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Teixeira and Son, Inc. d/b/a L. Liss Bakery *and* Bakery, Confectionery, Tobacco & Grain Millers Workers International Union, AFL–CIO–CLC, Local 6. Cases 4–CA–30480 and 4–CA–30531

July 11, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon a charge and amended charges filed by the Union in Case 4–CA–30480 on June 29, July 18, and August 31, 2001, respectively, and a charge and an amended charge filed by the Union in Case 4–CA–30531 on July 18 and August 28, 2001, respectively, the General Counsel issued an order consolidating cases and a consolidated complaint on October 3, 2001, against Teixeira & Son, Inc. d/b/a L. Liss Bakery, the Respondent, alleging that it has violated Section 8(a)(1), (3), (4) and (5) of the Act. The Respondent failed to file an answer.

On January 2, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On January 8, 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 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 November 1, 2001, notified the Respondent that unless an answer was received by November 8, 2001, 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 Pennsylvania corporation with a facility located at 6242 Haverford Avenue, Philadelphia, Pennsylvania (the bakery facility), has been engaged in the manufacture and sale of bread and other baked goods to commercial customers. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, purchased and received at its bakery facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. 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, Joseph Teixeira, Respondent's owner, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

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

> All full and part-time bakery employees employed by the Respondent at its bakery facility in Philadelphia, Pennsylvania.

At all material times, the Respondent and the Union have been parties to a series of collective-bargaining agreements, the most recent of which is effective by its terms from November 22, 2000, through September 30, 2003 (the Agreement), and pursuant to which the Respondent has recognized the Union as the exclusive collective-bargaining representative.

At all times since at least November 22, 2000, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about July 16, 2001, the Respondent, by Joseph Teixeira, by telephone, told a union representative to advise an employee that the employee was being discharged because the Union filed an unfair labor practice charge, and that "the Union doesn't exist here anymore" if it filed further unfair labor practice charges against the Respondent.

On about July 16, 2001, the Respondent discharged its employee Anthony Chrupcala.

The Respondent engaged in the conduct described above because the Union and Anthony Chrupcala were seeking to have the Respondent comply with the terms of the Agreement, and because the Union filed the charge in Case 4–CA–30480.

Since about January 2, 2001, the Respondent has failed and refused to apply portions of the Agreement to the unit employees by: (i) failing and refusing to make health and welfare contributions required by article XIV of the Agreement; (ii) failing and refusing to make pension contributions required by article XV of the Agreement; and (iii) failing and refusing to remit union dues required by article VI of the Agreement.

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 engaged in the conduct described above without the Union's consent.

CONCLUSIONS OF LAW

1. By telling a union representative to advise an employee that the employee was being discharged because the Union filed an unfair labor practice charge and that "the Union doesn't exist here anymore" if it filed further unfair labor practice charges against the Respondent, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act. In addition, by discharging Anthony Chrupcala because the Union and Chrupcala were seeking to have the Respondent comply with the terms of the Agreement, the Respondent has discriminated in regard to hire, 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.

2. Further, by discharging Chrupcala because the Union filed an unfair labor practice charge, the Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

3. Finally, by failing and refusing, since about January 2, 2001, to apply portions of the Agreement to the unit by: (i) failing and refusing to make health and welfare contributions required by article XIV of the Agreement; (ii) failing and refusing to make pension contributions required by article XV of the Agreement; and (iii) failing and refusing to remit union dues required by article VI of the Agreement, the Respondent has been refusing to bargain collective with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and in violation of Section 8(a)(1) and (5) of the Act.

The Respondent's unfair labor practices affect 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)(1), (3), and (4) by discharging Anthony Chrupcala, we shall order the Respondent to offer Anthony Chrupcala 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, and 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).[1] The Respondent shall also be required to remove from its files any and all references to the unlawful discharges, and to notify Anthony Chrupcala in writing that this has been done and that the discharge will not be used against him in any way.

