

Atlas Hospital Equipment Company, Inc. and/or Hospital Equipment Corporation and United Steelworkers of America, Local Union 7938, AFL-CIO-CLC.
Case 6-CA-11342

March 27, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

Upon a charge filed on June 15, 1978, by United Steelworkers of America, Local Union 7938, AFL-CIO-CLC, herein called the Union, and duly served on Atlas Hospital Equipment Company, Inc., herein called Atlas, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 6, issued a complaint against Atlas alleging that Atlas 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, complaint, and notice of hearing were served on the above-mentioned parties. On August 18, 1978, Atlas filed an answer, denying it committed the unfair labor practices referred to above. Thereafter, on November 20, 1978, the Union filed an amended charge and duly served it on Atlas and/or Hospital Equipment Corporation. On December 8, 1978, the Regional Director for Region 6 issued an amended complaint against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. Copies of the amended charge, amended complaint, and notice of hearing before an Administrative Law Judge were served on the parties to this proceeding.

With respect to the unfair labor practices, the amended complaint alleges in substance that Respondent¹ violated Section 8(a)(1) and (5) of the Act by repudiating an existing collective-bargaining agreement, by unilaterally abrogating benefits arising under that agreement, and by refusing to execute a successor collective-bargaining agreement previously agreed to by the parties. Although duly served, Respondent has not filed an answer to the amended complaint.

On January 5, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based upon Respondent's failure to file an answer to the amended complaint.² Subse-

¹ The amended complaint alleges that Hospital Equipment Corporation "has been, and is now, an *alter ego* and/or a successor employer to Respondent Atlas."

² The Motion for Summary Judgment, together with a copy of the complaint and exhibits, was served via certified mail on (1) Atlas Hospital Equip-

ment Company, Inc., and/or Hospital Equipment Corporation, at the Windber, Pennsylvania, facility; (2) Albert Zuccolotto, alleged to be general manager, vice president, and an agent of Atlas and Hospital; (3) Jules Shurkman; and (4) Morton Scherl, alleged to be owner and an agent of Atlas and Hospital.

quently, on January 22, 1979, 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 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 of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, counsel for the General Counsel, pursuant to Section 102.22 of the Board's Rules and Regulations, informed Respondent in a letter dated December 22, 1978, that unless an answer was filed by December 29, 1978, a Motion for Summary Judgment would be filed. Respondent Atlas Hospital Equipment Company, Inc., and/or Hospital Equipment Corporation 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 the Respondent's failure to answer, and no other good cause having been shown therefor, 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 THE RESPONDENT

Atlas, a corporation with its facility located at Windber, Pennsylvania, is engaged in the manufacture and nonretail sale of hospital equipment. During the 12-month period immediately preceding the issuance of the original complaint and notice of hearing, Atlas received goods and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania for use at its Windber, Pennsylvania, facility. During the same period, Atlas shipped products and goods valued in excess of \$50,000 from its Windber, Pennsylvania, facility directly to points outside the Commonwealth of Pennsylvania. Since July 26, 1978, Hospital Equipment Corporation, a Pennsylvania corporation, has been, and is now, the *alter ego* or successor employer of Atlas.

We find, on the basis of the foregoing, that Respondent Atlas Hospital Equipment Company, Inc. and/or Hospital Equipment Corporation 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

United Steelworkers of America, Local Union 7938, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

At all times on or about December 16, 1971, and continuing to date, the Union has been the exclusive representative of employees employed at Respondent's Windber, Pennsylvania, facility in the following appropriate unit:

All production and maintenance employees at [Respondent's] Windber, Pennsylvania, plant; excluding office clerical employees and guards,

professional employees and supervisors as defined in the Act.³

Thereafter, Atlas has been party to successor collective-bargaining agreements, one of which was entered into on March 20, 1978, and was to continue in effect for a minimum of 103 calendar days or a maximum of 195 calendar days.

Respondent has failed and refused and continues to fail and refuse to bargain in good faith with the Union as the duly recognized exclusive bargaining representative of the employees in the above-described unit by the following acts and conduct: (1) On or about April 17, 1978, and at all times thereafter, Atlas unilaterally and without prior notice to, or consultation with, the Union canceled sick and accident and life insurance benefits and ceased making payments of premiums for Blue Cross and Blue Shield, all of which benefits it was required to pay by the terms of the March 20, 1978, collective-bargaining agreement. (2) On or about May 9, 1978, Atlas bypassed the Union and dealt directly with employees by announcing to them its intention to repudiate the March 20, 1978, collective-bargaining agreement with respect to the payment of fringe benefits. (3) On or about May 17, 1978, and at all times thereafter, Atlas unilaterally and without prior notice to or consultation with the Union repudiated the provisions of the March 28, 1978, collective-bargaining agreement regarding the benefits described previously, the vacation pay program, and the pension fund. (4) On June 26, 1978, the Union was notified by Atlas that henceforth it was doing business under the name Hospital Equipment Corporation; thereafter, on or about August 28, 1978, and continuing to date, Hospital failed and refused to execute a written collective-bargaining agreement embodying the terms and conditions of employment previously agreed upon by Hospital and the Union on August 14, 1978.

