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**Lowe's Food Company d/b/a Kauffman's Thriftway
and Portland Area UFCW Local 555-Employers
Health Trust. Case 36-CA-7421**

January 25, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

Upon a charge filed by Portland Area UFCW Local 555-Employers Health Trust (the Trust) on October 3, 1994, the General Counsel of the National Labor Relations Board issued a complaint on November 15, 1994, against Lowe's Food Company d/b/a Kauffman's Thriftway, 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 December 28, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On December 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, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 8, 1994, notified the Respondent that unless an answer were received by December 15, 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 Washington corporation, with an office and place of business in Vancouver, Washington, is engaged in the business of operating a supermarket. At all material times Food Employers, Inc. (the Association) has been an organization composed of various employers engaged in the grocery industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations including United Food and Commercial Workers Union, Local 555 (the Union). At all material times the Respondent has been an employer-member of the Association and has authorized the Association to represent it in negotiating and administering collective-bargaining agreements with the Union. The Respondent and other employer-members of the Association collectively, during the 12-month period preceding the issuance of complaint, a representative period, in the course and conduct of their business operations, had gross sales of goods and services valued in excess of \$500,000. During the same period, the Respondent, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside the state or from suppliers within the state which in turn obtained such goods and materials directly from sources outside the state. 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 Association including employees of the Respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

All Journeyman Meatcutters; Apprentice Meatcutters; and Meatwrappers employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, including the Respondent, but excluding all other employees, guards and supervisors as defined in the Act.

Since at least 1984 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in

successive collective-bargaining agreements, the most recent of which (the agreement) was effective by its terms from January 14, 1990, through December 25, 1993, and was extended by agreement of the parties through June 3, 1994. At all times since at least 1984, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The agreement requires the employer to contribute \$1.53 per straight-time hour for each of the Respondent's unit employees to the Trust, and requires payment of liquidated damages and interest for delinquent contributions. Since June 3, 1994, and continuing to date, the Respondent has failed to make the contributions and pay the liquidated damages and interest. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has 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.

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, since June 3, 1994, to make the required contributions to the Trust and to pay the liquidated damages and interest, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any liquidated damages, interest, and additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse 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), enf. 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), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such re-

ORDER

The National Labor Relations Board orders that the Respondent, Lowe's Food Company d/b/a Kauffman's Thriftway, Vancouver, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to make the required contributions on behalf of its unit employees to the Trust or failing to pay the liquidated damages and interest for delinquent contributions, without prior notice to the Union and without affording the Union an opportunity to bargain. The unit includes the following employees:

All Journeyman Meatcutters; Apprentice Meatcutters; and Meatwrappers employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, including the Respondent, but excluding all other employees, guards and supervisors as defined in the Act.

(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) Make all delinquent contributions to the Trust, including any liquidated damages and interest, that have not been made since June 3, 1994, and make the unit employees whole for any expenses ensuing from the failure to make the required contributions, as set forth in the remedy section of this decision.

(b) 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.

(c) Post at its facility in Vancouver, Washington, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 19, 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.

imbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

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."

(d) 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. January 25, 1995

James M. Stephens, Member

Charles I. Cohen, Member

John C. Truesdale, 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 fail to make the required contributions on behalf of our unit employees to the Portland Area UFCW Local 555-Employers Health Trust or fail to pay the liquidated damages and interest for delinquent contributions, without prior notice to the Union and without affording the Union an opportunity to bargain. The unit includes the following employees:

All Journeyman Meatcutters; Apprentice Meatcutters; and Meatwrappers employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, including us, but excluding all other employees, guards and supervisors as defined in the Act.

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 make all delinquent contributions to the Portland Area UFCW Local 555-Employers Health Trust, including any liquidated damages and interest, that have not been made since June 3, 1994, and make our unit employees whole for any expenses ensuing from our failure to make the required contributions, with interest.

LOWE'S FOOD COMPANY D/B/A
KAUFFMAN'S THRIFTWAY