

**Kane Systems Corporation and Carpenters District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 6-CA-26372**

October 24, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

Upon a charge filed by Carpenters District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the Union) on April 28, 1994, the General Counsel of the National Labor Relations Board issued a complaint on July 1, 1994, against Kane Systems Corporation (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

The complaint alleges, and the Respondent admits, that the Respondent has failed to continue in effect all the terms and conditions of its collective-bargaining agreement with the Union effective by its terms for the period of March 1, 1992, through February 29, 1996, by failing to remit union dues to the Union, maintain health insurance benefits, and remit pension contributions as required by the collective-bargaining agreement.

Although the Respondent admits in its answer the operative facts giving rise to the unfair labor practices, it attempts to explain its motivation for its failure to adhere to all the terms of the collective-bargaining agreement. The Respondent asserts that its conduct was caused by cash flow shortages that can be attributed to an inability to compete and contractual breaches by its customers. The Respondent claims that all of its financial resources were necessary to continue its manufacturing activities. The Respondent also maintains that it is attempting to negotiate a "restructuring plan" with its secured and unsecured creditors, and it anticipates selling substantially all of its assets between September 1 and October 1, 1994, in order to distribute the proceeds among its creditors.

The Respondent has admitted in part and denied in part paragraph 3 of the complaint which alleges that it has sold and shipped from its Kane, Pennsylvania facility products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.<sup>1</sup> It has, however, admitted

<sup>1</sup>The Respondent's answer states that all products manufactured by the Respondent were "sold to customers FOB Respondent's facility in Kane, Pennsylvania. Accordingly, Respondent sold such products, goods and materials within the Commonwealth of Pennsylvania and Respondent's customers, not Respondent, shipped such products, goods and materials to points outside the Commonwealth of Pennsylvania."

paragraph 4 of the complaint alleging that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, the Respondent has neither admitted nor denied the complaint allegation concerning the appropriateness of the bargaining unit, stating that it is a conclusion of law.

On September 6, 1994, the General Counsel filed a Motion for Summary Judgment on the ground that the Respondent's answer "reveals that there are no material facts in dispute such as would warrant an evidentiary hearing and that Respondent's 'defense' is irrelevant as a matter of law." On September 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. The Respondent filed no 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

Section 102.20 of the Board's Rules and Regulations provides that an answer to a complaint shall specifically admit, deny, or explain each of the facts alleged in the complaint unless the respondent is without knowledge, in which case it shall so state. Section 102.20 further provides that "any allegation in the complaint not specifically denied or explained in an answer filed . . . shall be deemed to admitted to be true and shall be so found by the Board."

In its answer the Respondent admits its failure to remit union dues to the Union, maintain health insurance benefits, and remit pension contributions. The Respondent's defense is one of economic necessity. It is well established that Section 8(a)(5) and (1) and Section 8(d) prohibit an employer that is a party to an existing collective-bargaining agreement from modifying the terms and conditions of employment established by that agreement without obtaining the consent of the union. *Nick Robilotto, Inc.*, 292 NLRB 1279 (1989). Here the Respondent has admitted that it breached its collective-bargaining agreement with the Union. Accordingly, the Respondent has admitted all the facts material to a resolution of the unfair labor practice issues raised by the complaint. An employer's claim that it is financially unable to make the required payments, even if proven, does not constitute an adequate defense to an allegation that the employer has violated Section 8(a)(5) and (1) by failing to abide by a provision of a collective-bargaining agreement. *Demun Market*, 314 NLRB 714 (1994); *Zimmerman Painting & Decorating*, 302 NLRB 856, 857 (1991). Therefore, the Respondent's answer to these complaint allegations has raised no issues warranting a hearing.

We also find that the Respondent's partial denial of the complaint's commerce facts allegation does not raise any factual dispute warranting a hearing. The Respondent has attached to its answer a completed commerce questionnaire in which it admits that during the prior fiscal year (October 1, 1992–September 30, 1993) it sold goods valued in excess of \$50,000 directly to customers outside the Commonwealth of Pennsylvania, and purchased goods or services valued in excess of \$50,000 directly from vendors outside the Commonwealth of Pennsylvania. In addition, the Respondent's answer admits that it is an employer engaged in commerce within the meaning of the Act. We find that by attaching the commerce questionnaire to its answer the Respondent has incorporated by reference its admissions contained therein. We therefore find that the Respondent has admitted sufficient facts to establish that it is appropriate for the Board to assert jurisdiction over the Respondent.

