

Park Drop Forge, Division of Park-Ohio Industries, Inc. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Lodge No. 1086.
Case 8-CA-32497

July 2, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on June 12, 2001, the General Counsel issued the complaint on October 31, 2001, against Park Drop Forge, Division of Park-Ohio Industries, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On February 28, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On March 6, 2002, 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 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 February 8, 2002, notified the Respondent that unless an answer were received by February 14, 2002, 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 Delaware corporation with an office and place of business located at 777 East 79th Street, Cleveland, Ohio, has been engaged in the manufacture and forging of crank shafts. Annually, in the conduct of its operations, the Respondent sells and ships products valued in excess of \$50,000 directly to 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 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

D. P. Porter	Plant Manager
Greg Muniak	Vice President

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 at Respondent's facility located at 777 East 79th Street, Cleveland, Ohio, but excluding all other employees, supervisory personnel, and guards as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees employed in 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 is effective by its terms from December 12, 2000, to December 11, 2006, and was executed on about February 22, 2001.

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

On about January 1, 2001, the Respondent unilaterally changed its existing drug policy and implemented a new "zero tolerance" drug policy.

On about January 16, 2001, the Respondent unilaterally changed its existing attendance policy and implemented a revised attendance policy.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent unilaterally engaged in the conduct above 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.

CONCLUSION OF LAW

By unilaterally changing its drug and attendance policies, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, 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)(1) and (5) by unilaterally changing its existing drug policy and implementing a new "zero tolerance" drug policy, and by unilaterally changing its attendance policy and implementing a revised attendance policy, we shall order the Respondent, on request, to restore the terms and conditions of employment in effect before the Respondent's unlawful changes, and make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct, 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).

ORDER

The National Labor Relations Board orders that the Respondent, Park Drop Forge, Division of Park-Ohio Industries, Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing its existing drug policy and implementing a new "zero tolerance" drug policy.

(b) Unilaterally changing its existing attendance policy and implementing a revised attendance policy.

(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) On request, restore the terms and conditions of employment in effect before the unilateral changes by rescinding the new "zero tolerance" drug policy and the revised attendance policy.

(b) Make the employees in the following unit whole for any loss of earnings and other benefits attributable to the Respondent's unlawful unilateral changes, in the manner set forth in the remedy section of this decision:

All production and maintenance employees at Respondent's facility located at 777 East 79th Street, Cleveland, Ohio, but excluding all other employees, supervisory personnel, and guards as defined in the Act.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, 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.

(d) Within 14 days after service by the Region, post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 8, 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 January 1, 2001.

(e) 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.

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally change our existing drug policy and implement a new "zero tolerance" drug policy.

WE WILL NOT unilaterally change our existing attendance policy and implement a revised attendance policy.

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, restore the terms and conditions of employment in effect before our unilateral changes by

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."

rescinding our new “zero tolerance” drug policy and our revised attendance policy.

WE WILL make our employees in the following unit whole for any loss of earnings and other benefits attributable to our unlawful unilateral changes, with interest:

All production and maintenance employees at our facility located at 777 East 79th Street, Cleveland, Ohio, but excluding all other employees, supervisory personnel, and guards as defined in the Act.

PARK DROP FORGE, DIVISION OF
PARK-OHIO INDUSTRIES, INC.