

Newark Performing Arts Corporation d/b/a Newark Symphony Hall and Local 68, International Union of Operating Engineers, AFL-CIO. Case 22-CA-21586

July 18, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

Upon a charge filed by the Union on September 24, 1996, the General Counsel of the National Labor Relations Board issued a complaint on December 6, 1996, against Newark Performing Arts Corporation d/b/a Newark Symphony Hall, 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 the complaint, the Respondent failed to file an answer.

On February 5, 1997, the General Counsel filed a Motion for Summary Judgment. On March 26, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion should not be granted. On April 25, 1997, the Respondent filed a cross-motion to extend time to answer complaint, a brief in support of its cross-motion and in opposition to General Counsel's Motion for Summary Judgment, and an answer. On May 6, 1997, the General Counsel filed a reply to the Respondent's response.

Ruling on the 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. In addition, the complaint states 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 December 31, 1996, extended the time to file an answer from December 20, 1996, to January 7, 1997, and notified the Respondent that unless an answer was received by the close of business on that day a Motion for Summary Judgment would be filed.

Thereafter, the Respondent requested another extension of time to file an answer. On January 8, 1997, the Region granted this request and extended the time for filing an answer to January 24, 1997. The Respondent, however, failed to file an answer by January 24, 1997.

In its opposition to the Motion for Summary Judgment, the Respondent contends that it had not retained labor counsel when the complaint issued and that it did not know how to answer the complaint. The Respondent further asserts that once it received the Motion for

Summary Judgment it retained labor counsel, engaged in contract negotiations with the Union, and executed a proposed settlement agreement which was not accepted by the Regional Director.

We find that the Respondent has not shown good cause for its failure to file a timely answer to the complaint. As noted above, it is undisputed that the Region repeatedly informed the Respondent of its obligation to answer the complaint. In addition, it is undisputed that the Respondent was informed that failure to timely answer the complaint would result in a Motion for Summary Judgment being filed. The Respondent having been granted two extensions of time to file an answer, nevertheless failed to file an answer by the twice extended deadline. In these circumstances, the Respondent's contention that it had not retained labor counsel and did not know how to answer the complaint is insufficient to show good cause for its failure to file a timely answer to the complaint.¹

We also find unavailing the Respondent's contention that it executed a proposed settlement agreement which was subsequently rejected by the Regional Director. As the Respondent concedes, the power to reject a proposed settlement is well within the authority of the Regional Director. Further, according to the Respondent's contentions, the settlement agreement was not executed until after the Motion for Summary Judgment had been received. Thus, the Respondent's willingness to sign such an agreement does not, in itself, show cause why the Motion for Summary Judgment should not be granted. Accordingly, 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 Newark, New Jersey, has been engaged in the management of Newark Symphony Hall for the purpose of producing concerts, shows, and other theatrical events. During the 12-month period ending June 30, 1995, the Respondent, in conducting its business operations, derived gross revenues in excess of \$1 million, and purchased and received at its Newark, New Jersey facility products, goods, and materials valued in excess of \$5000 directly from points outside the State of New Jersey. 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.

¹ See generally *Urban Laboratories*, 249 NLRB 867 (1980).

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All operating engineers, maintenance engineers, mechanics, and helpers employed by the Employer at its Newark facility, excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act, and all other employees.

For more than 20 years, 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 series of collective-bargaining agreements, the most recent of which was effective from January 1, 1993, to December 31, 1995.

About July 1996, the Union submitted a proposed collective-bargaining agreement for the Respondent's consideration, and requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about July 1996, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit.

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 Union as the exclusive collective-bargaining representative of its employees, and therefore has 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 with the Union, we shall order it, on request, to bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the unit.

ORDER

The Respondent, Newark Performing Arts Corporation d/b/a Newark Symphony Hall, Newark, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Local 68, International Union of Operating Engineers, AFL-CIO as the exclusive collective-bargaining representative of the employees in the unit.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of 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 collectively in good faith with the Union as the exclusive representative of the following appropriate unit and, if an understanding is reached, embody the understanding in a signed agreement:

All operating engineers, maintenance engineers, mechanics and helpers employed by the Employer at its Newark facility, excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act, and all other employees.

(b) Within 14 days after service by the Region, post at copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since September 24, 1996.

(c) Within 21 days after service by the Region, file with Regional Director a sworn certification of a responsible official on a form provided by the Region at-

²If this Order is enforced by a judgment of the 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."

testing to the steps that 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 refuse to bargain with Local 68, International Union of Operating Engineers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

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 collectively and in good faith with the Union as the exclusive representative of the employees in the following appropriate unit and, if an understanding is reached embody the understanding in a signed agreement:

All operating engineers, maintenance engineers, mechanics and helpers employed by the Employer at its Newark facility, excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act, and all other employees.

NEWARK PERFORMING ARTS CORPORATION
D/B/A NEWARK SYMPHONY HALL