In addition, we find that the Respondent has raised no issues warranting a hearing with respect to the appropriateness of the bargaining unit. The Respondent's answer states that this is a "conclusion of law and is neither admitted nor denied." Inasmuch as the Respondent has failed to specifically deny this allegation, and its explanation raises no factual issues, pursuant to Section 102.20 of the Board's Rules and Regulations we deem that paragraph to be admitted to be true, and we so find.

In the absence of any material issues warranting a hearing, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, a corporation with its office and principal place of business located in Kane, Pennsylvania, has been engaged in the manufacture and non-retail sale of shelving, showcases, and other products. During the fiscal year ending September 30, 1993, the Respondent, in the course and conduct of its business operations, sold goods valued in excess of \$50,000 directly to customers outside the Commonwealth of Pennsylvania, and purchased goods or services valued in excess of \$50,000 directly from vendors outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer 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.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Unit and the Union's Representative Status*

The following employees of the 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 production and maintenance employees employed by the Respondent at its Kane, Pennsylvania facilities; excluding office clerical employees, guards, professional employees and supervisors, as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees and has been recognized as such representative by the Respondent. Recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from March 1, 1992, through February 29, 1996. At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

### B. *The Refusal to Bargain*

About January 1, 1994, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above by failing to remit dues to the Union, maintain health insurance benefits, and remit pension contributions as required by article 2, article 23, and article 24 of the collective-bargaining agreement. The Respondent engaged in this conduct without the Union's consent. The terms and conditions of employment described above are mandatory subjects of bargaining. By these acts and conduct, the Respondent has refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

#### CONCLUSION OF LAW

By failing to remit union dues to the Union, maintain health insurance benefits, and remit pension contributions as required by article 2, article 23, and article 24 of the collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5)

and (1), Section 8(d), and Section 2(6) and (7) of the Act.

#### 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.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld dues to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing to maintain contractually required health insurance for its unit employees, we shall order the Respondent to restore the employees' health coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the Pension Fund, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the fund in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, supra, such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

In light of the Respondent's statement in its answer that "[i]n the event that the Respondent cannot successfully implement the proposed restructuring, it is likely that the Respondent will cease conducting business entirely" and its representation that it laid off 37 employees on March 25, 1994, pursuant to plant closing notices prescribed by the Worker Adjustment and Retraining Notification Act, we shall also provide for mail notices to employees.

#### ORDER

The National Labor Relations Board orders that the Respondent, Kane Systems Corporation, Kane, Pennsylvania, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by failing and refusing to remit union dues to the Union, maintain health insurance benefits, and remit required contributions to the Pension Fund.

(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) Remit to the Union all dues it deducted from employees' pay pursuant to valid dues-checkoff authorizations, in the manner set forth in the remedy section of the decision.

(b) Restore the employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the failure to maintain the coverage, in the manner set forth in the remedy section of the decision.

(c) Remit the delinquent Pension Fund contributions, including any additional amounts due the fund, and reimburse the unit employees for any expenses ensuing from the Respondent's failure to make the required payments, in the manner set forth in the remedy section of the decision.

(d) On request, bargain with Carpenters District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Respondent at its Kane, Pennsylvania facilities; excluding office clerical employees, guards, professional employees and supervisors, as defined in the Act.

(e) 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.

(f) Post at its facility in Kane, Pennsylvania, and mail to the Union and to all unit employees, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, 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

<sup>2</sup>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."

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.

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

#### 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 refuse to bargain with the Union as the exclusive collective-bargaining representative of our unit employees by failing and refusing to remit union dues to the Union, maintain health insurance benefits, and remit required contributions to the Pension Fund.

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

WE WILL remit to the Union all dues we deducted from employees' pay pursuant to valid dues-checkoff authorizations, with interest.

WE WILL restore the employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from our failure to maintain the coverage, with interest.

WE WILL remit the delinquent Pension Fund contributions, including any additional amounts due the fund, and WE WILL reimburse the unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL, on request, bargain with Carpenters District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by us at our Kane, Pennsylvania facilities; excluding office clerical employees, guards, professional employees and supervisors, as defined in the Act.

KANE SYSTEMS CORPORATION