

Rhodes Heating & Roofing Co. and United Union of Roofers, Waterproofers and Allied Workers Local No. 20. Case 17-CA-17332

September 15, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

Upon a charge filed by the United Union of Roofers, Waterproofers and Allied Workers, Local No. 20 (the Union), on April 12, 1994, the General Counsel of the National Labor Relations Board issued a complaint on June 20, 1994, against Rhodes Heating & Roofing Co., 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 and complaint, the Respondent failed to file an answer.

On August 8, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On August 9, 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 July 19, 1994, notified the Respondent that unless an answer were received by August 4, 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

The Respondent, a corporation, with an office and place of business in Lawrence, Kansas, has been engaged in the installation of heating and air-conditioning equipment and duct work. During the year end-

ing October 30, 1993, the Respondent purchased and received at its Lawrence, Kansas facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Kansas. 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 workmen in the roofing trade employed by the Respondent in the Counties of Leavenworth, Wyandotte, Johnson, Miami, Linn, Anderson, Franklin, Douglas, and Jefferson in Kansas, and Bates, Benton, Carroll, Cass, Cedar, Clay, Chariton, Jackson, Johnson, Lafayette, Pettis, Platte, Ray, and Saline in Missouri, but excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees.

At all material times the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in a recognition agreement dated February 11, 1993, and successive collective-bargaining agreements, the most recent of which is effective August 23, 1993 to June 1, 1996. At all times since February 11, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

At all material times the Respondent has failed to make certain contractually required contributions to the health and welfare fund, local pension fund, national pension fund, vacation fund, United Way, and apprentice fund due for the months of November and December 1993.

At all material times the Respondent has also failed to remit to the Union dues which the Respondent deducted from employees' paychecks during the months of November and December 1993.

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 has engaged in the conduct described above without prior notice to the Union, without affording the Union the opportunity to bargain with the Respondent with respect to this conduct, and without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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 contractually required payments to various fringe benefit funds due for the months of November and December 1993, we shall order the Respondent to make whole its unit employees by making all such payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *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).¹

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union dues that were deducted from the pay of unit employees during November and December 1993, we shall order the Respondent to remit such withheld dues to the Union, with interest, to be computed in the manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Rhodes Heating & Roofing Co., Lawrence, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ Although the complaint generally alleges that the various funds are mandatory subjects of bargaining, there is no further discussion or precedent cited in the motion in support of finding that United Way contributions, specifically, constitute a mandatory subject of bargaining for which a remedy would be warranted in this proceeding. We shall leave this issue to compliance.

(a) Failing and refusing to bargain with the United Union of Roofers, Waterproofers and Allied Workers, Local No. 20, as the exclusive collective-bargaining representative of the employees in the following unit, by failing to make contributions to various benefit funds on behalf of employees and to remit dues to the Union as required by the 1993–1996 collective-bargaining agreement:

All workmen in the roofing trade employed by the Respondent in the Counties of Leavenworth, Wyandotte, Johnson, Miami, Linn, Anderson, Franklin, Douglas, and Jefferson in Kansas, and Bates, Benton, Carroll, Cass, Cedar, Clay, Chariton, Jackson, Johnson, Lafayette, Pettis, Platte, Ray, and Saline in Missouri, but excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees.

(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 1993–1996 collective-bargaining agreement with the Union.

(b) Make whole the unit employees by making all payments to the various fringe benefit funds due for November and December 1993, as required by the 1993–1996 collective-bargaining agreement, and by reimbursing employees for any expenses ensuing from the failure to make the required payments, in the manner set forth in the remedy section of this decision.

(c) Make the Union whole for any losses resulting from the Respondent's failure to remit union dues deducted from the pay of unit employees during November and December 1993, in the manner set forth in the remedy section of this decision.

(d) 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.

(e) Post at its facility in Lawrence, Kansas, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 17, 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 Re-

² 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."

spondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) 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
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 with United Union of Roofers, Waterproofers and Allied Workers, Local No. 20, as the exclusive collective-bargaining representative of the following unit by failing to make contributions to various benefits funds on behalf of employees and by failing to remit to the Union dues as required by the 1993–1996 collective-bargaining agreement:

All workmen in the roofing trade employed by us in the Counties of Leavenworth, Wyandotte, John-

son, Miami, Linn, Anderson, Franklin, Douglas, and Jefferson in Kansas, and Bates, Benton, Carroll, Cass, Cedar, Clay, Chariton, Jackson, Johnson, Lafayette, Pettis, Platte, Ray, and Saline in Missouri, but excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees.

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 terms of the 1993–1996 collective-bargaining agreement with the Union.

WE WILL make whole the unit employees by making all payments to the various fringe benefit funds due for November and December 1993, as required by the 1993–1996 collective-bargaining agreement, and by reimbursing employees for any expenses ensuing from our failure to make the required payments.

WE WILL make the Union whole for any losses resulting from our failure to remit union dues deducted from the pay of unit employees during November and December 1993.

RHODES HEATING & ROOFING CO.