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**Automotive Engineering Company and Machinists Automotive Trades District Lodge No. 190 of Northern California; Teamsters Automotive Employees, Local 78, a/w International Brotherhood of Teamsters, AFL-CIO; and East Bay Automotive Council (Joint Representative).
Case 32-CA-14456**

May 12, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

Upon a charge filed by Machinists Automotive Trades District Lodge No. 190 of Northern California; Teamsters Automotive Employees, Local 78, a/w International Brotherhood of Teamsters, AFL-CIO; and East Bay Automotive Council (Joint Representative), collectively the Union, on January 6, 1995, the General Counsel of the National Labor Relations Board issued a complaint on February 15, 1995, against Automotive Engineering Company, 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 April 14, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On April 18, 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 March 30, 1995, notified the Respondent that unless an answer were received by April 7, 1995, a Motion for Summary Judgment would be filed.

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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 California corporation with an office and places of business, inter alia, in Oakland, California, has been engaged in the nonretail and retail remanufacture of automotive engines and general retail automotive repair. During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, purchased and received goods or services valued in excess of \$50,000 from sellers or suppliers located within the State of California which sellers or suppliers had received such goods in substantially the same form directly from outside said State, had a gross volume of business in excess of \$500,000, and purchased and received goods valued in excess of \$5000 which originated outside the State of California. 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, as joint representative, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following described employees of the Respondent (the unit) 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 performing maintenance, rebuilding, dismantling, assembling, repairing, installing, erecting, cleansing, preparing and conditioning of all automotive parts, units, and auxiliaries connected with passenger cars, motorcycles, tractors, trucks, shovels, trench digging and excavating equipment, and all types of machinery propelled or operated by any type of engine (combustion or otherwise), packing, shipping, handling, stocking or merchandising of all parts, all machine processes connected thereto, the writing or taking of orders for all orders for service or parts counter work, job estimating, auto and truck washing, steam cleaning, teardown, polishing, lubricating, car unloading, motorcycle pick-up and delivery men, part pick-up men (motorcycle and/or parts truck), tire and battery service, tow truck operating, underseal applications, combination work, used car lot attendants, car parking attendants, utility men and automotive janitorial work, employed by the Respondent at its Oakland, Berkeley, Concord and Hay-

ward, California facilities; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since at least 1991, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since that date the Union has been recognized as such joint representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which (the Agreement) is effective by its terms for the period June 15, 1991, through November 1, 1994.

At all times since 1991, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive joint representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On various dates between October 7 and November 17, 1994, the Respondent and the Union met for the purpose of negotiating with respect to a successor collective-bargaining agreement to the Agreement. About November 17, 1994, the Respondent proposed the elimination of all the Respondent's contributions to health and welfare coverage for unit employees and a reduction in the Respondent's contribution to the cost of laundering unit employees' uniforms. About December 1, 1994, the Respondent implemented the terms of its November 17, 1994 proposal without having bargained in good faith to impasse with the Union with respect to these terms.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the representative 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 implemented the terms of its November 17, 1994 proposal, including elimination of all the Respondent's contributions to health and welfare insurance coverage for unit employees and reduction in the Respondent's contribution to the cost of laundering unit employees' uniforms, without having bargained in good faith to impasse with the Union with respect to such acts and conduct, we shall order the Respondent to restore its contributions to the employees' health and welfare in-

surance coverage and to the cost of laundering unit employees' uniforms, as provided in the 1991-1994 Agreement, and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Automotive Engineering Company, Oakland, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Implementing the terms of its November 17, 1994 proposal regarding the elimination of all its contributions to health and welfare coverage for unit employees and a reduction in its contribution to the cost of laundering unit employees' uniforms, without having bargained in good faith to impasse with Machinists Automotive Trades District Lodge No. 190 of Northern California; Teamsters Automotive Employees, Local 78, a/w International Brotherhood of Teamsters, AFL-CIO; and East Bay Automotive Council (Joint Representative) with regard to these terms and conditions. The unit includes the following employees:

All full time and regular part-time employees performing maintenance, rebuilding, dismantling, assembling, repairing, installing, erecting, cleansing, preparing and conditioning of all automotive parts, units, and auxiliaries connected with passenger cars, motorcycles, tractors, trucks, shovels, trench digging and excavating equipment, and all types of machinery propelled or operated by any type of engine (combustion or otherwise), packing, shipping, handling, stocking or merchandising of all parts, all machine processes connected thereto, the writing or taking of orders for all orders for service or parts counter work, job estimating, auto and truck washing, steam cleaning, teardown, polishing, lubricating, car unloading, motorcycle pick-up and delivery men, part pick-up men (motorcycle and/or parts truck), tire and battery service, tow truck operating, underseal applications, combination work, used car lot attendants, car parking attendants, utility men and automotive janitorial work, employed by the Respondent at its Oakland, Berkeley, Concord and Hayward, California facilities; excluding all office clerical employees, professional 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) Restore its contributions to the employees' health and welfare insurance coverage and to the cost of laundering unit employees' uniforms, as provided in the 1991-1994 Agreement, and make the employees whole 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, time-cards, 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 Oakland, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 32, 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.

(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. May 12, 1995

William B. Gould IV,	Chairman
James M. Stephens,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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."

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 implement the terms of our November 17, 1994 proposal regarding the elimination of all our contributions to health and welfare coverage for unit employees and a reduction in our contribution to the cost of laundering unit employees' uniforms, without having bargained in good faith to impasse with Machinists Automotive Trades District Lodge No. 190 of Northern California; Teamsters Automotive Employees, Local 78, a/w International Brotherhood of Teamsters, AFL-CIO; and East Bay Automotive Council (Joint Representative) with regard to these terms and conditions. The unit includes the following employees:

All full time and regular part-time employees performing maintenance, rebuilding, dismantling, assembling, repairing, installing, erecting, cleansing, preparing and conditioning of all automotive parts, units, and auxiliaries connected with passenger cars, motorcycles, tractors, trucks, shovels, trench digging and excavating equipment, and all types of machinery propelled or operated by any type of engine (combustion or otherwise), packing, shipping, handling, stocking or merchandising of all parts, all machine processes connected thereto, the writing or taking of orders for all orders for service or parts counter work, job estimating, auto and truck washing, steam cleaning, teardown, polishing, lubricating, car unloading, motorcycle pick-up and delivery men, part pick-up men (motorcycle and/or parts truck), tire and battery service, tow truck operating, underseal applications, combination work, used car lot attendants, car parking attendants, utility men and automotive janitorial work, employed by us at our Oakland, Berkeley, Concord and Hayward, California facilities; excluding all office clerical employees, professional 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 restore our contributions to the employees' health and welfare insurance coverage and to the cost of laundering unit employees' uniforms, as provided in

the 1991–1994 Agreement, and make the employees whole, with interest.

AUTOMOTIVE ENGINEERING COMPANY