

Spaulding Corporation and United Food and Commercial Workers Union, Local 550R, affiliated with United Food and Commercial Workers International Union, AFL-CIO, CLC. Cases 25-CA-21505 and 25-CA-21572

May 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by the Union on September 6, 1991, in Case 25-CA-21505 and on October 11, 1991, in Case 25-CA-21572, the General Counsel of the National Labor Relations Board issued a consolidated complaint on November 27, 1991, against Spaulding Corporation, 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,¹ the Respondent failed to file an answer.

On April 29, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On May 3, 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 consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, on February 20, 1992, telephonically contacted the Respondent's attorney who indicated a desire to settle the cases. On April 14, 1992, the Region again contacted the Respondent's attorney who indicated that the Respondent was unable to settle the cases and that the

¹ On December 19, 1991, the copy of the consolidated complaint which was sent to the Respondent by certified mail was returned to the Region marked "unclaimed." On January 29, 1992, a copy of the consolidated complaint was again served by certified mail on the Respondent in care of its corporate registered agent, William Spaulding. This copy was again returned to the Region on February 24, 1992, marked "unclaimed." The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

Respondent did not intend to file an answer. The Region informed the Respondent's attorney of the necessity of filing an answer and of the consequences of failing to do so. In addition, by certified letter dated August 13, 1993, sent to the Respondent at the address where it was known to do business and at the address of its corporate registered agent, and to the Respondent's attorney, the Region advised the Respondent of the necessity of filing an answer, and of the Region's intention to seek summary judgment if an answer were not received by August 20, 1993.

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, an Indiana corporation, has maintained its principal office and places of business in Evansville, Indiana, and is and has been at all material times, engaged in the operation of retail grocery stores. During the 12-month period ending November 27, 1991, the Respondent purchased and received at its Evansville, Indiana facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Indiana and derived gross revenues in excess of \$500,000. 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 the Act:

All employees of the Employer not specifically exempted herein who are engaged in the handling or selling of items classified as groceries. Exempted are one store manager per store, leased bakery employees, guards, professional and supervisory employees as defined in the Labor Management Relations Act of 1947 as amended.

Since about 1968 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 from April 4, 1990, through April 4, 1993. At all times since 1968, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About July 10, 1991, the Respondent unilaterally ceased making contributions to its employees' pension and health and welfare funds, and refused to pay its employees severance and accrued vacation pay. 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 and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct. Since about September 12, 1991, the Union, by letter, has requested that the Respondent furnish the Union with the information outlined in attachment A of the consolidated complaint relating to severance payments and unpaid contributions to the pension and health and welfare funds. This information 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 12, 1991, the Respondent has failed and refused to furnish the Union with the information it requested.

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 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 to make contributions to the employees' pension and health and welfare funds and refusing to pay its employees severance and accrued vacation pay, we shall order the Respondent to make whole its unit employees for any loss of earnings attributable to its unlawful conduct and make all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). 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). 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*, 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*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra. Furthermore, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested. Because it appears from the record that the Respondent has closed its stores, we shall require the Respondent to mail notices to all employees employed at the time the stores closed.

ORDER

The National Labor Relations Board orders that the Respondent, Spaulding Corporation, Evansville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally ceasing to make contributions to the unit employees' pension and health and welfare funds and refusing to pay severance and vacation pay. The unit includes the following employees:

All employees of the Employer not specifically exempted herein who are engaged in the handling or selling of items classified as groceries. Exempted are one store manager per store, leased bakery employees, guards, professional and supervisory employees as defined in the Labor Management Relations Act of 1947 as amended.

(b) Refusing to provide United Food and Commercial Workers Union, Local 550R, affiliated with United Food and Commercial Workers International Union, AFL-CIO, CLC with the information requested on September 12, 1991, relating to severance payments and unpaid contributions to the employees' pension and health and welfare funds.

(c) 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 funds and the unit employees for its failure to make contributions to the employees' pension and health and welfare funds and refusing to pay unit employees' severance and accrued vacation pay, as set forth in the remedy section of this decision.

(b) Provide the Union with the requested information.

(c) 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.

(d) Mail a copy of the attached notice marked "Appendix"² to all employees employed by the Respondent at the time it closed its stores. Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt as directed.

(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. May 31, 1994

James M. Stephens, Member

Dennis M. Devaney, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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."

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 unilaterally cease to make contributions to our unit employees' pension and health and welfare funds or refuse to pay severance or vacation pay. The unit includes the following employees:

All employees of the Employer not specifically exempted herein who are engaged in the handling or selling of items classified as groceries. Exempted are one store manager per store, leased bakery employees, guards, professional and supervisory employees as defined in the Labor Management Relations Act of 1947 as amended.

WE WILL NOT refuse to provide United Food and Commercial Workers Union, Local 550R, affiliated with United Food and Commercial Workers International Union, AFL-CIO, CLC with the information requested on September 12, 1991, relating to severance payments and unpaid contributions to the pension and health and welfare funds

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 whole our unit employees for our failure to make contributions to the employees' pension and health and welfare funds and refusal to pay unit employees' severance and accrued vacation pay.

WE WILL provide the Union with the requested information.

SPAULDING CORPORATION