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**Dick Boehm Enterprises, Inc. d/b/a Comanche Restaurant and Virgin Islands Workers Union.**  
Case 24-CA-7571

August 20, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and amended charge filed by the Union on November 20 and December 23, 1996, the General Counsel of the National Labor Relations Board issued a complaint on January 31, 1997, against Dick Boehm Enterprises, Inc. d/b/a Comanche Restaurant, 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 July 21, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On July 24, 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. The Respondent filed no response. The allegations in the motion are therefore undisputed.

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 17, 1997, notified the Respondent that unless an answer were received by April 24, 1997, 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

At all material times, the Respondent, a Virgin Islands corporation with an office and place of business in St. Croix, United States Virgin Islands, has been engaged in the restaurant business. During the 1996 cal-

endar year, a representative period, the Respondent, in conducting its business operations, purchased and received at its St. Croix facility goods valued in excess of \$50,000 directly from points outside the U.S. Virgin Islands. 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:

Included: All regular, full-time waiters, waitresses, cooks, pantry persons (including "dishwashers"), busboys and bartenders employed by the Employer at the Restaurant.

Excluded: All part-time, casual, seasonal and managerial employees, guards and supervisors as defined in the Act.

On March 17, 1992, the Union was certified as the exclusive collective-bargaining representative of the unit. About March 17, 1993, the Respondent and the Union entered into a collective-bargaining agreement (the 1993-1995 agreement) with respect to terms and conditions of employment of the unit, which agreement was to remain in effect until February 28, 1995, and thereafter from year to year, unless either party served the other party with notice of its desire to terminate or modify the agreement at least 60 days prior to its termination.

About May 1996, the Respondent failed to continue in effect all the terms and conditions of the 1993-1995 agreement by failing and refusing to pay employees vacation pay and paid holidays, and by failing and refusing to check off union dues. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

About January 10, 1997, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively 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 violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the 1993–1995 agreement by failing and refusing, since about May 1996, to pay employees contractually required vacation pay and paid holidays, we shall order the Respondent to comply with the terms and conditions of the 1993–1995 agreement and to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. 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).

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, to continue in effect the terms and conditions of the 1993–1995 agreement by failing, since about May 1996, to check off union dues, we shall order the Respondent to check off union dues as required by the 1993–1995 agreement and to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by withholding recognition from the Union on January 10, 1997, we shall order the Respondent to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

## ORDER

The National Labor Relations Board orders that the Respondent, Dick Boehm Enterprises, Inc. d/b/a Comanche Restaurant, St. Croix, United States Virgin Islands, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the 1993–1995 agreement by failing or refusing to pay employees vacation pay and paid holidays, or by failing or refusing to check off union dues.

(b) Withdrawing recognition from the Virgin Island Workers Union as the exclusive collective-bargaining representative of the following unit employees:

Included: All regular, full-time waiters, waitresses, cooks, pantry persons (including “dishwashers”), busboys and bartenders employed by the Employer at the Restaurant.

Excluded: All part-time, casual, seasonal and managerial employees, guards and supervisors as defined in the Act.

(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) Comply with the terms and conditions of the 1993–1995 agreement.

(b) Make the unit employees whole for any loss of earnings attributable to its unlawful failure and refusal to pay employees contractually required vacation pay and paid holidays since about May 1996.

(c) Deduct union dues, as required by the 1993–1995 agreement, and reimburse the Union for its failure to do so since about May 1996.

(d) Recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

(e) Preserve and, within 14 days of a 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 amounts due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in St. Croix, United States Virgin Islands, copies of the attached notice marked “Appendix.”<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 24, 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 employees and former employees employed by the Respondent at any time since November 20, 1996.

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

<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.”

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 20, 1997

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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John E. Higgins, Jr., Member

(SEAL) 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 continue in effect all the terms and conditions of the 1993–1995 collective-bargaining agreement with the Union by failing or refusing to pay unit employees vacation pay and paid holidays, or by failing or refusing to check off union dues.

WE WILL NOT withdraw recognition from the Virgin Island Workers Union as the exclusive collective-bargaining representative of our following unit employees:

Included: All regular, full-time waiters, waitresses, cooks, pantry persons (including ‘‘dishwashers’’), busboys and bartenders employed by the Employer at the Restaurant.

Excluded: All part-time, casual, seasonal and managerial employees, guards and supervisors as defined in the Act.

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 comply with all the terms and conditions of the 1993–1995 collective-bargaining agreement with the Union.

WE WILL make the unit employees whole for any loss of earnings attributable to our unlawful failure or refusal to pay unit employees contractually required vacation pay and paid holidays since about May 1996.

WE WILL deduct union dues, as required by the 1993–1995 agreement, since about May 1996, and reimburse the Union for our failure to do so.

WE WILL recognize and bargain with the Union as the exclusive collective-bargaining representative of our unit employees.

DICK BOEHM ENTERPRISES, INC. D/B/A  
COMANCHE RESTAURANT