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Elliott Metal Processing Co. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and its Local 985. Cases 7-CA-41062 and 7-CA-41179

October 30, 1998

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Upon charges filed by the Union on June 11 and July 15, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on August 21, 1998, against Elliott Metal Processing Co., 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 13, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On October 15, 1998, 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 9, 1998, notified the Respondent that unless an answer were received by September 23, 1998, 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 corporation, with an office and place of business in Detroit, Michigan, has been engaged in the business of metal processing. During the 12-month period ending December 31, 1997, the Respondent in conducting its business operations

described above, purchased and received at its Detroit, Michigan facility, goods valued at more than \$50,000 directly from points 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

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 production and maintenance employees employed by Respondent at its Detroit facility, but excluding office employees, truck drivers, technical employees and guards and supervisors as defined in the Act.

Since about 1974, and at all material times, the Charging Party 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 successive collective-bargaining agreements, the most recent of which was effective from October 22, 1994, to October 22, 1997.

At all times since 1974, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The parties' 1994-1997 collective-bargaining agreement provides, among other things, (1) that the Respondent shall pay for certain coverages and maintain a health insurance benefit plan for the unit employees and their families; and (2) that with certain specified exceptions, no foreman, supervisors, or nonunit employee shall perform the work done by unit employees.

In about late October 1997, the Respondent and the Union verbally agreed to continue the terms of the 1994-1997 collective-bargaining agreement on a day-to-day basis, pending the negotiation of a new agreement.

Commencing on about November 1, 1997, and continuing until about February 1998, the Respondent unilaterally caused the health insurance plan provided by the collective-bargaining agreement to lapse by failing to remit the required premium payments to the insurance carrier. The Union did not become aware of the Respondent's failure to remit those payments until about February 15, 1998. Since about March 1, 1998, and continuing to date, the Respondent again unilaterally caused the contractual health insurance plan to lapse by failing to remit required premium payments.

In addition, since about May 1, 1998, and continuing to date, the Respondent has been using supervisors and/or nonunit employees to perform work normally performed by unit employees, without meeting any of the contractual exceptions permitting the Respondent to do so.

The Respondent engaged in all of the above conduct without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), 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 violated Section 8(a)(5) and (1) by failing to remit the required premium payments to the unit employees' contractual health insurance plan, and thereby causing the plan to lapse, we shall order the Respondent to restore the employees' health insurance benefits and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by using supervisors and/or nonunit employees to perform unit work, we shall order the Respondent to make unit employees whole for all hours of unit work performed by supervisors and nonunit employees. 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*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Elliott Metal Processing Co., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to comply with the terms of the 1994-1997 collective-bargaining agreement with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, and its Local 985, by failing to remit the required premium payments to the health insurance carrier, thereby causing the health insurance plan to lapse.

(b) Using supervisors and/or nonunit employees to perform work normally performed by employees in the following unit without meeting any of the exceptions set

forth in the 1994-1997 collective-bargaining agreement permitting it to do so.

All production and maintenance employees employed by Respondent at its Detroit facility, but excluding office employees, truck drivers, technical employees and 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) Restore the health insurance coverage for the unit employees as provided in the 1994-1997 collective-bargaining agreement.

(b) Make the unit employees whole for the Respondent's failure to maintain the contractual health insurance coverage, in the manner set forth in the remedy section of this decision.

(c) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's use of supervisors and/or nonunit employees to perform work normally performed by unit employees, in the manner set forth in the remedy section of this decision.

(d) 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 amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."¹ 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 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 1, 1997.

(f) 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 at

¹ 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."

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

Dated, Washington, D.C. October 30, 1998

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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	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 comply with the terms of the 1994-1997 collective-bargaining agreement with the International Union, United Automobile, Aerospace and

Agricultural Implement Workers of America (UAW), AFL-CIO, and its Local 985, by failing to remit the required premium payments to the health insurance carrier, thereby causing the health insurance plan to lapse.

WE WILL NOT use supervisors and/or nonunit employees to perform work normally performed by employees in the following unit without meeting any of the exceptions set forth in the 1994-1997 collective-bargaining agreement permitting us to do so.

All production and maintenance employees employed by us at our Detroit facility, but excluding office employees, truck drivers, technical employees and 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 restore the health insurance coverage for the unit employees as provided in the 1994-1997 collective-bargaining agreement.

WE WILL make the unit employees whole for our failure to maintain the contractual health insurance coverage, with interest.

WE WILL make the unit employees whole for any loss of earnings and other benefits suffered as a result of our use of supervisors and/or nonunit employees to perform work normally performed by unit employees, with interest.