

**Cara-Cam, Inc. and Teamsters Local Union No. 436  
a/w International Brotherhood of Teamsters,  
AFL-CIO. Case 8-CA-25931**

October 31, 1994

DECISION AND ORDER

BY MEMBERS DEVANEY, BROWNING, AND COHEN

Upon a charge filed by the Union on November 12, 1993, the General Counsel of the National Labor Relations Board issued a complaint on December 17, 1993, against Cara-Cam, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleged that the Respondent and Union were bound to a May 1, 1992, to April 30, 1995 collective-bargaining agreement, during the term of which the Respondent unilaterally ceased making contractually required contributions to the Union's health and welfare and pension funds. Although properly served with copies of the charge and complaint, the Respondent did not file a timely answer.

On June 1, 1994, counsel for the General Counsel wrote the Respondent that no answer had been filed, and set a June 9, 1994 deadline for receipt of an answer. Subsequently, counsel for the General Counsel granted the Respondent further extensions to file an answer until June 21 and 27, 1994.

On June 24, 1994, the Respondent filed an answer to the complaint. The answer admitted, among other things, the Union's representative status, and that the parties have been bound to a succession of collective-bargaining agreements. The Respondent also admitted unilaterally failing to remit required contributions to the Union's health and welfare and pension funds beginning about July 1, 1993.<sup>1</sup> The Respondent affirmatively pled in its answer that, because of adverse economic circumstances, it has been unable to remit these required contributions.

On August 16, 1994, counsel for the General Counsel filed a Motion for Summary Judgment. Counsel argued that in view of the Respondent's admissions to all of the factual allegations in the complaint, the pleadings raised no issues of material fact requiring a hearing.

On August 19, 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 National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>1</sup>The Respondent denied, however, the allegation that it has refused to bargain with the Union since July 1, 1993, and the legal conclusions that it violated Sec. 8(a)(5) and (1) of the Act.

Ruling on Motion for Summary Judgment

The Respondent admits to all the operative facts giving rise to the unfair labor practices alleged in the complaint. It admits that it is a member of the United Truckers Association of Cleveland, Ohio, and that it has designated the Association to act as its collective-bargaining representative. It also acknowledges the exclusive representative status of the Union and the appropriateness of the unit. It concedes that there have been a succession of collective-bargaining agreements between the parties, culminating in the current 1992-1995 contract. It also admits that, about July 1, 1993, it unilaterally ceased making contractually required health and welfare and pension contributions to the Union's funds.

In defense of its unilateral action, the Respondent pleads financial difficulties. It is well settled, however, that "economic inability to pay does not constitute an adequate defense to an allegation that an employer has violated Section 8(a)(5) by failing to abide by the provisions of a collective-bargaining agreement." *Abernathy Excavating*, 313 NLRB 68 (1993). Accordingly, we find that the Respondent has failed to present a meritorious defense to its unlawful conduct, and 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, an Ohio corporation, with an office and place of business in Independence, Ohio, is engaged in the intrastate and interstate transportation of concrete aggregates and asphalt. Annually, the Respondent provided services valued in excess of \$50,000 from its Independence, Ohio facility to Cleveland Trinidad Paving Company, an Ohio business directly engaged in interstate commerce. The parties admit, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 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

A. *Representative Status of the Union*

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by members of the [United Truckers Association of Cleveland, Ohio] and of the employers who have authorized the Association to bargain on their behalf, but excluding office clerical employees, guards and supervisors as defined in the Act.

Since about 1965, and at all material times, the Union has been the designated and recognized exclusive representative of this unit under Section 9(a) of the Act. This recognition has been embodied in a succession of collective-bargaining agreements, the most recent of which is effective by its terms from May 1, 1992, until April 30, 1995. At all times since about 1965, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the Respondent's employees for the purposes of collective bargaining.

#### B. Refusal to Comply with the Contract

About July 1, 1993, during the term of the 1992-1995 collective-bargaining agreement, the Respondent unilaterally ceased remitting on behalf of its employees contractually required contributions to the Union's health and welfare and pension funds. These contractual provisions relate to wages, hours, and other terms and conditions of employment in the unit and are mandatory subjects for purposes of collective bargaining.

We find that by the above acts and conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act, as alleged.<sup>2</sup>

#### CONCLUSION OF LAW

By discontinuing contractually required contributions to the Union's health and welfare and pension funds, the Respondent has committed 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.

We shall order the Respondent to make the appropriate contributions to the health and welfare and pension funds that it failed to make since about July 1, 1993, together with any additional amounts required as a result of the Respondent's obligations under the collective-bargaining and fund agreements. See *Merryweather Optical*, 240 NLRB 1213, 1216 fn. 7 (1979). We shall also order the Respondent to make employees whole, with interest,<sup>3</sup> for any expenses they may have incurred as a result of the Respondent's fail-

<sup>2</sup>We note that in par. 11 of the complaint which alleged the refusal to bargain the references to the Employer and the Union were transposed. This clearly inadvertent error does not affect our decision.

<sup>3</sup>*New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ure to make contributions,<sup>4</sup> to be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971).

#### ORDER

The National Labor Relations Board orders that the Respondent, Cara-Cam, Inc., Independence, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain with Teamsters Local Union No. 436 a/w the International Brotherhood of Teamsters, AFL-CIO, by failing to make required contributions on behalf of its employees to the Union's health and welfare and pension funds.

(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) Pay into the funds, on behalf of its unit employees, those health and welfare and pension contributions it failed to make as a result of the unlawful discontinuation of fund payments, in the manner set forth in the remedy section of this decision.

(b) Make whole, in the manner set forth in the remedy section of this decision, unit employees for any expenses they suffered because of the Respondent's failure to remit contractually required contributions to the health and welfare and pension funds. The appropriate unit is:

All employees employed by members of the [United Truckers Association of Cleveland, Ohio] and of the employers who have authorized the Association to bargain on their behalf, but excluding 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 payments records, timecards, personnel records and reports, and all other records necessary to analyze the amount of contributions due under the terms of this Order.

(d) Post at its facility copies of the attached notice marked "Appendix."<sup>5</sup> Copies of this notice, on forms provided by the Regional Director for Region 8, 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

<sup>4</sup>*Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981).

<sup>5</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."

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.

#### 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 to bargain in good faith with Teamsters Local Union No. 436 a/w International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of an appropriate unit of our

employees, by discontinuing contributions to the Union's health and welfare and pensions funds.

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 give effect to the terms and conditions of employment in our collective-bargaining agreement with the Union by paying into the funds, on behalf of our unit employees, those health and welfare and pension contributions we unlawfully failed to make.

WE WILL make whole unit employees for any expenses resulting from our failure to make contractually required contributions to the health and welfare and pension funds. The appropriate unit is:

All employees employed by members of the [United Truckers Association of Cleveland, Ohio] and of the employers who have authorized the Association to bargain on their behalf, but excluding clerical employees, guards and supervisors as defined in the Act.

CARA-CAM, INC.