 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)(1) and (5) and Section 8(d) 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 about July 1, 1991, to continue in effect all the terms and conditions of its 1988-1991 collective-bargaining agreement with the Union, we shall order the Respondent to honor the terms and conditions of that agreement, and to make whole the Union for any unremitted dues and the unit employees for any loss of earnings and benefits or expenses ensuing from its failure to do so, 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. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>2</sup> We shall also order the Respondent to make contractually required fund contributions, if any, including any additional amounts applicable to delinquent benefit payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

## ORDER

The National Labor Relations Board orders that the Respondent, Oklahoma Aerotronics, Inc., Hartshorne, Oklahoma, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing and refusing to honor the terms and conditions of the 1988-1991 collective-bargaining agreement with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW and its Local Union No. 1679, including, inter alia, the union security, representation, grievance procedure, seniority, recall from layoff, insurance, and sick leave sections of the agreement.

<sup>2</sup>Because it is apparent from the original consolidated complaint attached to the General Counsel's motion that Respondent sold the subject facility in 1991, we shall also order Respondent to mail rather than post copies of the notice.

(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) Honor the terms and conditions of the 1988-1991 collective-bargaining agreement with the Union, and make whole the unit employees and the Union for its failure to do so as set forth in the remedy section of this decision. The unit is:

All employees working in the Hartshorne, Oklahoma facility of Respondent, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) 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.

(c) Mail a copy of the attached notice marked "Appendix"<sup>3</sup> to the Union and to all unit employees who were employed at the Hartshorne, Oklahoma facility. Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt.

(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. March 2, 1994

James M. Stephens, Chairman

Dennis M. Devaney, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<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."

## 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 honor the terms and conditions of the 1988-1991 collective-bargaining agreement with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW and its Local Union No. 1679, including, inter alia, the union security, representation,

grievance procedure, seniority, recall from layoff, insurance, and sick leave sections of 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 honor the terms and conditions of the 1988-1991 agreement with the Union, and WE WILL make whole the unit employees and the Union for our failure to do so. The unit is:

All employees working in our Hartshorne, Oklahoma facility, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

OKLAHOMA AEROTRONICS, INC.