Accordingly, we find that, by engaging in the conduct found above, Respondent did refuse 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 its operations

³On December 16, 1971, a majority of the employees in the unit designated and selected the Union as their representative for purposes of collective bargaining with Respondent Atlas in a Board conducted election. On December 27, 1971, the Regional Director for Region 6 certified the Union as the collective-bargaining representative of the employees in the said unit.

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 actions 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 employees whole for any losses they may have incurred as a result of Respondent's repudiation of various provisions of the March 20, 1978, collective-bargaining agreement, including payments employees may have made to secure alternative insurance coverages, plus interest, or other losses they may have suffered as a result of Respondent's actions, plus interest. Interest shall be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).⁴

Additionally, we shall order Respondent to execute, sign, and give effect to all the terms and conditions of the contract agreed to by the parties on August 14, 1978. If the Union does not request such execution, we shall order that Respondent be ordered to bargain collectively in good faith, upon request, with the Union, as the exclusive collective-bargaining representative of Respondent's employees in the above-described appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

We shall further order that Respondent make whole the employees, in the unit found appropriate herein, for any loss of benefits they may have suffered from August 28, 1978, to the date of its compliance with the Order herein, by reason of Respondent's failure to give effect to the August 14, 1978, contract. All such moneys to be paid to such employees shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, *supra*.

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

CONCLUSIONS OF LAW

1. Atlas Hospital Equipment Company, Inc., and/or Hospital Equipment Corporation constitute an

employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steelworkers of America, Local Union 7938, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by Respondent at the Windber, Pennsylvania, facility; excluding office clerical employees and guards, professional employees 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 December 16, 1971, 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 canceling on or about April 17, 1978, unilaterally and without prior notice to or consultation with the Union, sick and accident and life insurance benefits, and ceasing to make payments of premiums for Blue Cross and Blue Shield, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act, as amended.

6. By announcing to employees on or about May 9, 1978, its intention to repudiate the then existing collective-bargaining agreement with respect to the payment of fringe benefits, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act, as amended.

7. By repudiating on or about May 17, 1978, and at all times thereafter, unilaterally and without prior notice to or consultation with the Union, the provisions of the then existing collective-bargaining agreement, described previously, with respect to vacation pay, the pension fund, and the previously mentioned benefits, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act, as amended.

8. By refusing on or about August 28, 1978, and at all times thereafter, to execute and implement provisions of the agreed-upon written agreement with the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act, as amended.

9. 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.

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

⁴ See generally, *Istis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Atlas Hospital Equipment Company, Inc., and/or Hospital Equipment Corporation, Windber, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, Local Union 7938, AFL-CIO-CLC, as the exclusive bargaining representative of all its employees in the following appropriate unit:

All production and maintenance employees employed by Respondent at the Windber, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Unilaterally instituting changes in wages, rates of pay, hours, or other terms and conditions of employment of its employees in the above-described appropriate unit, or announcing its intention to do same, without first notifying and consulting with the Union.

(c) Refusing to sign or execute, in writing, the written agreement reached with the Union or with any other collective-bargaining representative of its employees.

(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 which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as exclusive representative of all employees in the aforesaid appropriate unit by executing forthwith the agreed-upon contract and by honoring and complying with the provisions thereof or, if the Union does not request such execution, bargain collectively in good faith, upon request, with the Union as the exclusive representative of the employees in the unit found appropriate, and, if an understanding is reached, embody such an understanding in a signed contract.

(b) Make whole the employees in the unit found appropriate herein for any losses they may have sustained from April 17, 1978, to August 28, 1978, by reason of Respondent's cancellation of benefits arising under the March 20, 1978, collective-bargaining agreement in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Make whole the employees in the unit found appropriate herein for any losses they may have suf-

fered from August 28, 1978, by reason of Respondent's failure to execute and give effect to the previously agreed-upon contract, in the manner set forth in the section of this Decision entitled "The Remedy."

(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) Post at its place of business at Windber, Pennsylvania, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 6, 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.

(f) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ 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 refuse to bargain collectively with United Steelworkers of America, Local Union 7938, AFL-CIO CLC, as the exclusive bargaining representative of all our employees in the following bargaining unit:

All production and maintenance employees employed by Respondent at the Windber,

Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT unilaterally institute changes in wages, rates of pay, hours, fringe benefits, or other terms and conditions of employment, nor will we announce our intention to do so, without first notifying and bargaining with the Union.

WE WILL NOT refuse to sign or execute, in writing, collective-bargaining agreements reached with the Union or with any other collective-bargaining representative.

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 in the appropriate unit for any losses they may have sustained by reason of our unlawful cancellation of benefits arising under the collective-bargain-

ing agreement which was executed on March 20, 1978.

WE WILL, upon request of the Union, execute and give retroactive effect to the collective-bargaining contract on which agreement was reached August 14, 1978, or, if the Union does not request such execution, WE WILL bargain collectively in good faith, upon request, with the Union with respect to rates of pay, wages, hours, and other terms and conditions of employment, and embody in an agreement any understanding reached.

WE WILL reimburse our employees for any loss of benefits they may have suffered because we failed to sign, execute, and give effect to such a contract on August 28, 1978, with interest.

ATLAS HOSPITAL EQUIPMENT COMPANY,
INC. AND/OR HOSPITAL EQUIPMENT CORPO-
RATION