

Property Maintenance Corporation and Security Police Fire Professionals of America, Local Union 451 (SPFPA). Case 5–CA–30272

November 1, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, 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 complaint. Upon a charge filed by the Union on March 1, 2002, the General Counsel issued the complaint on May 31, 2002, against Property Maintenance Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On July 17, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On July 19, 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.

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 June 24, 2002, notified the Respondent that unless an answer were received by July 8, 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.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Virginia corporation, with an office and place of business in Roa-

noke, Virginia, has been engaged in supplying security services to the United States Coast Guard at the United States Coast Guard Reserve Training Center, Yorktown, Virginia. During the 12-month period preceding the issuance of the complaint, the Respondent, in its performance of services described above, derived gross revenues in excess of \$50,000, and purchased and received at its Yorktown and Roanoke, Virginia facilities products, goods, and materials valued in excess of \$5000 directly from points located outside the State of Virginia. 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:

Kenneth Haley	President
Larry Underwood	Project Manager/Captain

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-full time and/or regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended; but excluding all office clerical employees, professional employees, supervisors as defined in the Act, and all other employees.

Since about January 25, 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees 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 by its terms from June 9, 1998, to October 1, 2001.

At all times since about January 25, 1991, based on Section 9(a) of the Act, the Union has been the collective-bargaining representative of the unit employees.

On about September 30, 2001, the Union filed a grievance alleging the Respondent had failed to pay an employee vacation pay in accordance with the terms of the 1998–2001 agreement. During that same period, the Respondent, by Larry Underwood, entered into a settlement of the grievance with the Union, which included the

¹ The Respondent, which, as stated above, has not filed an answer to the complaint or a response to the Notice to Show Cause, does not contend that the General Counsel's motion should be denied based on the legal argument advanced by the dissent. Therefore, Member Liebman sees no need to address that argument. In addition, Member Liebman observes that the dissent's position was rejected by the Board in *Scapino Steel Erectors*, 337 NLRB 992, 993 fn. 3 (2002).

Respondent's agreement to pay the employee the owed vacation pay.

At all times since September 30, 2001, the Respondent has failed to abide by the grievance settlement described above.

Since about August 1, 2001, the Respondent has deducted union dues from unit employees' pay, in accordance with the terms of article IV, section 1 of the 1998–2001 agreement. Since around the end of September 2001, and continuing to date, the Respondent has failed to remit to the Union the dues deducted from unit employees' pay for the months of August and September 2001, in accordance with the terms of article IV, section 4 of the 1998–2001 agreement.

The subjects described above related 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 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. The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed to continue in effect all the terms and conditions of the 1998–2001 agreement, and has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (5), and 8(d) 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 abide by the terms of the grievance settlement between the Respondent and the Union, which included the Respondent's agreement to pay its employee the owed vacation pay, we shall order the Respondent to abide the terms of the grievance settlement and to pay the owed vacation pay with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has failed to remit to the Union dues that were deducted from the pay of unit employees for the months of August and

September 2001, in accordance with the terms of article IV, section 4 of the 1998–2001 agreement, we shall order the Respondent to remit the withheld dues to the Union, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Property Maintenance Corporation, Roanoke and Yorktown, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to abide by the terms of the grievance settlement with Security Police Fire Professionals of America, Local Union 451 (SPFPA), which included the Respondent's agreement to pay its employee the owed vacation pay.

(b) Failing and refusing remit to the Union dues that were deducted from unit employees' pay for the months of August and September 2001.

(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) Abide by the terms of the grievance settlement with Security Police Fire Professionals of America, Local Union 451 (SPFPA), and pay its employee the owed vacation pay, with interest, as set forth in the remedy section of this decision.

(b) Remit to the Union dues that were deducted from unit employees' pay for the months of August and September 2001, with interest, as set forth in the remedy section of this decision.

(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 Roanoke and Yorktown, Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's author-

² 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."

ized 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 September 30, 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.

MEMBER BARTLETT, concurring.

I join in granting summary judgment in the absence of an answer to the complaint. However, in my concurring opinion in *Baptist Hospital of East Tennessee*, 338 NLRB 249 (2002), I expressed the view that the Board should sua sponte defer processing allegations of an 8(a)(5) contract breach violation until after the parties have exhausted the possibility of resolving their contractual dispute through their won agreed-upon systems, or, in the absence of applicable procedures for arbitral resolution, Section 301 of the Act. The unfair labor practice issues presented here, involving the Respondent's failure to adhere to a grievance settlement agreement about an employee's vacation pay and a 2-month failure to remit deducted union dues, seem particularly suited to resolution through these non-Board procedures.

MEMBER COWEN, dissenting.

Contrary to my colleagues, I would deny the General Counsel's Motion for Summary Judgment because, in my view, the complaint on which it is based fails to allege any violations cognizable under Section 8(a)(5) and (1) of the Act.

The complaint alleges that the Respondent refused to bargain with the Union in good faith by failing to abide by a grievance settlement regarding vacation pay owed to an employee and failing to remit to the Union dues deducted from unit employees' pay for the months of August and September 2001.

As I see it, these matters, as alleged, merely involve possible breaches of the parties' collective-bargaining agreement. As explained in my dissent in *Scapino Steel*

Erectors, Inc., 337 NLRB 992, 994-995 (2002), the Board should not be involved in disputes involving alleged breaches of a collective-bargaining agreement, and the parties should be left to resolve such disputes through traditional contract enforcement mechanisms. Simply put, Congress did not intend for the Board to become embroiled in contractual disputes of the sort alleged in the General Counsel's complaint, because mere breaches of contract are not unfair labor practices. *Scapino Steel Erectors, Inc.*, supra at 995 (Member Cowen, dissenting).

Thus, I would deny the General Counsel's motion for summary judgment.

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 had 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 fail to abide by the terms of the grievance settlement with Security Police Fire Professionals of America, Local Union 451 (SPFPA), which included our agreement to pay our employee the owed vacation pay.

WE WILL NOT fail and refuse to remit to the Union dues that were deducted from unit employees' pay for the months of August and September 2001.

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 abide by the terms of the grievance settlement with Security Police Fire Professionals of America, Local Union 451 (SPFPA), and WE WILL pay our employee the owed vacation pay, with interest.

WE WILL remit to the Union dues that were deducted from unit employees' pay for the months of August and September 2001, with interest.

PROPERTY MAINTENANCE CORPORATION