

**Waltham Clock Company and United Electrical,
Radio and Machine Workers of America (UE),
Local 263. Case 1-CA-30775**

February 7, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon a charge and amended charge filed by United Electrical, Radio and Machine Workers of America (UE), Local 263, the Union, the General Counsel of the National Labor Relations Board issued a complaint on September 30, 1993, against Waltham Clock Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.

On November 26, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On December 1, 1993, 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.

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 November 3, 1993, notified the Respondent that unless an answer were received by November 10, 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 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 Waltham, Massachusetts, has been engaged in the manufacture and sale of aircraft clocks. During the year ending December 31, 1992, the Respondent purchased and received goods valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts and sold and shipped

goods valued in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts. 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 employed by the Respondent at its Waltham facility, but excluding managerial employees, professional employees, office employees, feedback area employees, foremen, assistant foreman, draftsmen, nurses, guards and supervisors as defined in the Act.

On August 3, 1981, the Union was certified as the exclusive collective-bargaining representative of the unit employees. At all times since August 3, 1981, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

About July 15, 1993, the Union and the Respondent reached complete agreement on terms and conditions of employment of unit employees to be incorporated in a collective-bargaining agreement. Since about July 16, 1993, the Union has requested that the Respondent execute a written contract containing the July 15 agreement. Since about August 9, 1993, the Respondent has failed and refused to execute the agreement.

About August 1, 1993, the Respondent terminated a health insurance plan provided for in the July 15 agreement and required employees covered by that plan to switch to another health insurance plan. This matter relates to wages, hours, and other terms and conditions of employment of unit employees and is a mandatory subject for purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent and without giving the Union prior notice and an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has violated Section 8(a)(5) and (1), and has thereby engaged in unfair labor practices affecting commerce within the meaning of 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 failed to execute a written contract containing its July 15 agreement, we shall order that the Respondent execute that agreement, give retroactive effect to that agreement, and make unit employees whole for any loss of pay or expenses incurred as a result of the Respondent's failure to execute and implement the written agreement, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), and as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest on such amounts to be computed as prescribed *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has terminated a health insurance plan provided for in the July 15 agreement and required covered employees to switch to another plan, we shall order the Respondent to reinstate its former insurance coverage and make all payments that have not been made and that would have been made but for the Respondent's unlawful termination of coverage, including any additional amounts applicable as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its unlawful termination of coverage, as set forth in *Kraft Plumbing*, supra, with interest as prescribed in *New Horizons*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Waltham Clock Company, Waltham, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with United Electrical Radio and Machine Workers of America (UE), Local 263, the exclusive representative of its employees in the following appropriate bargaining unit by failure to execute a written contract containing agreed-upon terms and conditions of employment for unit employees and failing to adhere to the agreed-upon health insurance coverage for certain of its employees. That appropriate bargaining unit consists of:

All production and maintenance employees employed by the Respondent at its Waltham facility,

but excluding managerial employees, professional employees, office employees, feedback area employees, foremen, assistant foreman, draftsmen, nurses, 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) Execute and implement the written contract with the Union containing the terms and conditions of employment for unit employees that were agreed to on or about July 15, 1993, give retroactive effect to that agreement, and make whole unit employees for any losses incurred as a result of the Respondent's failure to execute the written contract, with interest as described in the remedy section of this Decision and Order.

(b) Honor the terms of its July 15 agreement with the Union by reinstating its agreed-upon insurance coverage as set forth in the remedy section and make employees whole, with interest, for any losses incurred as a result of the Respondent's termination of a health insurance plan provided for in the agreement.

(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) Post at its facility in Waltham, Massachusetts, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 1, 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.

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 Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(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. February 7, 1994

James M. Stephens, Chairman

Dennis M. Devaney, Member

John C. Truesdale, 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 fail and refuse to bargain collectively with United Electrical, Radio and Machine Workers of America (UE), Local 263, which is the exclusive collective-bargaining representative of our employees in an appropriate unit, by failing to execute a written contract with the Union containing agreed-upon terms and

conditions of employment for employees in the unit. The appropriate bargaining unit consists of:

All production and maintenance employees employed by us at our Waltham facility, but excluding managerial employees, professional employees, office employees, feedback area employees, foremen, assistant foreman, draftsmen, nurses, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to honor the agreed-upon terms and conditions of employment by unilaterally terminating a health insurance plan and requiring employees covered by that plan to switch to another health insurance 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 execute a written contract with the Union containing the unit employees' terms and conditions of employment that were agreed to with the Union on or about July 15, 1993, WE WILL give retroactive effect to that agreement, and WE WILL make whole unit employees for any losses incurred as a result of our failure to execute and implement the written contract, with interest.

WE WILL honor the terms of the agreement with the Union by retroactively reinstating our former insurance coverage and WE WILL make our employees whole, with interest, for our unilateral termination of the insurance plan.

WALTHAM CLOCK COMPANY