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A & M Janitorial Services, Inc. and Manu Service Contract Trust Fund. Case 4-CA-23795

November 27, 1995

DECISION AND ORDER

**BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN**

Upon a charge filed on May 9, 1995, the General Counsel of the National Labor Relations Board issued a complaint on July 31, 1995, against A & M Janitorial Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 23, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On October 27, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On November 13, 1995, Manu Service Contract Trust Fund, the Charging Party, filed a statement in support of the General Counsel's motion. 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

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 complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 23, 1995, notified the Respondent that unless an answer were received by August 30, 1995, 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

At all material times, the Respondent, an Illinois corporation, has been engaged in providing janitorial services at the Naval Aviation Supply Center at 700 Robbins Avenue, Philadelphia, Pennsylvania. During the year preceding issuance of the complaint, the Respondent performed services valued in excess of \$50,000 outside the State of Illinois. 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 Local 1041, Laborers' International Union of North America, affiliated with Federal Public Service Employees District Council #37 of Philadelphia and Vicinity (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

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

All nonsupervisory employees of the Respondent at the Naval Aviation Supply Office (Compound) at 700 Robbins Avenue, Philadelphia, Pennsylvania.

Since at least August 31, 1993, the Respondent and the Union have been parties to a collective-bargaining agreement (the agreement) effective by its terms from August 31, 1993, to August 31, 1994, and continuing from year to year unless and until either party to the agreement gives at least 25 days written notification to the other party of its desire to terminate or modify the agreement, pursuant to which the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. At all times since about August 31, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about November 10, 1994, the Respondent has been failing and refusing to maintain and continue in effect the terms and conditions of employment contained in the agreement by failing to pay unit employees the wage rates set forth in article X of the agreement and by failing to make the payments to the fund for health and welfare benefits for employees required by article XII of the agreement. These subjects relate to the wages, hours, and terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent has been engaging in this conduct without the Union's consent.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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 violated Section 8(a)(5) and (1) by failing to pay unit employees contractual wage rates since about November 10, 1994, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *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*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has also violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the fund for health and welfare benefits since November 10, 1994, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds 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*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.¹

ORDER

The National Labor Relations Board orders that the Respondent, A & M Janitorial Services, Inc., Philadel-

¹To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

phia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to maintain and continue in effect the terms and conditions of employment contained in the collective-bargaining agreement in effect from August 31, 1993, to August 31, 1994, and continuing from year to year, by failing to pay the following unit employees the wage rates set forth in article X of the agreement, or by failing to make the payments to the fund for health and welfare benefits for unit employees required by article XII of the agreement:

All nonsupervisory employees of the Respondent at the Naval Aviation Supply Office (Compound) at 700 Robbins Avenue, Philadelphia, Pennsylvania.

(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) Comply with the collective-bargaining agreement and make the unit employees whole, with interest, for any loss of earnings, benefits, and expenses attributable to its failure to pay the contractually required wages rates and to make contractually required fund contributions for health and welfare benefits since about November 10, 1994, in the manner set forth in the remedy section of the decision.

(b) 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.

(c) Post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 4, 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.

²If 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."

(d) 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. November 27, 1995

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William B. Gould IV,	Chairman
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Margaret A. Browning,	Member
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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 maintain or continue in effect the terms and conditions of employment contained in the collective-bargaining agreement in effect from August 31, 1993, to August 31, 1994, and continuing from year to year, by failing to pay the following unit employees the wage rates set forth in article X of the agreement, or by failing to make the payments to the fund for health and welfare benefits for employees required by article XII of the agreement:

All nonsupervisory employees of the Respondent at the Naval Aviation Supply Office (Compound) at 700 Robbins Avenue, Philadelphia, Pennsylvania.

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 comply with the collective-bargaining agreement and make our unit employees whole, with interest, for any loss of earnings, benefits, and expenses attributable to our failure to pay the contractually required wage rates or to make contractually required fund contributions for health and welfare benefits since about November 10, 1994, in the manner set forth in a decision of the National Labor Relations Board.

A & M JANITORIAL SERVICES, INC.