A. N. O. Packaging Company, Inc. and Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO. Case 7–CA–17915

February 23, 1981

DECISION AND ORDER

Upon a charge filed on June 20, 1980, by Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL–CIO, herein called the Union, and duly served on A. N. O. Packaging Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on August 12, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

Respondent failed to file an answer to the complaint or request an extension of time for filing an answer.

On October 30, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on November 26, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not thereafter file a response to the Notice To Show Cause, and thus the allegations of the Motion for Summary Judgment stand uncontroverted.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in the answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on August 12, 1980, and duly served on Respondent and the Union, specifically states that unless an answer to the complaint is filed by Respondent within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, according to the uncontroverted allegations of the General Counsel's memorandum in support of the Motion for Summary Judgment, by letter dated September 19, 1980, and attached to the Motion for Summary Judgment, the Regional Director advised Respondent that, due to Respondent's failure to file an answer, counsel for the General Counsel would move for summary judgment. No answer has been received.

Good cause for failure to answer the complaint has not been shown. Under the rule set forth above, the allegations of the complaint are deemed admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a corporation which, until on or about April 11, 1980, engaged in the business of packaging and/or painting customers' products for shipment at its principal office and place of business; 15848 Glendale, Detroit, Michigan. During the past calendar year, a representative period, Respondent performed services valued in excess of $100,000. Of these services, more than $50,000 in services were performed for Borg and Beck Division, Borg-Warner Corporation, which company is engaged in commerce within the meaning of the Act inasmuch as on an annual basis said company ships goods and materials valued in excess of $50,000 from its various plants located in the State of Michigan directly to points located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union,

AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

1. The unit

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

> All full-time and regular part-time employees, including packers, painters, shipping and receiving and set up; but excluding all office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

A majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 7, designated the Union as their representative for the purposes of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on December 13, 1977, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. Respondent's Refusal To Bargain

Respondent and the Union entered into a collective-bargaining agreement which by its terms is effective from March 30, 1978, until March 29, 1981. The collective-bargaining agreement provides, inter alia, for the deduction by Respondent from the pay of each employee of all current and uniform union membership dues and initiation fees, and provides for the remittance to the Union of all sums so deducted by Respondent.

In or about February, March, and April 1980, Respondent deducted monthly union dues from its employees' wages, but it has failed and refused, and continues to fail and refuse, to remit same to the Union even though required to do so under the terms of the collective-bargaining agreement.

Further, on or about April 11, 1980, Respondent permanently closed its Detroit plant, and laid off all its employees in the unit described above. Respondent took these actions without prior notice to the Union, thereby denying the Union an opportunity to negotiate and bargain as the exclusive bargaining representative of Respondent's employees in the unit described above with respect to the effects of the plant closing.

Accordingly, we find that Respondent has, since in or about February 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom. We shall also order it to take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent failed to remit to the Union monthly union dues which it deducted from employees' wages for February, March, and April 1980. In order to dissipate the effect of these violations of Section 8(a)(1) and (5) we shall order Respondent to make whole the Union by transmitting to it the full amount of union dues which Respondent was required to withhold for the 3 months in question pursuant to signed dues-deduction authorizations and in accordance with the checkoff provision of the collective-bargaining agreement, together with interest on this amount.[1] The interest shall be calculated in the manner prescribed in Florida *Steel* Corporation, 231 NLRB 651 (1977).[2]

We have further found that Respondent failed to afford the Union an opportunity to bargain about the effects of its closing on bargaining unit employees in violation of Section 8(a)(5) and (1) of the Act. In order to effectuate the purposes of the Act, we shall order Respondent to bargain with the Union concerning the effects of closing on all bar-

[1] *The Presbyterian Hospital in the City of New York.* 241 NLRB 996 (1979); *Merryweather Optical Company.* 240 NLRB 1213 (1979); *Seneca Environmental Products, a Division of Seneca Sheet Metal. Inc.*, 243 NLRB 624 (1979).

