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First United Communications, Inc. and Communications Workers of America, Local 1109, AFL-CIO. Case 29-CA-18542

June 9, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

Upon a charge filed by the Union on September 16, 1994, the General Counsel of the National Labor Relations Board issued a complaint on December 13, 1994, against First United Communications, Inc., 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 May 12, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On May 16, 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

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 April 18, 1995, notified the Respondent that unless an answer were received by May 2, 1995, 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 New York corporation, has maintained its principal office and a place of business at

513 Tompkins Avenue, Staten Island, New York, where it has been engaged in the installation of telephone cable. During the year preceding issuance of the complaint, a representative period, the Respondent provided services valued in excess of \$50,000 to NEC Business Communications Systems (East), Inc. (NEC), an enterprise located within the State of New York that meets one of the Board's standards for the assertion of jurisdiction, exclusive of indirect outflow and indirect inflow. At all times material, NEC, a Delaware corporation, has maintained its principal office and place of business at 5890 Enterprise Parkway, Syracuse, New York, where it has been engaged in the sale, installation, and servicing of telecommunications equipment. During the past fiscal year, a representative period, NEC, in the course and conduct of its business operations, purchased and received goods, supplies, and materials valued in excess of \$50,000 at its Syracuse facility in interstate commerce directly from points outside the State of New York. 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 employees employed by the Respondent, excluding clerical employees, guards, and supervisors as defined in Section 2(11) of the Act.

At all material times, the Union has been the designated collective-bargaining representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and has been, and is, recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements between the Union and the Respondent, the most recent of which is effective by its terms for the period May 1, 1992, through April 30, 1995.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The collective-bargaining agreement covering the employees in the unit contains, inter alia, in article 19, a provision requiring the Respondent to contribute each month to the Local 1109 Welfare Fund, a specified sum of money multiplied by 40 hours per week

for all its employees in the unit, regardless of the actual number of hours worked, and further requiring the Respondent to transmit such sums to the Welfare Fund no later than the 20th day of the month following the month for which payment is due, with interest to accrue with respect to all contributions which are not paid on the due date.

Commencing about April 20, 1994, the Respondent has failed and refused to remit contributions to the Welfare Fund, due for the months of March through May 1994, inclusive, as provided for in the collective-bargaining agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively, and is failing and refusing to bargain collectively, with the representatives of its employees, and has thereby 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 violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the Welfare Fund, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the fund 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. 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).¹ At the request of the General Counsel,

¹To the extent that an employee has made personal contributions to the fund that are accepted by the fund in lieu of the Respondent'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.

we will order the Respondent to mail copies of the notice to all unit employees employed during the period March through May 1994.

ORDER

The National Labor Relations Board orders that the Respondent, First United Communications, Inc., Staten Island, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to remit contractually required contributions to the Welfare Fund for its unit employees:

All full-time and regular part-time employees employed by the Respondent, excluding clerical employees, guards, and supervisors as defined in Section 2(11) of 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 Welfare Fund, as required by the collective-bargaining agreement, for the months of March through May 1994, inclusive, and make the unit employees whole for any expenses resulting from its failure to make the required contributions, in the manner 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) Mail an exact copy of the attached notice marked "Appendix"² to the Union and to all unit employees employed during the period March through May 1994. Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

²If 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. June 9, 1995

William B. Gould IV, Chairman

James M. Stephens, 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 or refuse to remit contractually-required contributions to the Welfare Fund for our unit employees:

All full-time and regular part-time employees employed by us, excluding clerical employees, guards, and supervisors as defined in Section 2(11) of 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 Welfare Fund, as required by the collective-bargaining agreement, for the months of March through May 1994, inclusive, and make the unit employees whole for any expenses resulting from our failure to make the required contributions, in the manner set forth in the decision of the National Labor Relations Board.

FIRST UNITED COMMUNICATIONS, INC.