

Stairs and Rails, Ltd. and Local 1027, Chicago and Northeast Illinois District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 33-CA-10178

February 7, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon a charge filed by the Union on April 29, 1993, and a first amended charge on June 25, 1993, the General Counsel of the National Labor Relations Board issued a complaint on June 25, 1993, against Stairs and Rails, Ltd., 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,¹ the Respondent failed to file an answer.

On December 3, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On December 7, 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 August 11, 1993, notified the Respondent that unless an answer were received by August 25, 1993, a Motion for Summary Judgment would be filed. A copy of this letter was personally served on Respondent's president on September 30, 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

¹ Although Respondent failed to claim the certified mail containing the charge, amended charge, and complaint and notice of hearing, these documents were personally served on John Kendall, president of Respondent, at Kendall's home address in Crystal Lake, McHenry County, Illinois, on September 30, 1993, by the deputy sheriff for McHenry County, Illinois.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Illinois corporation, with an office and place of business in Cary, Illinois, has been engaged in the business of manufacturing stairs and railings. During the 12 months preceding June 25, 1993, Respondent, in conducting its business operations, sold and shipped from its Cary, Illinois facility goods valued in excess of \$50,000 directly to points outside the State of Illinois and purchased and received at its Cary, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois. 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 labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees engaged in the production of stairs, railing and related millwork at the Employer's plant in Cary, Illinois; but excluding all clerical employees, professional employees, clerks, guards and supervisors as defined in the Act.

Under the terms of settlement agreement in Case 33-CA-9225, approved by the Acting Regional Director for Region 33 of the Board on April 26, 1991, the Respondent agreed to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. At all times since April 26, 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About November 18, 1992, the Union and Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement. Since January 1, 1993, the Union has requested that the Respondent execute a written contract containing the November 1, 1992 agreement, and the Respondent has refused.

Since on or about January 1, 1993, the Respondent has ceased paying premiums for health insurance for unit employees. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for 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 Re-

spondent with respect to this conduct and the effects of this conduct.

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, we shall order the Respondent to execute a written contract containing the terms and conditions of employment of the unit as agreed by the parties on November 18, 1992, 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. 661 F.2d 940 (9th Cir. 1981), respectively, with interest on such amounts to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by ceasing to pay premiums for health insurance for its unit employees, we shall order the Respondent to restore the employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Stairs and Rails, Ltd., Cary, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing, since January 1, 1993, to execute the collective-bargaining agreement as agreed to with the Union on November 18, 1992.

(b) Ceasing to pay premiums for health insurance for unit employees since on or about January 1, 1993. The unit consists of the following employees:

All full-time and regular part-time production and maintenance employees engaged in the production of stairs, railing and related millwork at the Employer's plant in Cary, Illinois; but excluding all

clerical employees, professional employees, clerks, guards and supervisors as defined in the Act.

(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) Execute and implement the written contract with the Union containing the terms and conditions of employment for the unit employees that were agreed about November 18, 1992, give retroactive effect to that agreement, and make the employees whole for 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.

(b) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to pay premiums for health insurance for unit employees since January 1, 1993.

(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 Cary, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 33, 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.

(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

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."

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 or refuse to execute the collective-bargaining agreement as agreed to with the Union on November 18, 1992.

WE WILL NOT cease paying premiums for health insurance for unit employees since on or about January 1, 1993. The unit consists of the following employees:

All full-time and regular part-time production and maintenance employee engaged in the production

of stairs, railing and related millwork at our plant in Cary, Illinois; but excluding all clerical employees, professional employees, clerks, guards and supervisors as defined in the Act.

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 terms and conditions of employment of the unit employees that were agreed on about November 18, 1992, WE WILL give retroactive effect to that agreement, and WE WILL make unit employees whole for losses incurred as a result of our failure to execute and implement the written contract, with interest.

WE WILL make employees whole for any loss of benefits or other expenses suffered as a result of our failure to pay premiums for health insurance for our unit employees since January 1, 1993, with interest.

STAIRS AND RAILS, LTD.