Accent Maintenance, Inc. *and* Local 100, Service Employees International Union, AFL–CIO
Accent Maintenance/Accent Janitorial Services, Inc. *and* Local 100, Service Employees International Union, AFL–CIO. Cases 15–CA–11779 and 15–CA–12380

May 23, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

Upon charges filed by the Union on March 17, 1992 and November 19, 1993, the Acting General Counsel of the National Labor Relations Board issued an order withdrawing approval of withdrawal of charge and reinstating charge and order consolidating cases, consolidated complaint and notice of hearing on January 31, 1994, against Accent Maintenance Inc. and Accent Maintenance/Accent Janitorial Services, Inc., respectively, Respondent Maintenance and Respondent Janitorial, and collectively, the Respondent, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, neither Respondent filed an answer.

On April 4, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On April 8, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Neither Respondent filed a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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 consolidated complaint affirmatively notes that, unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted.

Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 7, 1994, notified the Respondent that unless an answer were received by March 18, 1994, 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.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Maintenance and Respondent Janitorial are corporations with an office and place of business in Baton Rouge, Louisiana, where they are engaged in providing contract maintenance services within the State of Louisiana.

During the 12-month period ending February 29, 1992, Respondent Maintenance, in conducting its business operations, has provided services within the State of Louisiana valued in excess of $50,000 for both Gulf States Utilities Company and Exxon Corporation, each of which enterprises is directly engaged in interstate commerce.

During the 12-month period ending December 31, 1993, Respondent Janitorial, in conducting its business operations, has provided services within the State of Louisiana valued in excess of $50,000 for Gulf States Utilities Company, Georgia Pacific Corporation, and Formosa Plastics, each of which enterprises is directly engaged in interstate commerce.

We find that Respondent Maintenance and Respondent Janitorial are employers 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.

About April 28, 1993, Respondent Janitorial was established by Respondent Maintenance as a disguised continuation of Respondent Maintenance. As a result, Respondent Janitorial and Respondent Maintenance are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

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

> All regular full-time, regular part-time and relief janitorial personnel employed by the Respondent at its Exxon Chemicals Baton Rouge location; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

On February 28, 1992, the Union was certified as the exclusive collective-bargaining representative of the unit and at all times material herein, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About February 28, 1992, Respondent Maintenance laid off the employees in the unit and ceased operations at its Exxon Chemical jobsite in Baton Rouge, Louisiana. This layoff and cessation of operations relates to wages, hours, and other terms and conditions

of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct.

III. 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.

As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of the layoff and its decision to cease operations, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of its closing its facilities on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the fact that the Respondent's facilities are currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the representative of its employees, and has thereby engaged in unfair labor practice or practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.[1]

ORDER

The National Labor Relations Board orders that the Respondent, Accent Maintenance, Inc., Baton Rouge, Louisiana, their officers, agents, successors, and assigns, shall

[1] The undisputed allegations of the consolidated complaint reflect that Respondent Maintenance and the Union entered into a non-Board adjustment of the allegations contained in Case 15–CA–11779. Pursuant thereto, the Regional Director approved withdrawal of the charges. When the Respondent failed to comply with the agreement, the Regional Director withdrew his approval of the charge withdrawal, reinstated the charge, and issued the consolidated complaint.

1. Cease and desist from

(a) Failing and refusing to afford the Union an opportunity to negotiate with it about the effects of the layoff and cessation of operations.

The bargaining unit is:

> All regular full-time, regular part-time and relief janitorial personnel employed by the Respondent at its Exxon Chemicals Baton Rouge location; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(b) 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) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision.

(b) On request, bargain collectively with Local 100, Service Employees International Union, AFL–CIO, with respect to the effects on the unit employees of its decision to cease operations, and reduce to writing any agreement reached as a result of such bargaining.

(c) Preserve and, on 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.

(d) Mail an exact copy of the attached notice marked "Appendix"[2] to Local 100, Service Employees International Union, AFL–CIO and to the unit employees who were employed by the Respondent at its Baton Rouge, Louisiana facility. Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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.

[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."

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

Dated, Washington, D.C. May 23, 1994

William B. Gould IV,	Chairman
James M. Stephens,	Member
Charles I. Cohen,	Member

(SEAL) 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 Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain with Local 100, Service Employees International Union, AFL–CIO as the representative of the employees in the appropriate bargaining unit concerning the effects of layoff and ceasing operations. The unit includes the following employees:

> All regular full-time, regular part-time and relief janitorial personnel employed by us at our Exxon Chemicals Baton Rouge location; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guranteed you by Section 7 of the Act.

WE WILL pay our unit employees their normal wages, with interest.

WE WILL, on request, bargain collectively with the Union with respect to the effects on the unit employees of our decision to cease operations, and to reduce to writing any agreement reached as a result of such bargaining.

ACCENT MAINTENANCE, INC.