

Sun Television and Appliance, Inc. and Jerry Duncan and Tim Hatfield and Julius Fisher. Cases 9-CA-35938-1, 9-CA-35938-2, and 9-CA-35938-4

May 28, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

Upon charges and amended charges filed by the Charging Parties on May 4, June 16, May 4 and 11, June 8, 15, and 16, 1998, the General Counsel of the National Labor Relations Board issued a complaint on July 20, 1998, and an amendment thereto on October 21, 1998, against Sun Television and Appliance Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. The Respondent filed a timely answer to the complaint, but by letter dated December 14, 1998, withdrew its answer.

On April 14, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On April 16, 1999, 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.

By letter to the Region dated December 14, 1998, the Respondent withdrew its answer to the complaint, stating that "[t]his withdrawal is being made because of the Chapter 11 liquidation status of the Company." Such a withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹

¹ See *Maislin Transport*, 274 NLRB 529 (1985). Although the Respondent claims to be in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

Accordingly, based on the Respondent's withdrawal of its answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.²

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 Groveport, Ohio, has been engaged in the warehousing and retail sale of televisions, radios, appliances, and computers. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its operations, derived gross revenues in excess of \$500,000, and purchased and received at its Groveport, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio. 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, Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 284, an affiliate of the International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about February 27, 1998, Respondent, by Manager Cory Best, at its Groveport, Ohio facility, interrogated an employee about his union sympathies, interrogated an employee about the union activities of fellow employees, told an employee that employees' union activities were under surveillance, made unspecified threats of reprisals because of employees' involvement in union activity, and threatened to abolish home delivery services

² In the amendment to the complaint, the General Counsel seeks an order requiring the Respondent to preserve and, on request, provide at the office designated by the Board or its agents, copies of specified records necessary to analyze the amount of backpay due under the terms of the Board's Order, including electronic copies, if such records are stored in electronic form.

We find that electronic copies of the relevant records, where such already exist, are encompassed within the Board's traditional remedial language. See generally Fed.R.Civ.P. 34 (definition of "document" includes data compilations). See also *Bills v. Kennecott Corp.*, 108 F.R.D. 459 (D. Utah 1985) (requesting party need not accept only data that exists in traditional forms, but may discover the same information when stored in electronic form in a computer); *National Union Electric Corp. v. Matsushita Electric Industrial Co.*, 494 F.Supp. 1257 (E.D. Pa. 1980) (same). Moreover, the Respondent has not established that it would be prejudiced in any way by a requirement that it produce electronic copies of these documents. Accordingly, and to clarify any ambiguity with respect to this matter, we have provided in the Order for the production of electronic copies of the specified backpay records if they are stored in electronic form.

With respect to the General Counsel's proposed requirement that the Respondent submit copies of the necessary backpay records at the office designated by the Board or its agents, however, we find that this proceeding does not satisfactorily present the question of whether a respondent should be ordered to provide copies of its records in this manner. We accordingly decline to order the Respondent to do so in connection with this case.

and hire a contractor because of employees' union activities.

About late February 1998, the Respondent, by Manager Cory Best, at its Logan, Ohio facility, interrogated employees about their union activities and created the impression that employees' union activities were under surveillance.

About February 27, 1998, the Respondent, by Manager Cathy Roberts, at its Groveport, Ohio facility, interrogated an employee about employees' union activities, made statements that employees' union activities were under surveillance, threatened to get rid of everyone involved in union activity and to "clean house," and threatened an employee that the Respondent could find new drivers and helpers or hire a contractor if needed to discourage employees from engaging in union activities.

About April 10, 1998, during a morning "shape meeting," employees, including employee Tim Hatfield, concertedly discussed announced changes in the damage control policy; employee Julius Fisher and employee Hatfield went to Manager Cathy Roberts' office to complain about the treatment of Hatfield during the morning "shape meeting;" and the Respondent then suspended employee Hatfield. About April 20, 1998, the Respondent terminated employee Hatfield. About April 24, 1998, the Respondent issued a final warning to employee Fisher. The Respondent engaged in the conduct described above because its employees joined, supported, or assisted the Union and engaged in concerted activities, and to discourage them from engaging in these activities.

CONCLUSIONS OF LAW

By the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by the suspension, termination and issuance of a final warning described above, the Respondent has discriminated in regard to hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act. The Respondent has thereby engaged in unfair labor practices affecting commerce within the meaning of 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)(3) and (1) by suspending and discharging Hatfield, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges

previously enjoyed. In addition, we shall order the Respondent to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful suspension and discharge, and to notify the discriminatee in writing that this has been done and that those actions will not be used against him in any way.

Further, having found that the Respondent has violated Section 8(a)(3) and (1) by issuing a final written warning to Fisher, we shall order the Respondent to remove from its files any and all references to the unlawful final written warning, and to notify the discriminatee in writing that this has been done, and that its action will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Sun Television and Appliance, Inc., Groveport, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union sympathies or fellow employees' union activities.

(b) Creating the impression that employees' union activities are under surveillance.

(c) Making unspecified threats of reprisals because of employees' involvement in union activity.

(d) Threatening to abolish home delivery services and hire a contractor because of employees' union activities.

(e) Threatening to get rid of everyone involved in union activity and to "clean house."

(f) Threatening an employee that the Respondent could find new drivers and helpers or hire a contractor if needed to discourage employees from engaging in union activities.

(g) Issuing a final written warning, suspending or discharging its employees for joining, supporting, or assisting the union and engaging in concerted activities.

(h) 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) Within 14 days from the date of this Order, offer Tim Hatfield full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Tim Hatfield whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful suspension and termination of Tim Hatfield and the unlawful final written warning given to Julius Fisher, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.

(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, including an electronic copy of such records if stored in electronic form, 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 facilities in Groveport and Logan, Ohio, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 9, 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 facilities 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 February 27, 1998.

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

³ 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 interrogate our employees about their union sympathies or fellow employees' union activities.

WE WILL NOT create the impression that our employees' union activities are under surveillance.

WE WILL NOT make unspecified threats of reprisals because of our employees' involvement in union activity.

WE WILL NOT threaten to abolish home delivery services and hire a contractor because of our employees' union activities.

WE WILL NOT threaten to get rid of everyone involved in union activity and to "clean house."

WE WILL NOT threaten our employees that we could find new drivers and helpers or hire a contractor if needed to discourage our employees from engaging in union activities.

WE WILL NOT suspend or discharge Tim Hatfield for joining, supporting, or assisting the Union and engaging in concerted activities.

WE WILL NOT issue a final written warning to Julius Fisher for joining, supporting, or assisting the Union and engaging in concerted activities.

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, within 14 days from the date of the Board's Order, offer Tim Hatfield full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Tim Hatfield whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful suspension and termination of Tim Hatfield, and the unlawful final written warning given to Julius Fisher, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful actions will not be used against them in any way.