

**Frison Building Maintenance, Inc. and Local 79,
Service Employees International Union, AFL-CIO.** Case 7-CA-34995

September 29, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge and amended charges filed by Local 79, Service Employees International Union, AFL-CIO on September 14, 1993, October 27, 1994, and June 24, 1994, the General Counsel of the National Labor Relations Board issued a complaint on June 28, 1994, against Frison Building Maintenance, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charges, and complaint, the Respondent failed to file an answer.

On August 22, 1994, the General Counsel filed a Motion for Default Summary Judgment with the Board. On August 24, 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 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 Default Summary Judgment disclose that the Region, by letter dated July 19, 1994, notified the Respondent that unless an answer were received by August 2, 1994, a Motion for Default 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 Default 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 at 10800 Puritan, Detroit, Michigan, has been engaged in providing building maintenance

services. During the calendar year ending December 31, 1993, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000, which services were performed for Ameritech Corporation and/or Michigan Bell Telephone Company, with entities each during the same period of time, were engaged directly in interstate commerce as telephone companies. 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 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time janitorial employees employed by the Employer at the Michigan Bell/Ameritech Oakman Building, 822 Oakman Boulevard, Detroit, Michigan; and the Michigan Bell/Ameritech Office Center, 23500 Northwestern Highway, Southfield, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

Since December 13, 1990, by virtue of a Certification of Representative which issued in Case 7-RC-19379, the Union has been the exclusive representative for the purposes of collective bargaining of the employees in the unit. By virtue of Section 9(a) of the Act, the Union has been, and is now, the exclusive representative of all employees in the unit.

At all material times, the Respondent and the Union have been signatory to a collective-bargaining agreement which has been effective by its terms from September 1, 1991, until August 31, 1994. Since about June 1, 1993, the Respondent has refused to pay contractual holiday pay to certain regular part-time employees. Since about March 30, 1993, the Respondent has refused to pay contractual wage rates to certain unit employees during their probationary period. Since about January 1, 1994, the Respondent has refused to pay certain unit employees who are not members of the Union the contractual wage increase which came due on that date. Between about July 19, 1993, and January 25, 1994, the Respondent unilaterally reduced the daily working hours of part-time unit employees from 5 hours to 4 hours each day, without notice to and/or bargaining with the Union. These subjects 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 changed the hours as described above in retaliation for the filing of a group grievance on behalf of part-time

employees with respect to requiring the Respondent to pay them holiday pay.

CONCLUSIONS 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 Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act. By refusing to pay the contractual wage increase to unit employees who are not members of the Union and by reducing the daily working hours of part-time employees in retaliation for the filing of a grievance, the Respondent has also been discriminating against employees with respect to their hire or tenure of terms or conditions of employment thereby encouraging or discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) 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 violated Section 8(a)(5) and (1) by unilaterally refusing to pay contractual holiday pay to certain regular part-time unit employees since June 1, 1993, and refusing to pay contractual wage rates to certain unit employees during their probationary period since March 30, 1993; and violated Section 8(a)(3), (5), and (1) by refusing to pay, since January 1, 1994, to certain unit employees who are not members of the Union the contractual wage increase which came due on that date and unilaterally reducing the daily working hours of part-time unit employees from 5 hours to 4 hours between July 19, 1993, and January 25, 1994, we shall order the Respondent to honor the terms of the agreement, to rescind the unlawful changes, and make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), and *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with respect to the reductions in hours, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Frison Building Maintenance, Inc., De-

troit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to pay contractual holiday pay to regular part-time employees.

(b) Refusing to pay contractual wage rates to unit employees during their probationary period.

(c) Refusing to pay unit employees who are not members of Local 79, Service Employees International Union, AFL-CIO, contractual wage increases.

(d) Unilaterally reducing the daily working hours of part-time unit employees without notice to and/or bargaining with the Union or in retaliation for the filing of a group grievance on behalf of part-time employees with respect to requiring the Respondent to pay them holiday pay.

(e) 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) Honor the terms of the 1991-1994 collective-bargaining agreement and rescind the unlawful change in working hours for part-time employees.

(b) Make the unit employees whole, with interest, for any loss of earnings attributable to its unlawful conduct. The unit includes the following employees:

All full-time and regular part-time janitorial employees employed by the Employer at the Michigan Bell/Ameritech Oakman Building, 822 Oakman Boulevard, Detroit, Michigan; and the Michigan Bell/Ameritech Office Center, 23500 Northwestern Highway, Southfield, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(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 facilities in Detroit, Michigan, and Southfield, Michigan, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 7, 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 no-

¹ 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."

tices 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.

Dated, Washington, D.C. September 29, 1994

William B. Gould IV, Chairman

James M. Stephens, 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 refuse to pay contractual holiday pay to regular part-time employees.

WE WILL NOT refuse to pay contractual wage rates to unit employees during their probationary period.

WE WILL NOT refuse to pay unit employees who are not members of Local 79, Service Employees International Union, AFL-CIO, contractual wage increases.

WE WILL NOT unilaterally reduce the daily working hours of part-time unit employees without notice to and/or bargaining with the Union or in retaliation for the filing of a group grievance on behalf of part-time employees with respect to requiring us to pay them holiday pay.

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 honor the terms of the 1991-1994 collective-bargaining agreement and rescind the unlawful change in working hours for part-time employees.

WE WILL make the unit employees whole, with interest, for any loss of earnings attributable to our unlawful conduct. The unit includes the following employees:

All full-time and regular part-time janitorial employees employed by us at the Michigan Bell/Ameritech Oakman Building, 822 Oakman Boulevard, Detroit, Michigan; and the Michigan Bell/Ameritech Office Center, 23500 Northwestern Highway, Southfield, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

FRISON BUILDING MAINTENANCE, INC.