In addition, having found that the Respondent has violated Section 8(a)(1) and (5) by failing, since January 2, 2001, to make contractually required health and welfare and pension contributions pursuant to articles XIV and XV of the Agreement, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216, fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

Finally, having found that the Respondent violated Section 8(a)(1) and (5) by failing, since January 2, 2001, to remit union dues to the Union as required by article VI of the Agreement, we shall order the Respondent to remit such dues to the Union as required by the Agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

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[1] In the consolidated complaint, the General Counsel seeks an order requiring the Respondent "to reimburse Anthony Chrupcala for any extra federal and/or state income taxes that would or may result from a lump sum payment of backpay to him." This aspect of the General Counsel's proposed Order would involve a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1985), enfd. 762 F.2d 990 (2d Cir. 1985). In light of this, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB 811 fn.1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order here.

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

ORDER

The National Labor Relations Board orders that the Respondent, Teixeira & Son, Inc., d/b/a L. Liss Bakery, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling representatives of Bakery, Confectionery, Tobacco & Grain Millers Workers International Union, AFL–CIO–CLC, Local 6 to advise an employee that the employee is being discharged because the Union filed an unfair labor practice charge, and that "the Union doesn't exist here anymore" if it filed further unfair labor practice charges against the Respondent.

(b) Discharging or otherwise discriminating against employees because of their union activities, or because they seek to have the Respondent comply with the terms of its 2000–2003 collective-bargaining agreement with the Union.

(c) Discharging or otherwise discriminating against employees for filing charges or giving testimony against the Respondent under the Act.

(d) Failing and refusing to apply portions of its 2000–2003 collective-bargaining agreement with the Union by failing and refusing to make the contractually required health and welfare and pension contributions pursuant to article XIV and article XV of the Agreement. The appropriate unit is:

> All full and part-time bakery employees employed by the Respondent at its bakery facility in Philadelphia, Pennsylvania.

(e) Failing and refusing to remit union dues to the Union as required by article VI of the Agreement.

(f) 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 Anthony Chrupcala full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Anthony Chrupcala whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, 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 reference to the unlawful discharge of Anthony Chrupcala and, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Make the contractually required health and welfare and pension contributions pursuant to article XIV and article XV of the Agreement that have not been made since January 2, 2001, and reimburse unit employees for any expenses ensuing from its failure to make the required contributions, with interest, in the manner set forth in the remedy section of this decision.

(e) Remit union dues to the Union as required by article VI of the Agreement that it has failed to remit since January 2, 2001, with interest, in the manner set forth in the remedy section of this decision.

(f) 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.

(g) Within 14 days after service by the Region, post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 4, 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 2, 2001.

(h) 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.

Dated, Washington, D.C. July 11, 2002

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Peter J. Hurtgen, Chairman

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Wilma B. Liebman, Member

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Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[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 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 tell representatives of Bakery, Confectionery, Tobacco & Grain Millers Workers International Union, AFL–CIO–CLC, Local 6, to advise an employee that the employee is being discharged because the Union filed an unfair labor practice charge, and that "the Union doesn't exist here anymore" if it filed further unfair labor practice charges against us.

WE WILL NOT discharge or otherwise discriminate against you because of your union activities, or because you seek to have us comply with the terms of our 2000–2003 collective-bargaining agreement with the Union.

WE WILL NOT discharge or otherwise discriminate against you for filing charges or giving testimony against us under the Act.

WE WILL NOT fail and refuse to apply portions of our November 22, 2000 through September 30, 2003 Agreement with the Union by failing and refusing to make the contractually required health and welfare and pension contributions pursuant to article XIV and article XV of the Agreement. The appropriate unit is:

All full and part-time bakery employees employed by us at our bakery facility in Philadelphia, Pennsylvania.

WE WILL NOT fail and refuse to remit union dues to the Union as required by article VI of the Agreement.

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 Order, offer Anthony Chrupcala full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Anthony Chrupcala whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Order, remove from our files any reference to the unlawful discharge of Anthony Chrupcala and, WE WILL within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL make the contractually required health and welfare and pension contributions pursuant to article XIV and article XV of the Agreement that have not been made since January 2, 2001, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL remit union dues to the Union as required by article VI of the Agreement that we have not remitted since January 2, 2001, with interest.

TEIXEIRA & SON, INC. D/B/A L. LISS BAKERY