

**Mastercraft Sleep Products, Inc. and Local 517-S,  
Production, Service and Sales District Council,  
Hotel Employees and Restaurant Employees  
International Union, AFL-CIO. Case 29-CA-  
18750**

October 23, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND  
TRUESDALE

Upon a charge filed by the Union on December 9, 1994, the General Counsel of the National Labor Relations Board issued a complaint on February 13, 1995, against Mastercraft Sleep Products, Inc., 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 September 27, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On September 28, 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 April 10, 1995, notified the Respondent that unless an answer was received by April 24, 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, a New York corporation, with its principal office and place of business located at 838 Sterling Place, Brooklyn, New York, has been engaged in the manufacture and wholesale distribution of bed mattresses and related products. During the year end-

ing November 28, 1994, a representative period, the Respondent, in the course and conduct of its business operations, sold and shipped from its Brooklyn facility products, goods, and materials valued in excess of \$50,000 directly to points 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

At all material times, the following employees have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production, maintenance and shipping employees and drivers employed by the Respondent, excluding all guards and supervisors as defined in the Act.

Since about 1977 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit, and since that date the Union has been recognized as the representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from December 24, 1992, to December 23, 1995.

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

About November 28, 1994, the Respondent ceased operations at its Brooklyn facility without prior notice to the Union and without affording the Union an opportunity to bargain regarding the effects of its decision to cease operations at its Brooklyn facility on the terms and conditions of employment of the Respondent's unit employees.

Since about the same date, the Respondent has failed and refused to pay to the unit employees wages and benefits including vacation, holiday, and sick pay, as required by the collective-bargaining agreement. These subjects relate to rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the consent of the Union.

## CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively, and is failing and refusing to bargain collectively, with the 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 violated Section 8(a)(5) and (1) by failing and refusing, since November 28, 1994, to pay the unit employees contractually required wages and benefits including vacation, holiday, and sick pay, we shall order the Respondent to honor the terms of the collective-bargaining agreement, and to make the unit employees whole for any loss of earnings attributable to its failure to do so. Backpay shall be computed in accordance with *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*, 283 NLRB 1173 (1987).

As a result of the Respondent's unlawful failure to afford the Union an opportunity to bargain about the effects of its decision to close its facility on November 28, 1994, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and 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 terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees 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 of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date 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; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the 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 which the terminated 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*, supra.

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

## ORDER

The National Labor Relations Board orders that the Respondent, Mastercraft Sleep Products, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing to afford Local 517-S, Production, Service and Sales District Council, Hotel Employees and Restaurant Employees International Union, AFL-CIO an opportunity to bargain about the effects of its decision to cease operations at its Brooklyn facility on the terms and conditions of employment of the unit employees. The unit includes the following employees:

All production, maintenance and shipping employees and drivers employed by the Respondent, excluding all guards and supervisors as defined in the Act.

(b) Failing or refusing to pay the unit employees wages and benefits, including vacation, holiday, and sick pay, as required by the collective-bargaining agreement.

(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 with respect to the effects on unit employees of the decision to close the Brooklyn facility, reducing to writing any agreement reached as a result of such bargaining, and pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision.

(b) Honor the terms of the collective-bargaining agreement, including paying vacation, holiday, and sick pay, and make the unit employees whole, with interest, for any loss of earnings attributable to its failure to do so in the manner set forth in the remedy section of this decision.

(c) 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.

(d) Mail signed and dated copies of the attached notice marked "Appendix"<sup>1</sup> to the Union and all unit employees employed as of the date the Respondent closed its facility. Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt by the Respondent to the last known address of each employee.

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

---

<sup>1</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."

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 to afford Local 517-S, Production, Service and Sales District Council, Hotel Employees and Restaurant Employees International Union, AFL-CIO an opportunity to bargain about the effects of our decision to cease operations at our Brooklyn facility on the terms and conditions of employment of the unit employees. The unit includes the following employees:

All production, maintenance and shipping employees and drivers employed by us, excluding all guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to pay to our unit employees wages and benefits including vacation, holiday, and sick pay, as required by the collective-bargaining agreement.

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 with respect to the effects on unit employees of our decision to close the Brooklyn facility, reducing to writing any agreement reached as a result of such bargaining, and pay limited backpay to the unit employees in the manner set forth in a decision of the National Labor Relations Board.

WE WILL honor the terms of the collective-bargaining agreement, including paying vacation, holiday, and sick pay, and make our unit employees whole, with interest, for any loss of earnings attributable to our failure to do so in the manner set forth in a decision of the National Labor Relations Board.

MASTERCRAFT SLEEP PRODUCTS, INC.