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Tube Craft, Inc. and United Steelworkers of America, AFL-CIO, CLC. Case 8-CA-27444

November 30, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge and amended charge filed by the United Steelworkers of America, AFL-CIO, CLC, the Union, on May 31 and July 12, 1995, respectively, the General Counsel of the National Labor Relations Board issued a complaint on July 12, 1995, against Tube Craft, 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 November 3, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On November 7, 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 September 28, 1995, notified the Respondent that unless an answer was received by October 5, 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, an Ohio corporation with an office and place of business in Cleveland, Ohio, has been engaged in tubular fabrication. Annually, the Respondent, in conducting its business operations, sells and ships from its Cleveland, Ohio facility goods valued in excess of \$50,000 directly to points outside the State of Ohio. 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 production and maintenance employees employed by the Respondent at its 8000 Baker Avenue, Cleveland, Ohio facility, but excluding all office clericals, professional employees, guards and supervisors as defined in the Act.

On December 1, 1993, the Union was certified as the exclusive collective-bargaining representative of the unit. Since about December 1, 1993, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement effective from June 16, 1993, to June 15, 1996. At all times since December 1, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about December 1, 1994, the Respondent has failed and refused to bargain with the Union as the exclusive bargaining representative of the unit by failing to remit dues to the Union which the Respondent collected from unit employees pursuant to their authorization and the contract described above.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain with the exclusive collective-bargaining representative of the unit employees within the meaning of Section 8(d) of the Act, 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, since December 1, 1994, to remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld dues to the Union as required by the 1993-1996 agreement, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Tube Craft, Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the United Steelworkers of America, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the following unit, by failing and refusing to remit dues to the Union which the Respondent collected from unit employees pursuant to their authorization and the 1993-1996 collective-bargaining agreement:

All production and maintenance employees employed by the Respondent at its 8000 Baker Avenue, Cleveland, Ohio facility, but excluding all office clericals, 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) Comply with the 1993-1996 collective-bargaining agreement by remitting to the Union all dues which have been collected from unit employees pursuant to valid dues-checkoff authorizations but which have not been remitted to the Union since December 1, 1994, with interest 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, 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 Cleveland, Ohio, copies of the attached notice marked "Appendix."¹ Copies of

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

the notice, on forms provided by the Regional Director for Region 8, 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. November 30, 1995

William B. Gould IV, Chairman

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 fail and refuse to bargain with the United Steelworkers of America, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the following unit, by failing and refusing to remit dues to the Union which we collected from unit employees pursuant to their authorization and the 1993-1996 collective-bargaining agreement:

All production and maintenance employees employed by us at our 8000 Baker Avenue, Cleveland, Ohio facility, but excluding all office clericals, 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 comply with the 1993-1996 collective-bargaining agreement by remitting to the Union all dues

which we have collected from unit employees pursuant to valid dues-checkoff authorizations but have not remitted to the Union since December 1, 1994, with interest.

TUBE CRAFT, INC.