

Sparkle Window Cleaning of Central New York, Inc. and Service Employees International Union, Local 200B. Cases 3-CA-19251 and 3-CA-19280

October 31, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

Upon charges filed by the Union on March 20 and April 3, 1995, the General Counsel of the National Labor Relations Board issued a complaint on July 21, 1995, against Sparkle Window Cleaning of Central New York, 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 charges and complaint, the Respondent failed to file an answer.

On October 10, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On October 12, 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 15, 1995, notified the Respondent that unless an answer was received by September 22, 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 corporation, with an office and place of business in Solvay, New York, has been engaged in the furnishing of window cleaning services to commercial customers. During the 12-month period

preceding issuance of the complaint, the Respondent provided services valued in excess of \$50,000 for various enterprises, including Syracuse University and the United States Government, enterprises within the State of New York that are directly engaged in interstate commerce. 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 window cleaners and window cleaning apprentices employed by the Respondent from its Solvay, New York facility.

Since about April 22, 1994, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement with a duration from April 8, 1994, to April 7, 1995. At all times since April 22, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About January 13, 1995, the Union, by letter, requested the Respondent to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit for a successor collective-bargaining agreement. Since about February 1995, the Respondent has failed and refused to meet and negotiate with the Union with regard to a successor collective-bargaining agreement.

From October 3, 1994, to April 7, 1995, the Respondent has failed and refused to continue in effect all the terms and conditions of the 1994-1995 agreement by failing to remit to the Union the dues deducted from employees' paychecks and by failing to make pension fund payments. The Respondent engaged in this conduct without the Union's consent.

Since April 7, 1995, the Respondent has failed and refused to continue in effect the terms and conditions of employment that had been set forth in the 1994-1995 collective-bargaining agreement regarding pension fund payments. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

The foregoing 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.

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 failed and refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit for a successor collective-bargaining agreement since about February 1995, we shall order it to do so.

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to continue in effect all the terms and conditions set forth in the collective-bargaining agreement by failing to make contractually required contributions to the pension fund since October 3, 1994, we shall order the Respondent to honor the terms and conditions of the agreement and make whole its unit employees by making all such delinquent contributions, 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

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing, from October 3, 1994, to April 7, 1995, 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

¹To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent'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.

the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Sparkle Window Cleaning of Central New York, Inc., Solvay, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to meet and negotiate with the Service Employees International Union, Local 200B with regard to a successor collective-bargaining agreement for the unit employees:

All window cleaners and window cleaning apprentices employed by the Respondent from its Solvay, New York facility.

(b) Failing or refusing to continue in effect all the terms and conditions of the collective-bargaining agreement in effect from April 8, 1994, to April 7, 1995, by failing to remit to the Union the dues deducted from employees' paychecks or by failing to make pension fund payments.

(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) Bargain collectively with the Union as the exclusive collective-bargaining representative of the unit for a successor collective-bargaining agreement and, if an agreement is reached, embody the terms and conditions in a signed agreement.

(b) Comply with the terms and conditions of the 1994-1995 agreement, including those concerning pension fund payments until a new agreement or good-faith impasse is reached.

(c) Make all delinquent contributions to the pension fund on behalf of the unit employees that have not been made since October 3, 1994, and make the unit employees whole for any expenses resulting from its unlawful failure to do so, as set forth in the remedy section of this decision.

(d) Remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations and were not remitted between October 3, 1994, and April 7, 1995, with interest, as prescribed in the remedy section of this decision.

(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 Solvay, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 3, 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.

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."

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 or refuse to meet and negotiate with the Service Employees International Union, Local 200B with regard to a successor collective-bargaining agreement for the unit employees:

All window cleaners and window cleaning apprentices employed by us from our Solvay, New York facility.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of the collective-bargaining agreement in effect from April 8, 1994, to April 7, 1995, by failing to remit to the Union the dues deducted from employees' paychecks or by failing to make pension fund payments.

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 bargain collectively with the Union as the exclusive collective-bargaining representative of the unit for a successor collective-bargaining agreement and, if an agreement is reached, embody the terms and conditions in a signed agreement.

WE WILL comply with the terms and conditions of the agreement, including those concerning pension fund payments, until a new agreement or good-faith impasse is reached.

WE WILL make all delinquent contributions to the pension fund on behalf of the unit employees that have not been made since October 3, 1994, and make the unit employees whole for any loss of benefits or expenses resulting from our unlawful failure to do so, as set forth in a decision of the National Labor Relations Board.

WE WILL remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations that we have not remitted between October 3, 1994, and April 7, 1995.

SPARKLE WINDOW CLEANING OF
CENTRAL NEW YORK, INC.