

Standard Metal Products Company and Sheet Metal Workers' International Association, Local Union No. 115, AFL-CIO. Case 13-CA-31791

March 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

Upon a charge filed by the Union on June 10, 1993, the Acting General Counsel of the National Labor Relations Board issued a complaint on January 6, 1994, against Standard Metal Products Company, the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 15, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On February 18, 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.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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 January 25, 1994, the Respondent was informed that unless an answer were filed by February 7, 1994, a Motion for Summary Judgment would be filed.

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

The Respondent, a corporation with an office and place of business in Gurnee, Illinois, has been engaged in the manufacture of air cleaners, conveyors, and coolers. During the calendar year ending December 31,

1992, the Respondent, in conducting its business operations, sold and shipped from its Gurnee, Illinois facility goods valued in excess of \$50,000 directly to points outside the State of Illinois. 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 production and maintenance employees of the Employer, excluding foremen, foreladies, office clerical and plant clerical employees, professional, technical and administrative employees, watchmen, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and at all material times, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which has been in effect from October 1, 1992, to September 30, 1995. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About December 1992, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement by abrogating article IX-Grievance Procedure and article XIII-Health and Welfare Fund. The Respondent engaged in this unilateral conduct without the Union's consent. These terms and conditions of employment 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 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 unilaterally abrogating article IX-Grievance Procedure and article XIII-Health

and Welfare Fund of the collective-bargaining agreement, we shall order the Respondent to honor the terms of the collective-bargaining agreement retroactively to December 1992 and make whole its unit employees by making any delinquent contributions, including any additional amounts due the fund in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from any failure to make any required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 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), enfd. 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, Standard Metal Products Company, Gurnee, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement for employees in the following unit:

All production and maintenance employees of the Employer, excluding foremen, foreladies, office clerical and plant clerical employees, professional, technical and administrative employees, watchmen, guards and supervisors as defined in the Act.

(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 for its abrogation of article XIII-Health and Welfare Fund, as set forth in the remedy section of this decision.

(b) Honor all terms and conditions of the collective-bargaining agreement, retroactively to December 1992, including processing of pending grievances in accordance with article IX-Grievance Procedure.

(c) 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 amounts due under the terms of this Order.

(d) Post at its facility in Gurnee, Illinois, copies of the attached notice marked "Appendix."¹ Copies of

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

the notice, on forms provided by the Regional Director for Region 13, 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.

(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. March 31, 1994

James M. Stephens, Member

Dennis M. Devaney, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 to continue in effect all the terms and conditions of the collective-bargaining agreement with Sheet Metal Workers' International Association, Local Union No. 115, AFL-CIO for employees in the following unit:

All production and maintenance employees of [our Company], excluding foremen, foreladies, office clerical and plant clerical employees, professional, technical and administrative employees, watchmen, guards and supervisors 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 honor in effect all terms and conditions of the collective-bargaining agreement, retroactively to

December 1992, including processing of pending grievances in accordance with article IX-Grievance Procedure.

WE WILL make whole our unit employees for our abrogation of article XIII-Health and Welfare Fund, as

set forth in a decision of the National Labor Relations Board.

STANDARD METAL PRODUCTS COM-
PANY