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Parma Restaurant Corp. d/b/a Girafe Restaurant and Local 100, Hotel Employees and Restaurant Employees International Union, AFL-CIO. Case 2-CA-27717 (Formerly 7-CA-36276)*

May 22, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

Upon a charge filed by Local 100, Hotel Employees and Restaurant Employees International Union, AFL-CIO (the Union) on August 16, 1994, the General Counsel of the National Labor Relations Board issued a complaint on September 28, 1994, against Parma Restaurant Corp. d/b/a Girafe Restaurant (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 24, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On April 27, 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 22, 1995, notified the Respondent that unless an answer were received by March 31, 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

*The caption has been amended according to an order correcting issued on April 28, 1995.

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation, with an office and place of business in New York, New York has been engaged in the operation of a restaurant. During the calendar year ending December 31, 1993, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000, and purchased meats and liquor valued in excess of \$50,000 from New York suppliers who had received said meats and liquor from sources located 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 kitchen, dining room and bar employees, including captains, waiters, waitresses, bus persons, hosts, hostesses, cashiers, checkers, bartenders, service bartenders, other bar employees, sous chefs, cooks, 2nd cooks, saucers, nite chefs, chef tourants, chef grandmanagers, relief cooks, roast cooks, broiler cooks, carvers, entremetiers, grandmanagers, butchers, pastry cooks, bakers, assistant butchers, commissary employees, oyster persons, head salad persons, salad persons, head pantry persons, pantry persons, legumiers, kitchen persons, storeroom persons, pot washers, silver persons, porters, head dishwashers, dishwashers, glass washers, pirogen cooks, sandwich bar persons, order cooks, griddle persons, counter persons, assistant counter persons, pizza workers, soda dispensers, general utility, outgoing order persons and miscellaneous employees, employed by Respondent at its New York facility; but excluding office clerical employees, guards and supervisors as defined in the Act.

Since at least 1976, and at all material times the Union has been the designated exclusive collective-bargaining representative of the unit and 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 September 1, 1988, to August 31, 1991, and which was extended for 1 year until August 31, 1992. At all times since at least 1976, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The collective-bargaining agreement described above obligates the Respondent to make monthly contributions on behalf of employees in the unit to various fringe benefit funds including, inter alia, the Hotel Employees and Restaurant Employees International Union Welfare Fund (welfare fund), and the Hotel Employees and Restaurant Employees International Union Pension Fund (pension fund), and provides for penalties for late payments.

Since about May, 1994, and continuing to date, the Respondent has failed and refused to make the contractually mandated contributions on behalf of the unit to the welfare fund and the pension fund.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby 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 May 1994, to make contractually required monthly contributions to the welfare and pension funds on behalf of the unit employees, we shall order the Respondent to honor the provisions of the collective-bargaining agreement regarding contributions to the welfare and pension funds, until a new agreement or good-faith impasse in negotiations, and to make whole the unit employees for its failure to do so since May 1994, by making all such delinquent contributions and paying any penalties thereon, 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. 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

¹To 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, Parma Restaurant Corp. d/b/a Girafe Restaurant, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 100, Hotel Employees and Restaurant Employees International Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit, by failing to make monthly contributions to the Hotel Employees and Restaurant Employees International Union Welfare Fund and the Hotel Employees and Restaurant Employees International Union Pension Fund as provided in the collective-bargaining agreement:

All kitchen, dining room and bar employees, including captains, waiters, waitresses, bus persons, hosts, hostesses, cashiers, checkers, bartenders, service bartenders, other bar employees, sous chefs, cooks, 2nd cooks, saucers, nite chefs, chef tourants, chef grandmanagers, relief cooks, roast cooks, broiler cooks, carvers, entremetiers, grandmanagers, butchers, pastry cooks, bakers, assistant butchers, commissary employees, oyster persons, head salad persons, salad persons, head pantry persons, pantry persons, legumiers, kitchen persons, storeroom persons, pot washers, silver persons, porters, head dishwashers, dishwashers, glass washers, pirogen cooks, sandwich bar persons, order cooks, griddle persons, counter persons, assistant counter persons, pizza workers, soda dispensers, general utility, outgoing order persons and miscellaneous employees, employed by Respondent at its New York facility; but excluding office clerical 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) Honor the provisions of the collective-bargaining agreement with the Union regarding contributions to the welfare and pension funds, until a new agreement or good-faith impasse in negotiations, and make whole the unit employees for its failure to do so since May 1994, 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

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

records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 2, 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 22, 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.

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."

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 100, Hotel Employees and Restaurant Employees International Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit, by failing to make monthly contributions to the Hotel Employees and Restaurant Employees International Union Welfare Fund and the Hotel Employees and Restaurant Employees International Union Pension Fund, as provided in the collective-bargaining agreement:

All kitchen, dining room and bar employees, including captains, waiters, waitresses, bus persons, hosts, hostesses, cashiers, checkers, bartenders, service bartenders, other bar employees, sous chefs, cooks, 2nd cooks, saucers, nite chefs, chef tourants, chef grandmanagers, relief cooks, roast cooks, broiler cooks, carvers, entremetiers, grandmanagers, butchers, pastry cooks, bakers, assistant butchers, commissary employees, oyster persons, head salad persons, salad persons, head pantry persons, pantry persons, legumiers, kitchen persons, storeroom persons, pot washers, silver persons, porters, head dishwashers, dishwashers, glass washers, pirogen cooks, sandwich bar persons, order cooks, griddle persons, counter persons, assistant counter persons, pizza workers, soda dispensers, general utility, outgoing order persons and miscellaneous employees, employed by us at our New York facility; but excluding office clerical 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 honor the provisions of our collective-bargaining agreement with the Union regarding contributions to the welfare and pension funds, until a new agreement or good-faith impasse in negotiations, and WE WILL make whole the unit employees for our failure to do so since May 1994, with interest.

PARMA RESTAURANT CORP. D/B/A
GIRAFE RESTAURANT