

**Beeby Products, Inc. and General Industrial Employees Local Union 42, Distillery, Wine and Allied Workers International Union, AFL-CIO-CLC. Case 7-CA-37391**

December 18, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND TRUESDALE

Upon a charge and an amended charge filed by the Union on June 30 and July 28, 1995, the General Counsel of the National Labor Relations Board issued a complaint on August 3, 1995, against Beeby Products, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge and complaint, the Respondent failed to file an answer.<sup>1</sup>

On November 13, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On November 21, 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 August 31, 1995, notified the Respondent that unless an answer were received by September 14, 1995, a Motion for Default Judgment would be filed.

<sup>1</sup> Although the General Counsel's motion indicates the charge, amended charge, and the complaint were served by certified mail but were returned to the Regional Office unclaimed, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Further, a copy of the original charge was hand delivered to the Respondent on July 18, 1995. Finally, the General Counsel also alleges that the amended charge and complaint were sent by regular mail and were not returned. The failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987). Therefore, we find that the Respondent was properly served the charge, amended charge, and the complaint.

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**

At all material times, the Respondent, a corporation, with an office and place of business in Detroit, Michigan, has been engaged in the manufacture and nonretail sale of wall panels. During the 12 months preceding the filing of the charge, a representative period, the Respondent, in conducting its operations, sold and shipped from its Detroit facility goods valued in excess of \$50,000 directly to Ellis Don Michigan Corporation, an installation contractor located within the State of Michigan, which during the same period performed work valued in excess of \$50,000 for companies located outside the State of Michigan. 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**

All full-time and regular part-time production and maintenance employees employed by the Respondent at its facility located at 4786 Bellevue, Detroit, Michigan, but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act, is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. On April 14, 1995, in a Board election in Case 7-RC-20541, a majority of the unit designated and selected the Union as their representative for purposes of collective bargaining, and the Union was so certified by the Board on April 25, 1995. At all times since April 14, 1995, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit for the purposes of collective bargaining with respect to wages, hours of employment, and other terms and conditions of employment.

About mid-April, April 14, and July 7, 1995, the Respondent threatened employees with plant closure if the Union were voted in or if the Union obtained a contract.

About early May 1995, the Respondent threatened employees with unspecified reprisals because of their support for the Union.

About April 14, early May, June 21 and 29, and July 7, 1995, the Respondent coercively interrogated employees regarding their union activities, sympathies, and support and the union activities, sympathies, and support of their fellow employees.

About June 29, 1995, the Respondent coercively implied to its employees it would be futile for them to

support the Union by stating that the Respondent did not have to accept the Union or its contract offers.

About July 7, 1995, the Respondent coercively stated to its employees that the Respondent would put the Union off and not negotiate in order to get the Union off its back.

About April 14, 1995, the Respondent eliminated the second shift and changed employee starting times and breaktimes. About early June 1995, the Respondent reassigned bargaining unit work to supervisory employees. About June 29, 1995, the Respondent discharged all the employees in the unit. About early June 1995, the Respondent bypassed the Union and dealt directly with its unit employees by offering employee William Manzo a supervisory position while he continued to perform bargaining unit work. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent and because of its employees' protected activities in support and on behalf of the Union and in order to discourage such activities.

At various times during June and July 1995, the Respondent and the Union met for the purposes of engaging in negotiations with respect to wages, hours, and other terms and conditions of employment of the unit. From April 26, 1995, until July 1995, the Respondent delayed 6 weeks before meeting with the Union and failed and refused to provide contract proposals to the Union.

#### CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By eliminating the second shift, changing employee starting times and breaktimes, reassigning bargaining unit work to supervisory employees, discharging all employees in the unit, and bypassing and dealing directly with its unit employees, the Respondent has also been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

3. By the foregoing conduct, and by delaying before meeting with the Union and refusing to provide contract proposals to the Union, the Respondent has also failed and refused 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 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)(1), (3), and (5) of the Act by eliminating the second shift, changing employee starting and breaktimes, reassigning bargaining unit work to supervisory employees, and discharging all employees in the unit, without notice to or bargaining with the Union, and because of its employees' protected activities in support of and on behalf of the Union and in order to discourage such activities, we shall order the Respondent to rescind the unlawful changes, to offer the discharged employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. Backpay 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). In addition, we shall order the Respondent to expunge from its files any reference to the discharges and notify the employees that this has been done.

Finally, having found that the Respondent has unlawfully failed and refused to bargain in good faith with the Union since April 26, 1995, by delaying before meeting with the Union and refusing to provide contract proposals, we shall order the Respondent to bargain in good faith with the Union, on request. To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Beeby Products, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with plant closure if General Industrial Employees Local Union 42, Distillery, Wine and Allied Workers International Union, AFL-CIO-CLC were voted in or if the Union obtained a contract.

(b) Threatening employees with unspecified reprisals because of their support for the Union.

(c) Interrogating employees regarding their union activities, sympathies, and support and the union activities, sympathies, and support of their fellow employees.

(d) Coercively implying to its employees it would be futile for them to support the Union by stating that it did not have to accept the Union or its contract offers.

(e) Coercively stating to its employees that it would put the Union off and not negotiate in order to get the Union off its back.

(f) Unilaterally or discriminatorily eliminating the second shift, changing employee starting times or breaktimes, reassigning bargaining unit work to supervisory employees, discharging unit employees, or bypassing the Union and dealing directly with its unit employees by offering a supervisory position while the employee continues to perform bargaining unit work.

(g) Delaying bargaining with the Union or refusing to provide contract proposals.

(h) 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) Rescind the unlawful changes and make whole the employees, with interest, for any losses attributable to its unlawful conduct in the manner set forth in the remedy section of this decision.

(b) Offer the discharged employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of the Respondent's unlawful conduct, as set forth in the remedy section of this decision.

(c) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The unit includes the following employees:

All full-time and regular part-time production and maintenance employees employed by the Respondent at its facility located at 4786 Bellevue, Detroit, Michigan, but excluding office clerical

employees, managerial employees, guards and supervisors.

(d) Expunge from its files any and all references to the discharges of the employees, and notify the employees, in writing, that this has been done.

(e) 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.

(f) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, 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.

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

#### 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 threaten employees with plant closure if General Industrial Employees Local Union 42, Distillery, Wine and Allied Workers International Union, AFL-CIO-CLC were voted in or if the Union obtained a contract.

WE WILL NOT threaten employees with unspecified reprisals because of their support for the Union.

WE WILL NOT interrogate employees regarding their union activities, sympathies, and support or the union activities, sympathies and support of their fellow employees.

WE WILL NOT coercively imply to our employees it would be futile for them to support the Union by stating that we would not have to accept the Union or its contract offers.

<sup>2</sup>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."

WE WILL NOT coercively state to our employees that we would put the Union off and not negotiate in order to get the Union off our back.

WE WILL NOT unilaterally or discriminatorily eliminate the second shift, change employee starting times or breaktimes, reassign bargaining unit work to supervisory employees, discharge unit employees, or bypass the Union and deal directly with our unit employees by offering a supervisory position while the employee continues to perform bargaining unit work.

WE WILL NOT delay bargaining with the Union or refuse to provide contract proposals.

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 rescind the unlawful changes and make whole the employees, with interest, for any losses attributable to our unlawful conduct in the manner set forth in a decision of the National Labor Relations Board.

WE WILL offer the discharged employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equiva-

lent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of our unlawful conduct, as set forth in a decision of the National Labor Relations Board.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The unit includes the following employees:

All full-time and regular part-time production and maintenance employees employed by us at our facility located at 4786 Bellevue, Detroit, Michigan, but excluding office clerical employees, managerial employees, guards and supervisors.

We will expunge from our files any and all references to the discharges of the employees, and notify them, in writing, that this has been done.

BEEBY PRODUCTS, INC.