

Windsor Art Products, Inc. and Graphic Communications Union, District Council No. 2, Local 388-M, Graphic Communications International Union, AFL-CIO. Cases 21-CA-29655 and 21-CA-29670

May 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY AND COHEN

Upon charges filed by the Union on September 29, 1993, in Case 21-CA-29655 and on October 6, 1993, in Case 21-CA-29670, the General Counsel of the National Labor Relations Board issued a consolidated complaint on March 8, 1994, against Windsor Art Products, Inc., 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 April 25, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On April 29, 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 consolidated 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, after receiving a letter dated March 21, 1994, from the Respondent's attorney, notifying the Region that he was withdrawing as counsel of record for the Respondent and of the appointment of a Chapter 7 trustee, sent a copy of the order extending time for filing an answer to the consolidated complaint by certified mail on March 23, 1994, to the trustee, along with a copy of the consolidated complaint and a letter explaining why he was being served with the consolidated complaint. By letter dated April 7, 1994, the Region notified the trustee of the failure to file an answer and of the General Counsel's intention to file a Motion for Summary Judgment unless an answer were received by April 14, 1994. It is well established that the institution of bankruptcy

proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

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 Delaware corporation with an office and place of business in Pico Rivera, California, has been engaged in the manufacture of picture frames. During the calendar year ending December 31, 1993, the Respondent, in conducting its business operations, purchased and received at its Pico Rivera, California facility goods valued in excess of \$50,000 directly from points outside the State of California. 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 the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All employees listed in the job classifications in Exhibit A of the collective-bargaining agreement between Windsor Art Products, Inc. and Graphic Communications Union, District Council No. 2, Local 388-M, Graphic Communications International Union, AFL-CIO, effective by its terms from April 8, 1990, through April 7, 1993, excluding executives, superintendent, foremen, personnel manager, office employees, salesmen, plant guard, watchmen and supervisors as defined in the Act.

Since at least April 8, 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then has been recognized as the representative by the Respondent. This recognition has been embodied in a series of collective-bargaining agreements, the most recent of which was effective by its terms for the period April 8, 1990, through April 7, 1993. At all times since April 8, 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about March 29, 1993, the Union has requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit for a successor collective-bargaining agreement. Since about March 29, 1993, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit for a successor collective-bargaining agreement.

Since about September 24, 1993, by a telephone call, and since about September 28, 1993, by letter, the Union has requested that the Respondent furnish the Union with the following information: the Respondent's representative to contact for the purposes of bargaining for a successor collective-bargaining agreement and/or the identity of the new owners. This information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about September 24, 1993, the Respondent has failed and refused to furnish the Union with the requested information.

Since on or about April 8, 1993, the Respondent has failed to continue in effect all the terms and conditions of the expired agreement described above by:

- i) Failing to pay employees the appropriate wage rates;
- ii) Limiting all employees to two weeks paid vacation per year;
- iii) Failing to pay holiday pay for employee birthdays;
- iv) Failing to pay funeral leave;
- v) Failing to maintain the Sickness and Accident Plan; and
- vi) Failing to pay pension contributions.

These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union or affording the Union an opportunity to bargain with respect to this conduct.

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 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.¹ Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing to pay employees the appropriate wage rates, holiday pay for employee birthdays, funeral leave, and pension contributions, limiting employees to 2 weeks' paid vacation per year, and failing to maintain the Sickness and Accident Plan, we shall order the Respondent to make the unit employees whole for any loss of wages and other benefits attributable to its unlawful conduct, for the period from April 8, 1993, until the Respondent ceased doing business. Backpay shall be computed in accordance with *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). We shall order the Respondent to make the employees whole for its failure to maintain the Sickness and Accident Plan by reimbursing them 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. We shall order the Respondent to make whole its unit employees by making all delinquent pension contributions for this period, including any additional amounts due the funds 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 its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, supra, such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra. We shall order that copies of the notice be mailed to all employees employed by the Respondent during the period from March 29, 1993, to the date the Respondent ceased doing business.

ORDER

The National Labor Relations Board orders that the Respondent, Windsor Art Products, Inc., Pico Rivera, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ The General Counsel, in its motion, states that inasmuch as the Respondent has ceased operations and is undergoing a bankruptcy liquidation, the General Counsel is not requesting a bargaining order, provision of the requested information (including the identity of the new owners which is now known to the Union), or the posting of a notice.

(a) Refusing to bargain collectively with Graphic Communications Union, District Council No. 2, Local 388-M, Graphic Communications International Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All employees listed in the job classifications in Exhibit A of the collective-bargaining agreement between Windsor Art Products, Inc. and Graphic Communications Union, District Council No. 2, Local 388-M, Graphic Communications International Union, AFL-CIO, effective by its terms from April 8, 1990, through April 7, 1993, excluding executives, superintendent, foremen, personnel manager, office employees, salesmen, plant guard, watchmen and supervisors as defined in the Act.

(b) Refusing to furnish information requested by the Union which is necessary for and relevant to the Union's role as the collective-bargaining representative of the unit employees.

(c) Refusing to continue in effect the terms of the expired collective-bargaining agreement with the Union, after April 7, 1993, by failing to pay employees the appropriate wage rates, holiday pay for employee birthdays, funeral leave, and pension contributions, limiting employees to 2 weeks' paid vacation per year, and failing to maintain the Sickness and Accident plan.

(d) 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 the unit employees whole for their loss of wages and benefits due to the Respondent's failure to continue in effect the terms of the expired collective-bargaining agreement after April 7, 1993, as 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, 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"² to all employees employed by the Respondent since March 29, 1993. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt as directed.

²If 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.

Dated, Washington, D.C. May 31, 1994

James M. Stephens, Member

Dennis M. Devaney, Member

Charles I. Cohen, 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 refuse to bargain collectively with Graphic Communications Union, District Council No. 2, Local 388-M, Graphic Communications International Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All employees listed in the job classifications in Exhibit A of the collective-bargaining agreement between Windsor Art Products, Inc. and Graphic Communications Union, District Council No. 2, Local 388-M, Graphic Communications International Union, AFL-CIO, effective by its terms from April 8, 1990, through April 7, 1993, excluding executives, superintendent, foremen, personnel manager, office employees, salesmen, plant guard, watchmen and supervisors as defined in the Act.

WE WILL NOT refuse to furnish information requested by the Union which is necessary for and relevant to the Union's role as the collective-bargaining representative of the unit employees.

WE WILL NOT refuse to continue in effect the terms of the expired collective-bargaining agreement with the Union after April 7, 1993, by failing to pay employees the appropriate wage rates, holiday pay for employee birthdays, funeral leave, and pension contributions, limiting employees to 2 weeks' paid vacation per year, and failing to maintain the Sickness and Accident Plan.

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 our unit employees whole, with interest, for their loss of wages and benefits due to our

failure to continue in effect the terms of the expired collective-bargaining agreement after April 7, 1993.

WINDSOR ART PRODUCTS, INC.