

**Orbitron Industries, Inc. and International Union,
United Automobile, Aerospace & Agricultural
Implement Workers of America, UAW.** Cases
8-CA-26144, 8-CA-26826, and 8-CA-27026

December 8, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon charges filed by the Union in Case 8-CA-26144 on February 15 and March 30, 1994 (an amended charge); in Case 8-CA-26826 on October 21, 1994; and in Case 8-CA-27026 on December 27, 1994, the General Counsel of the National Labor Relations Board issued a complaint against Orbitron Industries, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The initial complaint issued May 31, 1994. On June 27, 1994, the Respondent filed an answer admitting in part and denying in part the allegations of the initial complaint.

On February 28, 1995, the General Counsel issued an amended consolidated complaint. On May 26, 1995, the General Counsel issued a second amended consolidated complaint. Although properly served copies of the charges and complaints, the Respondent failed to file an answer to either the February 28 or the May 26 amended complaint.

On September 13, 1995, the General Counsel filed a Motion for Partial Summary Judgment with the Board seeking summary judgment with respect to the allegations that were added in the February 28 and May 26 amended complaints.¹ On September 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 Partial 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 al-

¹ The General Counsel acknowledges that the Respondent's answers to the original complaint allegations constitute proper denials of 8(a)(5) and (1) allegations re-pleaded in the amended consolidated complaint and the second amended consolidated complaint.

legations in the Motion for Partial Summary Judgment disclose that the General Counsel, by letter dated July 11, 1995, notified the Respondent that unless an answer were received by close of business on July 18, a Motion for Summary Judgment would be filed. No answer was 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 Partial Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Indiana corporation, has been engaged in the manufacture and distribution of rotational molded products at its facility in Delphos, Ohio, where it annually sold and shipped goods valued in excess of \$50,000 directly to points located 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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees, excluding, however, office employees and any company personnel engaged in a supervisory capacity.

Since about 1940, the Union has been recognized by the Respondent as the exclusive collective-bargaining representative of the bargaining unit employees. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 11, 1991, to June 11, 1994.

About December 31, 1993, the Respondent ceased operations at its Delphos, Ohio facility. On October 19, 1994, the Union requested that the Respondent meet and bargain over the effects of the closing of the Respondent's facility. Since about December 5, 1994, the Respondent has refused to meet and bargain with the Union over the effects of the closing.

Pursuant to the collective-bargaining agreement, the Respondent was required to make payments to the National Industrial Group Pension Plan. On April 25, 1994, the Union became aware of the fact that the Respondent has failed to make contractually required payments to the National Industrial Group Pension Plan for September 1992 and April, May, June, August, and September 1993.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the Union and to abide by the terms and conditions of its collective-bargaining agreement with the Union, 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, we shall order the Respondent, on request, to bargain with the Union over the effects on unit employees of the decision to cease its operations. To ensure that meaningful bargaining occurs and to effectuate the policies of the Act, we shall accompany our Order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay the employees in the unit backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on its employees of the cessation of the Respondent's operations; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount which the employees would have earned as wages from the date on which the Respondent ceased its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the employees would normally have received during the applicable period, less any net interim earnings, and shall be computed

in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments to the National Industrial Group Pension Plan, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any amounts due the plan 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 contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 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), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.²

Finally, in view of the Respondent's cessation of operations, we shall order the Respondent to mail copies of the notice to all employees in the units.

ORDER

The National Labor Relations Board orders that the Respondent, Orbitron Industries, Inc., Mishawaka, Indiana, 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 about the effects on unit employees of its decision to cease operations. The bargaining unit consists of:

All employees, excluding, however, office employees and any company personnel engaged in a supervisory capacity.

(b) Refusing to bargain with the Union by failing and refusing to make contractually required payments to the Pension Plan.

(c) 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, bargain with the Union over the effects on unit employees of its cessation of operations, and reduce to writing any agreement reached as a result of such bargaining.

²To 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) Pay all delinquent Pension Plan payments, including any additional amounts due the plan, 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 this Decision.

(c) Pay limited backpay to the unit employees in the manner set forth in the remedy section of this Decision.

(d) 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.

(e) Mail a copy of the attached notice marked "Appendix"³ to the last known addresses of all employees in the unit who were employed at the Respondent's locations described above immediately prior to the Respondent's cessation of operations. Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 8 for further appropriate action.

³If 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 refuse to bargain with the Union about the effects on unit employees of our decision to cease operations. The bargaining unit consists of:

All employees, excluding, however, office employees and any company personnel engaged in a supervisory capacity.

WE WILL NOT refuse to bargain with the Union as the exclusive collective-bargaining representative of our unit employees by failing and refusing to make contractually required payments to the Pension Plan.

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, bargain with the Union over the effects on unit employees of the cessation of our operations, and put in writing any agreement reached as a result of such bargaining.

WE WILL pay the delinquent Pension Plan payments, including any additional amounts due the fund, and WE WILL reimburse the unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL pay limited backpay to the unit employees, with interest.

ORBITRON INDUSTRIES, INC.