

**Harwich Industries, Inc. and Graphic Communications International Union, Boston Local 600M, AFL-CIO, CLC.** Case 1-CA-31533

January 31, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

Upon a charge filed by Graphic Communications International Union, Boston Local 600M, AFL-CIO, CLC (the Union) on March 29, 1994, and an amended charge filed on May 25, 1994, the General Counsel of the National Labor Relations Board issued a complaint on June 30, 1994, against Harwich Industries, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent filed an answer admitting all the allegations in the complaint, adding only that it ceased operations on March 18, 1994, and that on April 24, 1994, a Chapter 7 involuntary bankruptcy petition was filed, and on June 22, 1994, an order for relief was entered.

On December 29, 1994, the General Counsel filed a Motion for Summary Judgment. On January 3, 1995, 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**

The Respondent's answer admits all the allegations in the complaint. Although it asserts in its answer that it has ceased operations and that an involuntary bankruptcy petition has been filed and an order for relief has been granted, it is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Board proceedings fall within 11 U.S.C. § 362(b)(4) and (5), the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *Phoenix Co.*, 274 NLRB 995 (1985). Therefore, the Respondent has raised no issues warranting a hearing.

Accordingly, the Respondent having admitted all the factual and legal allegations of the complaint, and in the absence of any material issues warranting a hearing, 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 corporation with an office and place of business in Hyde Park, Massachusetts, has been engaged in the printing of newspapers and other commercial printing. Annually, the Respondent, in the course and conduct of its business operations, purchases and receives at its Hyde Park facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. 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**

**A. *The Unit and the Union's Representative Status***

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

All employees of Respondent performing work described in Article IV, Jurisdiction, of the parties' collective bargaining agreement which is effective by its terms for the period May 1, 1989 to April 30, 1994 excluding guards and all supervisors as defined in the Act.

Since about November 17, 1965, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit employees, and since that date the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 1, 1989, through April 30, 1994. At all times since November 17, 1965, the Union, based on Section 9(a) of the Act, has been, and is, the exclusive collective-bargaining representative of the employees in the unit.

**B. *The Refusal to Bargain***

Since about March 2, 1994, the Union has orally requested that the Respondent furnish the Union with the following information:

1. A copy of a trust mortgage agreement executed by Harry Pollack and dated March 1, 1994;
2. The name of any potential buyer of the Respondent, together with the terms of any potential sale.

Since about March 23, 1994, the Union, in writing, has requested that the Respondent furnish the Union with the following information:

1. A list of employees of the Respondent with their wage rates, including any premiums;
2. The amount of any wages, earned vacation, and severance pay due any employee under the collective-bargaining agreement.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. Since about March 2 and 23, 1994, the Respondent has failed and refused to furnish the Union with the information requested by it as described above. By this conduct, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act.

Since about September 29, 1993, the Respondent has failed to continue in effect all the terms and conditions of the 1989–1994 agreement by ceasing to make contractually mandated health and welfare payments by the 10th of the month for which they are due. Since about March 18, 1994, the Respondent has failed to continue in effect all the terms and conditions of the 1989–1994 agreement by failing to make contractually mandated severance and earned vacation payments. The Respondent engaged in this conduct without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining. By this conduct, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its unit employees, and has thereby been engaging in unfair labor practices within the meaning of Section 8(d) and Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing to provide necessary and relevant information to the Union, ceasing to make contractually mandated health and welfare payments by the 10th of the month for which they are due, and failing to make contractually mandated severance and earned vacation payments, the Respondent has engaged in 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.

Specifically, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the

Respondent to furnish the Union the information requested.

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required health and welfare payments by the 10th of the month for which they are due, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any 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), enfd. mem. 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), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>1</sup>

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required severance and earned vacation payments, we shall order the Respondent to make the unit employees whole for any losses attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

In light of the Respondent's representations in its answer that the Respondent ceased operations on March 18, 1994, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Harwich Industries, Inc., Hyde Park, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by failing to provide necessary and relevant information to the Union, failing to make required health and welfare payments by the 10th of the month for which they are due, and failing to make contractually required severance and earned vacation payments to unit employees.

<sup>1</sup> 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 reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(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) On request, furnish the Union with information that is necessary and relevant to its role as the exclusive bargaining representative of the unit employees, including the information requested orally by the Union on and after March 2, 1994, and the information requested in writing by the Union on March 23, 1994.

(b) Make the delinquent health and welfare payments, including any additional amounts due the funds, and reimburse the unit employees for any expenses ensuing from the Respondent's failure to make the required payments, in the manner set forth in the remedy section of the decision.

(c) Make all contractually required severance and earned vacation payments, in the manner set forth in the remedy section of the decision.

(d) On request, bargain with Graphic Communications International Union, Boston Local 600M, AFL-CIO, CLC as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees of Respondent performing work described in Article IV, Jurisdiction, of the parties' collective bargaining agreement which is effective by its terms for the period May 1, 1989 to April 30, 1994 excluding guards and all supervisors as defined in the Act.

(e) 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.

(f) Post at its facility in Hyde Park, Massachusetts, and mail to the Union and to all unit employees, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, 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.

(g) 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 refuse to bargain with the Union as the exclusive collective-bargaining representative of our unit employees by refusing to provide necessary and relevant information to the Union, failing to make required health and welfare payments by the 10th of the month for which they are due, and failing to make contractually required severance and earned vacation payments to unit employees.

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, on request, furnish the Union with information that is necessary and relevant to its role as the exclusive bargaining representative of the unit employees, including the information requested orally by the Union on and after March 2, 1994, and the information requested in writing by the Union on March 23, 1994.

WE WILL remit the delinquent health and welfare payments, including any additional amounts due the funds, and WE WILL reimburse the unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL make all contractually required severance and earned vacation payments, with interest.

WE WILL, on request, bargain with Graphic Communications International Union, Boston Local 600M, AFL-CIO, CLC as the exclusive collective-bargaining representative of the employees in the following appropriate unit.

All employees of the Employer performing work described in Article IV, Jurisdiction, of the parties' collective bargaining agreement which is effective by its terms for the period May 1, 1989 to April 30, 1994 excluding guards and all supervisors as defined in the Act.

HARWICH INDUSTRIES, INC.

<sup>2</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."