

**Supro Neon Corporation and International Brotherhood of Electrical Workers, Local 1968, AFL-CIO.** Case 2-CA-26549

July 14, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND DEVANEY

On March 23, 1994, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions<sup>1</sup> and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and order that the Respondent, Supro Neon Corporation, Yonkers, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup>No exceptions were filed to the judge's finding that the Respondent violated Sec. 8(a)(1) and (5) by failing to honor the provisions of the settlement agreement reached between the parties on October 29, 1992, resolving the issues raised in the unfair labor practice charge in Case 2-CA-25964.

<sup>2</sup>The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Julie L. Kaufman, Esq.*, for the General Counsel.  
*Stuart Kirshenbaum, Esq.*, for the Respondent.  
*Vincent F. O'Hara, Esq. (Holm, Krisel & O'Hara)*, of New York City, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that Supro Neon Corporation (the Respondent), in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), has failed and refused to honor requests by the International Brotherhood of Electrical Workers, Local 1968, AFL-CIO (the Union) to sign an agreement after a settlement as to its terms was reached on August 29, 1992, referring to both a settlement agreement resolving issues raised by an earlier unfair labor practice charge filed by the Union and to an accord as to the provisions of a renewal collective-bargaining agreement. All dates hereafter are for 1992 unless stated otherwise.

The Respondent's answer, as amended at the hearing, denies that agreement was reached.

I heard this case in New York City on January 5, 1994. Upon the entire record,<sup>1</sup> including my observation of the demeanor of the witnesses and after considering the briefs filed by counsel for the General Counsel, the Union and the Respondent, I make the following

FINDINGS OF FACT

I. COMMERCE

The Respondent is a corporation of the State of New York engaged in the manufacturing, installation, and maintenance of neon and electrical signs. In its operations annually, it meets the Board's nonretail standard for the assertion of jurisdiction.

II. LABOR ORGANIZATION

For about 30 years, the Union has represented the employees of the Respondent who do the manufacturing, installing, maintenance, and related work on its signs. Its last signed agreement with the Respondent was effective January 1, 1990, to December 31, 1992.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A meeting was held on October 29 at a restaurant between the Union and the Respondent. The union officials present were Diana Kaman, its president then, Steven Kaman, then its assistant business manager, and its former attorney, Michael Badman. Present for the Respondent were its President Michael Flora, its Secretary-Treasurer Dominick Tolli, and its Attorney Stuart Kirshenbaum. The meeting lasted for about 4 hours.

Diane Kaman gave the following account that was corroborated on all essential points by Steven Kaman's. The meeting had been scheduled to discuss settling the unfair labor practice charge the Union had filed in August in Case 2-CA-25964, alleging that the Respondent had unlawfully discharged two named employees. At the outset of the meeting, Tolli insisted that they also discuss terms for a collective-bargaining agreement to replace the one then in effect, scheduled to expire on December 31, 1992. Tolli also stated that any settlement of the unfair labor practice case would be contingent upon their reaching agreement on a new contract. She and Tolli then discussed terms for resolving the unfair labor practice case. In doing so, she reduced the total wage and benefit demands for the two employees from \$12,000 to \$5500 with allowance for the Respondent to pay moneys due trust funds on their behalf over a period of time. Tolli agreed to the lowered demands. She noted on a sheet of paper the terms thereof. At that point, the union officials caucused to outline demands for the renewal contract. When the meeting reconvened, she presented those demands to Tolli. In the ensuing negotiations, she, inter alia, lowered these demands to which Tolli assented, agreed to issue a side letter sought by Tolli pertaining to the Union's efforts to reach out to employees of nonunion competitors of the Respondent, agreed to set up a special category for newly hired

<sup>1</sup>The motion filed by counsel for the General Counsel to correct obvious transcript errors is granted. The motion is added to the formal papers as G.C. Exh. 1(f).

employees under which they would initially receive lower wages, and obtained agreement that the Respondent would in essence see that one of its employees would comply with the union-security provisions of the collective-bargaining agreement. Having thus reached an accord on the renewal contract, she gave Kirshenbaum her notes thereon, which included her notes, referred to above, as to the terms settling the unfair labor practice charge. He and Tolli reviewed these notes and agreed that they were correct. She asked that everyone initial the notes to confirm them. Kirshenbaum, who had been anxious to leave the meeting to attend his daughter's birthday party, stated that was not necessary and that they could all show their trust by handshakes. Reluctantly, the Union's officials shook hands with the Respondent's. The meeting ended with Badman telling Kirshenbaum that he would send him drafts incorporating the agreements reached.

Tolli was the only witness for the Respondent. He testified very generally, asserting that the Union was there only to try to "jam (an agreement) down his throat." He acknowledged that there was some discussion of the items referred to in Diana Kaman's testimony, including the fact that she kept notes while at the meeting and that Kirshenbaum told Badman, while leaving, to "put it in draft form and send it to us."

I credit the Kamans' accounts as they were vivid and detailed and as the subsequent events buttressed them.

