

Associated Trades and Crafts National Union (Industrial Elastomers, Inc.) and Keith Early. Case 6-CB-4460

March 1, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

Upon a charge filed on July 26, 1978, by Keith Early, an individual, and duly served on Associated Trades and Crafts National Union, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 6, issued a complaint and notice of hearing on September 14, 1978, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, 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.

On December 8, 1978, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 15, 1978, 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 and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

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

Respondent filed neither an answer to the complaint nor a response to the Notice To Show Cause. Section 102.20 of the Board's Rules and Regulations 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 allega-

tions 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 specifically stated that unless an answer to the complaint was 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." According to the uncontroverted allegations of the Motion for Summary Judgment, counsel for the General Counsel on October 31, 1978, by certified mail, notified Respondent that unless Respondent filed an answer to the complaint by November 14, 1978, counsel for the General Counsel would file a Motion for Summary Judgment. As noted, no answer had been filed as of the date of filing of the Motion for Summary Judgment. Respondent has not filed any response to the Notice To Show Cause.

No good cause for failure to file an answer having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted. Accordingly, we find as true all the allegations of the complaint and we shall grant the Motion for Summary Judgment.

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

FINDINGS OF FACT

I. THE LABOR ORGANIZATION INVOLVED

Respondent Associated Trades and Crafts National Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act. At all times material herein, Albert Meranto, business agent, and Phillip Williams, president, were, and are, agents of Respondent acting on its behalf, and are agents within the meaning of Section 2(13) of the Act.

II. THE BUSINESS OF THE EMPLOYER INVOLVED

Industrial Elastomers, Inc., herein called the Employer, is a Pennsylvania corporation with its principal offices located in Monaca, Pennsylvania, where it is engaged in the business of installing rubber linings in tanks. During the 12-month period immediately preceding the issuance of the complaint, the Employer received goods and materials valued in excess

of \$50,000 directly from points outside the Commonwealth of Pennsylvania for use at its Monaca, Pennsylvania, facility. The Employer is now, 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.

III. CONTRACTUAL RELATIONSHIP

Respondent and the Employer have been parties to successive collective-bargaining agreements, the most recent of which was effective from December 1, 1977, through November 30, 1978, inclusive. Pursuant to the most recent collective-bargaining agreement a vacation fund was established and maintained by Respondent for the benefit of employees, funded in part by the Employer and in part by employees.

IV. THE UNFAIR LABOR PRACTICES

Respondent, by its officers, agents, and representatives, has restrained and coerced and is restraining and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act by the following acts and conduct:

1. Since on or about July 26, 1978, and continuing to date, Respondent, acting through Williams, has withheld payment of vacation benefits from employees because they filed charges and/or a decertification petition under the Act.

2. On or about July 26, 1978, Respondent, acting through Meranto, informed an employee, by telephone, that he and other employees were being fined because they filed charges and/or a decertification petition under the Act.

Accordingly, we find that by the aforesaid conduct Respondent has restrained and coerced and is restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section IV, above, occurring in connection with the operations of the Employer, and the facts described in sections II and III, above, respectively, 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.

VI. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action, as set forth below, designed to effectuate the purposes and policies of the Act.

Having found that Respondent unlawfully withheld payment of vacation benefits from employees of Industrial Elastomers, Inc., and fined them because they exercised their rights under Section 7 of the Act, we shall order that Respondent grant the payment of such vacation benefits to said employees, with interest thereon to be computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977),¹ rescind the fines imposed on these employees, inform each employee by written communication of such rescission and, in the event these employees paid the fines, reimburse them with interest thereon to be computed in the manner set forth above. Finally, Respondent shall be required to post an appropriate notice.

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

CONCLUSIONS OF LAW

1. Industrial Elastomers, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent, Associated Trades and Crafts National Union, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein, Respondent and the Employer have been parties to successive collective-bargaining agreements, pursuant to the most recent of which a vacation fund has been established and maintained by Respondent for the benefit of employees, funded in part by the Employer and in part by the employees.

4. By the acts described in section IV, above, Respondent has restrained and coerced and is restraining and coercing employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

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

¹ See, generally, *Isis 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, Associated Trades and Crafts National Union, Youngstown, Ohio, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Withholding payment of vacation benefits from employees of Industrial Elastomers, Inc., because they file charges and/or decertification petitions under the Act.

(b) Fining its members because they file charges and/or decertification petitions under the Act.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

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

(a) Grant the payment of vacation benefits that were withheld from the employees of Industrial Elastomers, Inc., in the manner described in the "Remedy" section of this Decision.

(b) Rescind the fines imposed on employees of Industrial Elastomers, Inc., and notify each of them by written communication of such rescission and, in the event they paid the fines, reimburse them with interest thereon in the manner described in the "Remedy" section of this Decision.

(c) Post at its business office and meeting halls copies of the attached notice marked "Appendix."² 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 members 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) Deliver to the Board's Regional Director for Region 6 copies of the aforesaid notice, in sufficient

numbers for posting by Industrial Elastomers, Inc., if said Employer is willing, at its Monaca, Pennsylvania, facility, where notices to employees are customarily posted.

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

² 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 MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT withhold payment of vacation benefits from employees of Industrial Elastomers, Inc., because they file charges or decertification petitions under the National Labor Relations Act.

WE WILL NOT fine our members because they file charges or decertification petitions.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed under Section 7 of the Act.

WE WILL grant the payment of such vacation benefits to said employees, with interest thereon.

WE WILL rescind all fines assessed against employees of Industrial Elastomers, Inc., because they filed charges and/or a decertification petition, which fines were found unlawful by the National Labor Relations Board, and WE WILL notify said employees of such rescission and, in the event they paid said fines, reimburse them with interest thereon.

ASSOCIATED TRADES AND CRAFTS NATIONAL UNION