[2] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

gaining unit employees. However, under the present circumstances, a bargaining order alone is an inadequate remedy, since Respondent's unlawful failure to bargain at the time of the shutdown denied the employees an opportunity to bargain at a time when there would have been some measure of balanced bargaining power. In order to create an atmosphere in which meaningful bargaining can be assured, we must restore some measure of economic strength to the Union. Therefore, we shall accompany our order to bargain over the effects of the closing with a limited **backpay** requirement designed to make the employees whole for losses suffered as the result of Respondent's failure to bargain, as well as to recreate to some degree a situation in which the parties' bargaining position is not entirely devoid of economic consequences for Respondent.

Accordingly, we shall order Respondent to bargain with the Union, upon request, about the effects on bargaining unit employees of the closing of Respondent's operations, and to pay these employees amounts at the rate of their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing on bargaining unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith, but in no event shall the sum paid to any of these employees exceed the amount he would have earned as wages from the date on which Respondent closed its Detroit plant to the time he secured equivalent employment elsewhere; provided, however, that in no event shall the sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's **employ.**[3]

Interest on all such sums shall be computed in the manner prescribed in ***Florida Steel Corporation, supra.***[4]

The Board, on the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. A. N. O. Packaging Company, Inc., is an employer engaged in commerce within the meaning of Section **2(6)** and (7) of the Act.

2. Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL–CIO, is a labor organization within the meaning of Section **2(5)** of the Act.

3. A unit including all full-time and regular part-time employees, including packers, painters, shipping and receiving and set up; but excluding all office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section **9(b)** of the Act.

4. Since December 13, 1977, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section **9(a)** of the Act.

5. By failing and refusing in or about February 1980, and at all times thereafter, to remit to the Union all moneys which it was required to withhold from employees' wages as union dues for February, March, and April 1980, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section **8(a)(5)** and (1) of the Act.

6. By failing to afford the Union an opportunity to bargain about the effects on its employees of the closing of its Detroit plant, Respondent has violated Section **8(a)(5)** and (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section **2(6)** and (7) of the Act.

ORDER

Pursuant to Section **10(c)** of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, A. N. O. Packaging Company, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to remit to the Union all moneys which it was required to withhold from employees' wages as union dues for February, March, and April 1980.

(b) Failing and refusing to bargain collectively with the Union concerning the effects on its employees of its decision to close its Detroit plant.

(c) In any like or related manner interfering with, restraining, or coercing employees in the **ex-**

[3] See *Transmarine Navigation Corporation and its Subsidiary. International Terminals, Inc.*, 170 NLRB 389, 390 (1968); see also *Merryweather Optical Company, supra.*

[4] See fn. 2, supra.

ercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole its employees by paying those employees whose employment was terminated when Respondent closed its Detroit operation normal wages plus interest for the period and in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Upon request, bargain collectively with Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, with respect to the effects on its employees of its decision to terminate its operations, and reduce to writing any agreement reached as a result of such bargaining.

(c) Make whole the Union in the manner set forth in the section of this Decision entitled "The Remedy," for Respondent's unlawful failure to transmit to the Union all moneys which it was required to withhold from employees' wages for February, March, and April 1980 under its collective-bargaining agreement with the Union.

(d) Preserve and, upon 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 necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail an exact copy of the attached notice marked "Appendix"[5] to Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, and to all the employees who were employed at its former place of business at 15848 Glendale, Detroit, Michigan, on April 11, 1980, when Respondent closed its Detroit operation. Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's authorized representative, shall be mailed immediately upon receipt thereof, as hereinabove directed.

(f) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail and refuse to bargain with Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, concerning the effects on our employees of our decision to close our Detroit operations.

WE WILL NOT fail and refuse to remit to the Union all moneys which we were required to withhold from employees wages as union dues for February, March, and April 1980.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL make our employees whole by paying those employees who were terminated on April 11, 1980, when we closed our Detroit operations, normal wages for a period specified by the National Labor Relations Board, plus interest.

WE WILL, upon request, bargain collectively with Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, concerning the effects on our employees of our decision to close our operations, and reduce to writing any agreement reached as a result of such bargaining.

A. N. O. PACKAGING COMPANY, INC.

[5] In the event that 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."