

Frank's Restaurant, Inc. and Local 217, Hotel and Restaurant Employees and Bartenders Union, Hotel Employees and Restaurant Employees International Union, AFL-CIO. Case 34-CA-6483

June 14, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by Local 217, Hotel and Restaurant Employees and Bartenders Union, Hotel Employees and Restaurant Employees International Union, AFL-CIO (the Union) on February 2, 1994, the General Counsel of the National Labor Relations Board issued a complaint on March 31, 1994, against Frank's Restaurant, 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 charge and complaint, the Respondent failed to file an answer.

On May 10, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On May 16, 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 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 April 19, 1994, notified the Respondent that unless an answer were received by close of business April 27, 1994, 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

At all material times the Respondent, a corporation with an office and place of business in Hartford, Connecticut, has been engaged in the operation of a public

restaurant selling food and beverages. During the 12-month period ending February 28, 1994, the Respondent, in conducting its operations derived gross revenues in excess of \$500,000, and purchased and received at its facility goods valued in excess of \$5000 directly from points outside the State of Connecticut. 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 (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All bartenders, waiters, waitresses and busboys employed by the Respondent; excluding all other employees and supervisors as defined in the Act.

Since about 1977 and at all material times, Local 217 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 May 1, 1991, to October 1, 1994.

At all times since 1977, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About September 14, 1993, the Respondent and Local 217 entered into an agreement requiring the Respondent to, inter alia:

(a) Effective December 1, 1993, reinstate eligible employees in the [u]nit to their group health insurance coverage at \$135 per month;

(b) Effective January 1, 1994, reimburse all affected employees in the [u]nit an additional \$135 per month for their out of pocket expenses arising out of [the] Respondent's prior discontinuance of health insurance coverage.

Since about December 1, 1993, the Respondent has failed to continue in effect all the terms and conditions of the agreements described above, by failing to reinstate health insurance coverage for employees in the unit.

Since about January 1, 1994, the Respondent has also failed to continue in effect all the terms and conditions of the agreements described above by failing to reimburse all affected employees in the unit for their expenses related to the prior discontinuance of health insurance coverage.

Although the subjects set forth above 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 the conduct described above unilaterally and without prior notice to Local 217 and without affording Local 217 an opportunity to bargain with the Respondent 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 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 Sections 8(a)(1) and (5) and 8(d) 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 since December 1, 1993, to reinstate health insurance coverage for unit employees, and failing since January 1, 1994, to reimburse affected unit employees for their expenses related to the Respondent's prior discontinuance of health insurance coverage, as required by the 1991-1994 collective-bargaining agreement and the September 14, 1993 agreement, we shall order the Respondent to comply with the agreements and to make whole the employees by reimbursing them for any expenses ensuing from the Respondent's failure to reinstate health insurance coverage as required by the agreements, 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).¹

ORDER

The National Labor Relations Board orders that the Respondent, Frank's Restaurant, Inc., Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Local 217, Hotel and Restaurant Employees and Bartenders Union, Hotel Employees and Restaurant Employees International Union, AFL-CIO, as the exclu-

¹We leave to compliance any issues as to the amount, if any, owed to employees for their expenses over and above the amount set forth in the agreements.

sive collective-bargaining representative of its employees in the unit described below, by failing to reinstate health insurance coverage for unit employees and to reimburse affected unit employees for their expenses related to its prior discontinuance of health insurance coverage, as required by the 1991-1994 collective-bargaining agreement and the September 14, 1993 agreement with the Union:

All bartenders, waiters, waitresses and busboys employed by the Respondent; excluding all other employees 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) Comply with the terms of the 1991-1994 collective-bargaining agreement and the September 14, 1993 agreement by reinstating health insurance coverage for unit employees and reimbursing affected unit employees for their out-of-pocket expenses related to its prior discontinuance of health insurance coverage.

(b) Make the unit employees whole by reimbursing them for any expenses ensuing from its failure to reinstate their health insurance coverage as required by the 1991-1994 collective-bargaining agreement and the September 14, 1993 agreement in the manner set forth in the remedy section of this decision.

(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 Hartford, Connecticut, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 34, 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.

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."

(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. June 14, 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 fail and refuse to bargain collectively with Local 217, Hotel and Restaurant Employees and Bartenders Union, Hotel Employees and Restaurant Employees International Union, AFL-CIO, as the ex-

clusive collective-bargaining representative of the employees in the unit described below, by failing to reinstate health insurance coverage for the unit employees and to reimburse affected unit employees for their expenses related to our prior discontinuance of health insurance coverage, as required by the 1991-1994 collective-bargaining agreement and our September 14, 1993 agreement with the Union:

All bartenders, waiters, waitresses and busboys employed by us; excluding all other employees 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 comply with the 1991-1994 collective-bargaining agreement and the September 14, 1993 agreement by reinstating health insurance coverage for unit employees and reimbursing affected unit employees for their expenses related to the prior discontinuance of health insurance coverage, as required by the agreements.

WE WILL make whole unit employees by reimbursing them for any expenses ensuing from our failure to reinstate their health insurance coverage as required by the 1991-1994 collective-bargaining agreement and the September 14, 1993 agreement, to the extent those agreements do not already provide for such expenses, plus interest.

FRANK'S RESTAURANT, INC.