

Carpenters District Council of Greater St. Louis, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Ortmann Stair Co., Inc. Cases 14-CP-539 and 14-CP-542

September 15, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

Upon a charge filed by Ortmann Stair Co., Inc. (the Employer) in Case 14-CP-539 on December 15, 1993, and a charge filed in Case 14-CP-542 on April 26, 1994, the General Counsel of the National Labor Relations Board issued an Order Revoking Settlement Agreement, Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on May 23, 1994, against Carpenters District Council of Greater St. Louis, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, the Respondent, alleging that it has violated Section 8(b)(7)(C) of the National Labor Relations Act. On June 15, 1994, the Respondent filed its answer to the consolidated complaint. However, by letter dated August 4, 1994, the Respondent withdrew its answer and failed to file another.

On August 12, 1994, the General Counsel filed a Motion for Default Summary Judgment with the Board. On August 17, 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 Default 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 Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Respondent has withdrawn its answer. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the consolidated complaint must be considered to be admitted to be true.¹

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, based on the withdrawal of the Respondent's answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer is and has been at all material times, a corporation with an office and place of business in Pacific, Missouri, engaged in the manufacture and installation of custom staircases, and authorized to do business under the laws of the State of Missouri. During the 12-month period ending April 30, 1994, the Employer in conducting its business operations, purchased and received at its Pacific, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri. We find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About October 27, 1993, the Respondent demanded that the Employer recognize or bargain with it as the collective-bargaining representative of the shop employees employed by the Employer. Thereafter, from about November 1 to about December 22, 1993, and from about March 21 to about May 9, 1994, the Respondent picketed the Employer at its Pacific, Missouri facility and at various other locations in the St. Louis metropolitan area where the Employer's delivery truck makes deliveries with picket signs stating:

Notice to the Public, Ortmann Stair Co. is performing carpentry work at this shop at wage rates and fringes below standards obtained by our Union; we have no other dispute with any other Employer; Carpenters District Council of St. Louis, AFL-CIO.

Since about March 23, 1994, the Respondent also engaged in organizational activities among certain employees of the Employer.

The Respondent engaged in the above conduct in order to force or require the Employer to recognize and bargain with the Respondent as the representative of certain employees of the Employer and to force or require certain employees of the Employer to accept or select the Respondent as their collective-bargaining representative. At no material time has the Respondent been certified by the Board as the collective-bargaining representative of the shop employees employed by the Employer. The Respondent engaged in the above conduct without a valid petition under Section 9(c) of the

Act having been filed within a reasonable period of time from the commencement of the picketing.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has picketed the Employer in order to force or require the Employer to recognize and bargain with the Respondent as the representative of certain employees of the Employer and to force or require certain employees of the Employer to accept or select the Respondent as their collective-bargaining representative without the Respondent having been certified by the Board as the collective-bargaining representative of the shop employees of the Employer and without a valid petition under Section 9(c) of the Act having been filed within a reasonable period of time from the commencement of the picketing, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(C) 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.

ORDER

The National Labor Relations Board orders that the Respondent, Carpenters District Council of Greater St. Louis, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, St. Louis, Missouri, its officers, agents and representatives, shall

1. Cease and desist from picketing or causing to be picketed Ortmann Stair Co., Inc. where an object thereof is to force or require that employer to recognize or bargain with the Respondent as the representative of its employees, or to force or require that employer's employees to accept or select the Respondent as their collective-bargaining representative at a time when the Respondent is not certified as such representative and where such picketing has been conducted without a petition under Section 9(c) of the Act having been filed within a reasonable period of time from the commencement of the picketing, not to exceed 30 days from the start of such picketing.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business offices and meeting places, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 14, 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 members 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.

(b) Furnish the Regional Director for Region 14 signed copies of the notice for posting by Ortmann Stair Co., Inc., if willing, in places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
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 picket or cause to be picketed Ortmann Stair Co., Inc. where an object thereof is to force or require that employer to recognize or bargain with us as the representative of its employees, or to force or require that employer's employees to accept or select us as their collective-bargaining representative at a time when we are not certified as such representative and where such picketing has been conducted without a petition under Section 9(c) of the Act having been filed within a reasonable period of time from the commencement of the picketing, not to exceed 30 days from the start of such picketing.

CARPENTERS DISTRICT COUNCIL OF
GREATER ST. LOUIS, AFFILIATED WITH
THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,
AFL-CIO

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."