

Valiant Metal Products, Corp. and Sheet Metal Workers International Association, Local Union No. 137, AFL-CIO. Cases 22-CA-8862 and 22-CA-8991

September 13, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

Upon charges filed on November 22, 1978, and February 7, 1979, by Sheet Metal Workers International Association, Local Union No. 137, AFL-CIO, herein called the Union, and duly served on Valiant Metal Products, Corp., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint against Respondent alleging that Respondent had engaged 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 charges, the complaint, and notice of hearing were duly served on the above-mentioned parties.

With respect to the unfair labor practices the complaint alleges that since on or about May 22, 1978, and at all times material to date Respondent has unilaterally changed existing terms and conditions of employment by failing and refusing to make pension and welfare contributions to the Union as required by the applicable collective-bargaining agreement.¹ Although duly served, Respondent has failed to file an answer to the complaint.²

On July 16, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based on Respondent's failure to file an answer to the complaint. Subsequently, on July 25, 1979, the Board issued an Order transferring the proceeding to the Board and a Notice To Show Cause

¹ The initial charge in Case 22-CA-8862, alleging that since May 1978 Respondent failed to make contributions to the Union's pension and welfare funds as was required by the parties' collective-bargaining agreement, was filed on November 22, 1978. Subsequently, on December 13, 1978, the Regional Director approved the Union's request to withdraw the charge upon Respondent's representation that it would remedy the alleged violations. After the filing on February 7, 1979, of a second charge in Case 22-CA-8991 alleging that Respondent had failed to remedy, as promised, the aforementioned alleged violations, and was continuing to fail to make contractual pension and welfare payments the Regional Director, on March 22, 1979, withdrew his approval of the Union's withdrawal of the charge in Case 22-CA-8862 and on March 23, 1979, issued a consolidated complaint in Cases 22-CA-8862 and 22-CA-8991.

² The only responses to the complaint were two letters from Respondent's former attorney, dated March 27, 1979, and April 4, 1979, respectively, informing the Regional Office that Respondent is insolvent, and that in mid-March 1979 Respondent's secured creditors enforced their liens on Respondent's assets.

why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

Ruling on the Motion for Summary Judgment

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

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 an 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 served on Respondent herein specifically state that unless an answer is filed within 10 days of service thereof "all allegations contained in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Aside from the aforementioned letters from Respondent's former attorney, notifying the General Counsel of Respondent's insolvency and apparent liquidation, circumstances relevant only to compliance, Respondent has failed to file an answer to the complaint or to respond to the Notice To Show Cause. Therefore, the allegations of the Motion for Summary Judgment stand uncontroverted.

In view of Respondent's failure to answer and no other good cause having been shown therefore, the uncontroverted 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, a New York corporation with its principal office and place of business located at 553 Greg-

ory Avenue, Weehawken, New Jersey, is engaged in the manufacture, sale, and distribution of steel shelving, cabinets, and related products. During the 12-month period immediately preceding the issuance of the complaint and notice of hearing Respondent caused to be manufactured, sold, and distributed at its Weehawken facility products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said Weehawken facility in interstate commerce directly to States of the United States other than the State of New Jersey.

We find on the basis of the foregoing that Respondent 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

The Union, Sheet Metal Workers International Association, Local Union No. 137, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

At all times since on or about August 1, 1977, and continuing to date, the Union has been the exclusive representative of employees employed at Respondent's Weehawken, New Jersey, facility in the following appropriate unit:

All production and maintenance employees employed at Respondent's Weehawken plant including brake set-up men, operators of brakes, shears, presses, sprayers, arc welders, and spot welders, bench men, general labor utility workers, and all other employees, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Thereafter, Respondent was and is a party to a collective-bargaining agreement entered into on August 1, 1977, which continues in effect until July 31, 1980.

Since on or about May 22, 1978, and continuing to date Respondent has failed and refused, and continues to fail and refuse, to bargain collectively with the Union as the duly recognized exclusive representative of the employees in the above-described unit by unilaterally changing existing terms and conditions of employment by failing and refusing to make the pension and welfare payments required by section XVI of the aforementioned collective-bargaining agreement.

Accordingly, we find that, by engaging in the conduct found above, Respondent did refuse and contin-

ues to refuse to bargain collectively with the Union as the exclusive representative of the employees in the above-described 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 its 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 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 and take certain affirmative action designed to effectuate the policies of the Act.

To remedy Respondent's violation of Section 8(a)(5) and (1) of the Act we shall order Respondent to make whole its employees by transmitting the required current and accrued pension and welfare payments to the Union.³

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

CONCLUSIONS OF LAW

1. Valiant Metal Products, Corp., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Sheet Metal Workers International Association, Local Union No. 137, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by Respondent at its Weehawken, New Jer-

³ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and by reference where there are no governing provisions to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See *Merryweather Optical Company*, 240 NLRB 1213 (1979).

sey, plant, including brake set-up men, operators of brakes, shears, presses, sprayers, arc welders, and spot welders, bench men, general labor utility workers, and all other employees, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 1, 1977, the above-named labor organization has been and now is the 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 to make the pension and welfare payments required by section XVI of the parties' collective-bargaining agreement since May 22, 1978. Respondent has violated Section 8(a)(5) of the Act.

6. By the aforesaid actions, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(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, Valiant Metal Products, Corp., Weehawken, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to make contractually required pension and welfare payments to the Union.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make whole its employees in the manner set forth in the section of this Decision entitled "The Remedy" for Respondent's unlawful failure to make current and accrued pension and welfare payments as required by Respondent's collective-bargaining agreement with the Union.

(b) 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 amounts owed under the terms of this Order.

(c) Post at its place of business at Weehawken, New Jersey, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ 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."

APPENDIX

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

The National Labor Relations Act gives all employees the right:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT fail and refuse to make pension and welfare payments required by our contract with Sheet Metal Workers International Association, Local Union No. 137, AFL-CIO.

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

WE WILL make whole our employees by paying those current and accrued pension and welfare benefits we wrongfully withheld.

VALIANT METAL PRODUCTS, CORP.