

**PCT International Corporation, Inc. and Fukuokas, Inc., d/b/a Pearl City Tavern and Hotel Employees & Restaurant Employees, Local 5, AFL-CIO. Case 37-CA-3336**

April 11, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND  
BROWNING

Upon a charge filed by Hotel Employees & Restaurant Employees, Local 5, AFL-CIO, the Union, on July 13, 1993, the General Counsel of the National Labor Relations Board issued a complaint on August 27, 1993, against PCT International Corporation, Inc. and Fukuokas, Inc., d/b/a Pearl City Tavern, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 25, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On March 1, 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 the Region, by letter dated October 26, 1993, notified the Respondent that unless an answer were received by November 2, 1993, 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

At all material times, the Respondent, a Hawaii corporation, with an office and place of business in Pearl City, Hawaii, has been engaged in the operation of a

restaurant and lounge. During the 12-month period ending June 30, 1993, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000, and purchased and received at its Pearl City, Hawaii facility products, goods, and materials valued in excess of \$5000 which originated from points outside the State of Hawaii. 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 of the Respondent in the State of Hawaii, excluding professional, managerial, secretarial employees, and office clerical employees, guards and watchpersons, confidential employees, and supervisors as defined by the Labor Management Relations Act of 1947, as amended.

Since about 1971, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then, 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 is effective by its terms from March 1, 1986 to March 1, 1989, with automatic yearly renewals, through and including the term March 1, 1993 to March 1, 1994.

At all times since about 1971, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About March 1, 1986, the Respondent and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the unit, to remain in effect for the period March 1, 1986 through March 1, 1989, and from year to year thereafter.

Since about January 13, 1993, the Respondent failed to continue in effect all the terms and conditions of the agreements by failing to remit to the Union dues which it deducted from employees' paychecks.

In addition, since about July 15, 1993, the Respondent also failed to continue in effect all the terms and conditions of the agreements by failing to pay accrued pro rata vacation and health benefits to unit employees who were terminated.

Although the terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining, the Respondent engaged in the conduct without the Union's consent.

## CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith 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 since January 13, 1993, to remit to the Union dues which it deducted from employees' paychecks, we shall order the Respondent to comply with the agreements in this respect and to make whole the Union for its failure to do so by remitting such withheld dues to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has also violated Section 8(a)(5) and (1) by failing since July 15, 1993, to pay accrued pro rata vacation and health benefits to its terminated unit employees, we shall order the Respondent to also comply with the agreements in this respect and to make whole said employees for any losses resulting from its unlawful conduct, 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*, *supra*.<sup>1</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, PCT International Corporation, Inc. and Fukuokas, Inc., d/b/a Pearl City Tavern, Pearl City, Hawaii, its officers, agents, successors, and assigns, shall

<sup>1</sup>We are unable to determine from the complaint's reference to "accrued pro rata . . . health benefits" whether employees were simply entitled to a lump sum payment or whether some sort of medical coverage is involved. If the latter is determined to be the case at the compliance stage, our "make-whole" remedy will also require the Respondent to reimburse employees for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, *supra*.

## 1. Cease and desist from

(a) Failing to bargain collectively and in good faith with Hotel Employees & Restaurant Employees, Local 5, AFL-CIO as the exclusive bargaining representative of the employees in the unit described below, by failing to remit to the Union dues which it deducted from employees' paychecks and failing to pay accrued pro rata vacation and health benefits to its terminated employees, as required by its collective-bargaining agreements with the Union:

All employees of the Respondent in the State of Hawaii, excluding professional, managerial, secretarial employees, and office clerical employees, guards and watchpersons, confidential employees, and supervisors as defined by the Labor Management Relations Act of 1947, as amended.

(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) Comply with the terms and conditions of the collective-bargaining agreements by remitting to the Union dues which it deducts from employees' paychecks and paying accrued pro rata vacation and health benefits to terminated employees as required by the agreements.

(b) Make whole the Union and terminated employees for its failure, since January 13 and July 15, 1993, respectively, to remit such dues to the Union and to pay such benefits to terminated employees as required by the agreements, in the manner set forth in the remedy section of this decision.

(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 Pearl City, Hawaii, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 37, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for

<sup>2</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."

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.

#### 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 bargain collectively and in good faith with Hotel Employees & Restaurant Employees, Local 5, AFL-CIO as the exclusive bargaining representative of the employees in the unit described below, by failing to remit to the Union dues which we deducted from employees' paychecks and

failing to pay accrued pro rata vacation and health benefits to our terminated employees, as required by our collective-bargaining agreements with the Union:

All of our employees in the State of Hawaii, excluding professional, managerial, secretarial employees, and office clerical employees, guards and watchpersons, confidential employees, and supervisors as defined by the Labor Management Relations Act of 1947, as amended.

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 comply with the terms and conditions of the collective-bargaining agreements by remitting to the Union dues which we deduct from employees' paychecks and by paying accrued pro rata vacation and health benefits to terminated employees, and WE WILL make whole the Union and terminated employees for our failure to do so since January 13 and July 15, 1993, respectively.

PCT INTERNATIONAL CORPORATION,  
INC. AND FUKUOKAS, INC., D/B/A PEARL  
CITY TAVERN