On November 4, Badman sent Kirshenbaum a draft "Stipulation of Settlement" which set out the terms agreed upon on October 29 as to the unfair labor practice charge, one provision of which was that the Union would request withdrawal of that charge. Bauman's letter accompanying that draft spelled out seven points agreed on for the renewal contract. On November 12, Kirshenbaum responded. He requested that a nonadmissions clause be added to the stipulation of settlement and observed, as to the seven points, that one contained a typographical error and that the Union should clarify minor matters on two of the other points. Badman wrote him on November 19 to correct the typographical error and to clarify the two other points.

On December 4, Badman wrote Kirshenbaum, enclosing a settlement agreement which incorporated the terms of the agreement reached as to the unfair labor practice charge. In his letter, he advised Kirshenbaum that if this matter is not settled within 10 days, the charge would be reactivated. As discussed below, the Union had asked that the charge be withdrawn.

On December 11, he sent Kirshenbaum a draft of the renewal collective-bargaining agreement, along with a copy of the side letter agreed on at the October 29 meeting.

Kirshenbaum did not reply to either of these letters.

Steven Kaman met with Tolli and Flora on February 11, 1993. He related credibly that Tolli stated that he wanted the Union to first withdraw the charge (in Case 2-CA-25964) and that the Respondent would then sign the contract. When Kaman demurred, Tolli complained that the Respondent was losing money. According to Kaman, the discussion then "went South," in that Flora said, among other things, that the Union "could go to hell" and that he "would spend moneys on attorneys first." Steven Kaman also testified that, several days later, he tried to reach Tolli by telephone and that he spoke with Flora instead, who told him that there was

no settlement, that they would "go the hard way, to court." I credit his accounts as to those discussions.

On February 19, 1993, Badman wrote Kirshenbaum. With his letter, he enclosed two copies of the renewal collective-bargaining agreement. He requested that Respondent sign one copy and return it. There was no response. On March 25, 1993, he repeated his request in another letter to Kirshenbaum, again to no avail.

On December 2, Badman had written the Board's Regional Office to "conditionally withdraw" the charge in Case 2-CA-25964, noting that the withdrawal "is contingent on a successful settlement being reached by the parties." On December 16, the Regional Director approved the conditional request. On June 28, 1993, the Regional Director approved the Union's request to withdraw that charge, advising that the complaint in the instant case is being issued. The import of the foregoing, apparent from the testimony of Steven Kaman is that unfair labor practice charge in Case 2-CA-25964 is part of "the case we're here today about."

As of the date of the hearing, the Respondent had one employee performing unit work. Flora and Tolli worked with him. The two employees named in the unfair labor practice charge in Case 2-CA-25964 were on layoff and also on a preferential recall list.

The Respondent's failure to sign the agreed-on contract, despite repeated requests therefor by the Union, constitutes a breach of its duty to bargain collectively as set out in Section 8(d) of the Act. See *Dynaserv Industries*, 307 NLRB 326 (1992).

I find that the Respondent's failure to honor the provisions of the settlement agreement pertaining to the resolution reached on August 29 of the issues raised by the unfair labor practice charge in Case 2-CA-25964 is also a violation of its duty to bargain collectively. See *Standard Roofing Co.*, 290 NLRB 193, 196 (1988).

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act by having failed and refused to honor the requests of the Union to execute a collective-bargaining agreement containing the wage rates, hours, and other terms and conditions of employment of its employees who are engaged in the manufacture, installation, and maintenance of neon and electrical signs and by having failed to honor the settlement agreement which resolved the issues involved in Case 2-CA-25964.

4. The foregoing unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Respondent has engaged in an unfair labor practice, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall further recommend that the Respondent be ordered to sign the collective-bargaining-agreement sent it on February 19, 1993, and the settlement agreement sent it on December 9, 1992. The Respondent shall also be ordered to

make whole its employees for all losses they incurred by reason of the Respondent's failure to honor those agreement to be computed in accordance with the formula set out in *F. W. Woolworth Co.*, 90 NLRB 289 (1977), with interest thereon as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Union will be reimbursed by the Respondent for all dues and initiation fees owed by the Respondent under the agreement under the formula in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest under *New Horizons*, supra. Moneys due by the Respondent to the benefit funds are to be paid in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 2 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The Respondent, Supro Neon Corporation, Yonkers, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the Union, International Brotherhood of Electrical Workers, Local 1968, AFL-CIO by not honoring the Union's request to sign agreements on which accord has been reached.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of its employees of their rights under Section 7 of the Act.

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

(a) Sign and forward to the Union the collective-bargaining agreement sent it on February 19, 1993, and the settlement agreement sent it on December 4, 1992.

(b) Make whole the employees, the Union and the trust funds for all losses suffered as a result of its failure to honor the provisions of those agreements—in accordance with the methods set out in the remedy section of the 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.

<sup>2</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Post at its facility in Yonkers, New York, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, 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.

<sup>3</sup>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."

#### 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 sign any contract containing terms we had agreed on with the Union, International Brotherhood of Electrical Workers, Local 1968, AFL-CIO when requested to do so by the Union.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

WE WILL sign and honor the agreements sent us by the Union on December 4, 1992, and February 19, 1993.

WE WILL make whole, with interest, our employees, the Union, and trust funds for all losses incurred as a result of our failure to comply with the provisions of those agreements.

SUPRO NEON CORPORATION