

Mid-States Elevator Co., Inc. and International Union of Elevator Constructors, Local 12, AFL-CIO. Case 17-CA-17276

September 27, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge and amended charge filed by the International Union of Elevator Constructors, Local 12, AFL-CIO (the Union) on March 16 and April 15, 1994, respectively, the General Counsel of the National Labor Relations Board issued a complaint on April 20, 1994, against Mid-States Elevator Co., Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On May 23, 1994, the Respondent filed an answer to the complaint. However, on August 19, 1994, the Respondent withdrew its answer.

On August 26, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On August 30, 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, as indicated above, the undisputed allegations in the Motion for Summary Judgment disclose that although the Respondent initially filed an answer to the complaint, it subsequently withdrew its answer. Such a withdrawal has the same effect as the failure to file an answer, i.e., the allegations are considered to be admitted.¹

Accordingly, as the Respondent has withdrawn its answer to the complaint, and in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for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 See *Maislin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation with an office and place of business in Kansas City, Missouri, has been engaged in the construction of passenger and freight elevators. During the 12-month period ending April 1, 1994, the Respondent, in conducting its business operations, purchased and received at its facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Missouri, and performed services valued in excess of \$50,000 in States other than the State of Missouri. 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 elevator constructor mechanics and elevator constructor helpers in the employ of Respondent engaged in the installation, repair, maintenance and servicing of all elevator equipment and components as defined in Article IV, Par. 2 and Article IV(A) of the standard agreement between the International Union of Elevator Constructors, AFL-CIO and the National Elevator Industry, Inc., but EXCLUDING office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

About June 1, 1993, the Respondent entered into an agreement binding it to the terms and conditions of employment of the collective-bargaining agreement between the Union and the National Elevator Industry, Inc. effective June 1, 1993, through July 8, 1997, and agreed to be bound to such future agreements unless timely notice was given.

The Respondent, an employer engaged in the building and construction industry, as described above, granted recognition to the Union as the limited exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in the agreement.

Since about September 16, 1993, the Respondent has failed and refused to continue in effect all the terms and conditions of the collective-bargaining agreement by abrogating the provisions concerning wages, vacation pay, fringe benefit fund contributions, and the union-security clause, and by failing and refus-

ing to maintain other terms and conditions of employment set forth therein.

Although the foregoing terms and conditions of employment are mandatory subjects for the purpose of collective bargaining, the Respondent engaged in the acts and conduct described above 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 and in good faith with the Union as the limited 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 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, we shall order the Respondent to comply with the terms and conditions of the 1993-1997 collective-bargaining agreement with the Union including, among other things, the provisions concerning wages, vacation pay, fringe benefit fund contributions, and the union-security clause. In addition, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its failure to comply with the wages and vacation pay provisions of the agreement since September 16, 1993. Backpay shall be computed in accordance with *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). We shall further order the Respondent to make whole its unit employees by making all delinquent benefit fund contributions retroactive to September 16, 1993, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and also to reimburse the unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, *supra*, with interest as prescribed in *New Horizons for the Retarded*, *supra*. Finally, we shall order the Respondent to reimburse the Union for any loss of dues ensuing from Respondent's failure to comply with the union-security provision since September 16, 1993, with interest as prescribed in *New Horizons for the Retarded*, *supra*.

ORDER

The National Labor Relations Board orders that the Respondent, Mid-States Elevator Co., Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the International Union of Elevator Constructors, Local 12, AFL-CIO, as the limited exclusive collective-bargaining representative of the employees in the following unit by failing to continue in effect all the terms and conditions of its 1993-1997 collective-bargaining agreement with the Union by abrogating the provisions concerning wages, vacation pay, fringe benefit fund contributions, and the union-security clause, and by failing to maintain other terms and conditions of employment of the 1993-1997 agreement:

All elevator constructor mechanics and elevator constructor helpers in the employ of Respondent engaged in the installation, repair, maintenance and servicing of all elevator equipment and components as defined in Article IV, Par. 2 and Article IV(A) of the standard agreement between the International Union of Elevator Constructors, AFL-CIO and the National Elevator Industry, Inc., but EXCLUDING office clerical employees, professional employees, guards and 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 all the terms and conditions of the 1993-1997 collective-bargaining agreement.

(b) Make the unit employees whole for any loss of earnings and benefits and for expenses ensuing from its failure to comply with the wages, vacation pay, and fringe benefit fund provisions of the 1993-1997 agreement since September 16, 1993, with interest, as set forth in the remedy section of this decision.

(c) Reimburse the Union for any loss of dues resulting from its failure to comply with the union-security provision of the 1993-1997 agreement since September 16, 1993, with interest, as 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, time-cards, 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 Kansas City, Missouri, 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 Respondent 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.

Dated, Washington, D.C. September 27, 1994

William B. Gould IV, Chairman

James M. Stephens, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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."

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 the International Union of Elevator Constructors, Local 12, AFL-CIO, as the limited exclusive collective-bargaining representative of the employees in the following unit by failing to continue in effect all the terms and conditions of our 1993-1997 collective-bargaining agreement with the Union by abrogating the provisions concerning wages, vacation pay, fringe benefit fund contributions, and the union-security clause, and by failing to maintain other terms and conditions of employment of the 1993-1997 agreement:

All elevator constructor mechanics and elevator constructor helpers in our employ engaged in the installation, repair, maintenance and servicing of all elevator equipment and components as defined in Article IV, Par. 2 and Article IV(A) of the standard agreement between the International Union of Elevator Constructors, AFL-CIO and the National Elevator Industry, Inc., but EXCLUDING office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL comply with all the terms and conditions of the 1993-1997 collective-bargaining agreement.

WE WILL make the unit employees whole for any loss of earnings and benefits and for expenses ensuing from our failure to comply with the wages, vacation pay, and fringe benefit fund provisions of the 1993-1997 agreement since September 16, 1993, with interest.

WE WILL reimburse the Union for any loss of dues resulting from our failure to comply with the union-security provision of the 1993-1997 agreement since September 16, 1993, with interest.

MID-STATES ELEVATOR CO., INC.