

Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland and Teamsters Local Union No. 651, affiliated with the International Brotherhood of Teamsters, AFL-CIO. Cases 9-CA-30643 and 9-CA-30665

May 17, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by the Union on May 3, 1993,¹ in Case 9-CA-30643 and May 6, in Case 9-CA-30665, the General Counsel of the National Labor Relations Board issued a consolidated complaint on June 17, against Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland, 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 charges and consolidated complaint, the Respondent failed to file an answer.

On September 20, the General Counsel filed a Motion for Summary Judgment with the Board. On September 22, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 20, the Respondent filed a letter in response to the Board's Notice to Show Cause.

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

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides 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 consolidated complaint stated that unless an answer is filed within 14 days of service, "all the allegations in the consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 4, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.²

It is undisputed that the Respondent failed to file an answer within the allotted time. The Respondent, acting pro se, asserts in its response to the Notice to Show Cause that it has filed for bankruptcy under

Chapter 7 of the Bankruptcy Code and does not have the funds to secure legal counsel in this matter. The response to the Board's Show Cause Order is inadequate. The Respondent asserts that it did not respond to the complaint because it does not have the funds to secure legal counsel. The lack of legal counsel is not a legally sufficient ground for failing to file a timely answer. In view of the foregoing, we find that the Respondent has not shown good cause for its failure to file a timely answer.

Moreover, the "Response to Charges" that the Respondent submitted with its October 20 letter is not adequate as an answer. In its response to Case 9-CA-30643, the Respondent "denies the charge in the complaint" and asserts, in response to the allegation that it failed to pay employees' properly submitted medical claims, that "[c]ertain Medical Claims have been paid and company [sic] is awaiting funds to continue payments." In its response to Case 9-CA-30665, the Respondent again "denies the charge in the complaint" and asserts, in response to the allegation that it refused to pay laid-off employees for accrued vacation, that the Company was operating with a reduced labor force and that "[v]acation days were allowed as available."

Section 102.20 of the Board's Rules and Regulations provides that the "respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial."

Even assuming that the pro se Respondent's denials in its two-paragraph "Response" satisfy the specificity requirements for an answer under Section 102.20, we nonetheless find that summary judgment is appropriate. Thus, in its "Response" the Respondent expressly admits that certain medical claims and insurance premiums had not been paid, and implicitly acknowledges that some accrued vacation leave was not granted. In these circumstances, where the Respondent admits that it engaged in conduct alleged as unlawful, we find that summary judgment is appropriate. See generally *Sportswear Group*, 306 NLRB 854 (1992).

In accordance with the Rules set forth above, the allegations in the complaint are deemed to be admitted as true.³ Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

¹All dates are 1993, unless otherwise indicated.

²On August 10, the Respondent advised the Region that it would need until August 13 to respond. No extension was granted. However, on August 30, the Respondent's owner told the counsel for the General Counsel that he would file an answer by September 3, and was told that if he intended to file an answer, he should do so as soon as possible, preferably by September 1.

³To the extent that either document submitted by the Respondent raises a claim of bankruptcy as a defense, we note that a respondent's claim of bankruptcy will not stay unfair labor practice charges. It is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the manufacture of wood furniture at its facility in Somerset, Kentucky. During the 12-month period ending April 30, 1993, the Respondent, in conducting its operations, purchased and received at its Somerset, Kentucky facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky. 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 constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees and truckdrivers of Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland employed at Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland's plant located on North Highway 27, Somerset, Kentucky, but excluding all office clerical employees, technical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended, and all other employees of Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland.

On June 10, 1974, the Union was certified as the exclusive collective-bargaining representative of the unit. At all times since June 10, 1974, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. About October 23, 1992, the Respondent and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the unit, which was to remain in effect until August 29, 1995.

During January 1993, the Respondent refused to pay laid-off employees for accrued vacation in accordance with the terms of a 1992 grievance settlement. About February 1, the Respondent unilaterally discontinued its employees' health insurance benefits. About February 22, the Respondent abrogated the terms of its contract settlement with the Union, which required the Respondent to pay all outstanding unpaid medical claims within 90–120 days, by failing to pay employees' medical claims which had properly been submitted to it. These subjects relate to wages, hours, and other terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in these acts without

notifying the Union or affording it an opportunity to bargain about this action.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused 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 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 made unilateral changes in the terms and conditions of employment of the unit employees, we shall order that the Respondent restore the status quo and make the employees whole, with interest, for losses suffered as a result of its unlawful unilateral changes. To remedy the Respondent's discontinuance of employees' health insurance benefits, we shall order the Respondent to provide medical insurance to the unit employees as required by the collective-bargaining agreement, and to make the unit employees whole by reimbursing them for expenses they may have incurred as a result of the Respondent's failure to do so, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland, Somerset, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Teamsters Local Union No. 651, affiliated with the International Brotherhood of Teamsters, AFL–CIO by unilaterally refusing to pay laid-off employees for accrued vacation benefits, discontinuing employees' health insurance benefits, or abrogating the terms of its contract settlement with the Union by failing to pay employees' medical claims that had properly been submitted to it.

(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 as described in the remedy section of this decision, for any loss of bene-

fits or other expenses suffered as a result of the Respondent's failure to pay laid-off employees for accrued vacation, to provide health insurance benefits, or to pay employees' proper medical claims and provide unit employees with health insurance coverage as required by the collective-bargaining agreement. The unit consists of the following employees:

All production and maintenance employees and truckdrivers of Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland employed at Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland's plant located on North Highway 27, Somerset, Kentucky, but excluding all office clerical employees, technical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended, and all other employees of Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland.

(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) Post at its facility in Somerset, Kentucky, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 9, 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.

⁴If 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."

(d) 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 or refuse to bargain with Teamsters Local Union No. 651, affiliated with the International Brotherhood of Teamsters, AFL-CIO by unilaterally refusing to pay laid-off employees for accrued vacation benefits, discontinuing employees' health insurance benefits, or abrogating the terms of our contract settlement with the Union by failing to pay employees' medical claims that had properly been submitted.

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 provide unit employees with health insurance coverage as required by our collective-bargaining agreement and WE WILL make unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to pay laid-off employees for accrued vacation, to provide health insurance benefits, or to pay employees' proper medical claims. The unit consists of the following employees:

All production and maintenance employees and truckdrivers of Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland employed at Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland's plant located on North Highway 27, Somerset, Kentucky, but excluding all office clerical employees, technical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended, and all other employees of Cumberland Wood & Chair Corporation a/k/a Karel of Cumberland.

CUMBERLAND WOOD & CHAIR CORPORATION
A/K/A KAREL OF CUMBERLAND