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**Q3 Mansfield, Inc. and United Steelworkers of America, AFL-CIO, CLC.** Case 8-CA-33222

March 19, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, WALSH, AND ACOSTA

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 and amended charges filed by the Union on March 18, June 21, and July 25, 2002, the General Counsel issued the complaint on August 30, 2002, against Q3 Mansfield, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the Act. The Respondent failed to file an answer.

On September 23, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On September 26, 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

Section 102.20 of the Board's Rules and Regulations provides 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, on September 13, 2002, notified the Respondent that unless an answer was received, 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, an Ohio corporation, with an office and place of business on Rupp Road in Mansfield, Ohio, has been engaged in the busi-

ness of metal processing for the auto industry. Annually, the Respondent, in conducting its business operations described above, sold and shipped from its facility goods valued in excess of \$50,000 directly to points located 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. In addition, we find that, at all material times, the United Steelworkers of America, AFL-CIO (the International Union), United Steelworkers of America, Local Union 7597 (Local 7597), and United Steelworkers of America, Local Union No. 7597-2 (Local 7597-2), have been labor organizations 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 opposite their 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:

|                |                              |
|----------------|------------------------------|
| Francis Price  | Chief Executive Officer      |
| Art Barr       | Personnel Director           |
| Denny Laich    | Corporate Personnel Director |
| Sanil Kanuga   | Secretary Treasurer          |
| Nancy Baldrige | Human Resource Manager       |
| Tim Segerson   | Production Manager           |
| Vince Whitlock | Director of Operations       |

The following employees of the Respondent at its Mansfield, Ohio facility (the unit), 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, but excluding office, clerical employees, professional employees, plant protection, foremen and supervisors as defined in the National Labor [Relations] Act.<sup>1</sup>

Since about November 13, 2000, and at all material times, the International Union, Local 7597, and Local 7597-2 (collectively called the Union), have been the designated exclusive collective-bargaining representative of the unit, and since at least that same date the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which was effective from November 13, 2000, until about January 8, 2002, when it expired under the terms of a Closing and Release Agreement. Thereafter, the bargaining relationship has

<sup>1</sup> Although the word "Relations" was omitted from the unit description set forth in the complaint, it appears that this was an inadvertent error.

continued by the terms of the Closing and Release Agreement and by the terms of a Recall Agreement signed by the Respondent and the Union on December 27, 2001.

At all material times since November 13, 2000, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Respondent continued to operate its Mansfield, Ohio facility until about July 30, 2002. Since about January 22, 2002, the Respondent refused to recall bargaining unit employees to its Mansfield, Ohio facility.

The Respondent engaged in the above conduct because the employees of the Respondent were represented by a union and engaged in concerted activities, and to discourage employees from engaging in these activities.

At various times from January 28, 2002, until July 30, 2002, the Respondent and the Union met for the purpose of collective bargaining regarding the employees in the unit, including their recall, wages, hours of employment, and other terms and conditions of employment.

During the period of January 28 to July 30, 2002, the Respondent (1) advised the Union that it was futile to discuss recall rights and a new agreement because it was closing imminently; (2) failed to respond to proposals from the Union; (3) canceled at least two negotiating sessions; and (4) failed to appear at a scheduled meeting.

By its overall conduct, including the conduct described in the preceding paragraph, the Respondent has failed and refused to bargain in good faith with the Union as the exclusive bargaining representative of the unit.

On about April 9, 2002, the Respondent, by Tim Segerson at its facility, bypassed the Union and dealt directly with its unit employees by soliciting employees to enter into individual employment contracts.

#### CONCLUSIONS OF LAW

(1) By refusing to recall bargaining unit employees to its Mansfield, Ohio facility from January 22, 2002, until the facility closed on July 30, 2002, because they were represented by a union and engaged in concerted activities, the Respondent has discriminated in regard to the hire or tenure or terms or 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, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(1) and (5) of the Act, by advising the Union that it was futile to discuss recall rights and a new agreement because it was closing imminently; failing to respond to proposals from the Union and to appear at a scheduled meeting; canceling negotiating

sessions; bypassing the Union and dealing directly with unit employees by soliciting them to enter into individual employment contracts; and by its overall conduct in connection with the bargaining meetings held with the Union between January 28 and July 30, 2002.

(3) In addition, by the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

(4) 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 violated Section 8(a)(1) and (3) by refusing to recall unit employees between January 22 and July 30, 2002, we shall order the Respondent to make employees who were not recalled whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.<sup>2</sup> 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).

#### ORDER

The National Labor Relations Board orders that the Respondent, Q3 Mansfield, Inc., Mansfield, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the United Steelworkers of America, AFL-CIO, United Steelworkers of America, Local Union 7597, and United Steelworkers of America, Local Union 7597-2, as the exclusive collective-bargaining representative of the employees in the following unit, by advising that discussion regarding recall rights and a new agreement are futile; failing to respond to proposals from the Union; canceling negotiating sessions; and failing to appear at a scheduled meeting. The unit is:

<sup>2</sup> The identity of these individuals shall be ascertained at the compliance stage of this proceeding.

All production and maintenance employees, but excluding office, clerical employees, professional employees, plant protection, foremen and supervisors as defined in the National Labor Relations Act.

(b) Refusing to recall bargaining unit employees because they were represented by a union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(c) Bypassing the Union and dealing directly with unit employees by soliciting employees to enter into individual employment contracts.

(d) 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) Make whole unit employees who were not recalled between January 22 and July 30, 2002, for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, as set forth in the remedy section of this Decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to recall the bargaining unit employees, and within 3 days thereafter notify the employees in writing that this has been done and that the unlawful discrimination will not be used against them in any way.

(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, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"<sup>3</sup> to all current employees and former employees employed by the Respondent at any time since January 22, 2002.

(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 at-

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed 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. March 19, 2003

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Wilma B. Liebman, Member

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Dennis P. Walsh, Member

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R. Alexander Acosta, 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist any 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 fail and refuse to bargain in good faith with the United Steelworkers of America, AFL-CIO, United Steelworkers of America, Local Union 7597, and United Steelworkers of America, Local 7597-2, as the exclusive collective-bargaining representative of the employees in the following unit, by advising that discussion regarding recall rights and a new agreement are futile; failing to respond to proposals from the Union; canceling negotiation sessions; and failing to appear at a scheduled meeting. The unit is:

All production and maintenance employees, but excluding office, clerical employees, professional employees, plant protection, foremen and supervisors as defined in the National Labor Relations Act.

WE WILL NOT refuse to recall bargaining unit employees because they were represented by a union and en-

gaged in concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT bypass the Union and deal directly with unit employees by soliciting employees to enter into individual employment contracts.

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 make whole unit employees who were not recalled between January 22 and July 30, 2002, for any

loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusal to recall the bargaining unit employees, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the unlawful discrimination will not be used against them in any way.

Q3 MANSFIELD, INC.