

J. Leonard Spodek and Rosalind Spodek d/b/a 751 St. Marks Realty Associates and Paramount Realty Services, Inc. and Stationary Engineers, Firemen, Maintenance and Building Service Union, Local 670, affiliated with Retail, Wholesale, Department Store Union, AFL-CIO. Case 29-CA-14556

November 19, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

Upon a charge filed by Stationary Engineers, Firemen, Maintenance and Building Service Union, Local 670, affiliated with Retail, Wholesale, Department Store Union, AFL-CIO (the Union) on January 3, 1990,¹ and an amended charge filed on February 9, the General Counsel of the National Labor Relations Board issued a complaint dated February 9 against J. Leonard Spodek and Rosalind Spodek d/b/a 751 St. Marks Realty Associates and Paramount Realty Services, Inc. (the Respondents), alleging that the Respondents have violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to meet and bargain with the Union concerning the terms of a collective-bargaining agreement. Although properly served copies of the charge, amended charge, and complaint, the Respondents have failed to file an adequate answer.

On June 15, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On June 19, 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 Respondents 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 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. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted . . . to be true and may be so found by the Board." Section 102.20 also states that an answer should 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.

¹ All dates are 1990 unless otherwise noted.

The complaint issued on February 9. On February 21, the Respondents sent a letter to the Region. The four-paragraph letter stated, inter alia, that the Respondents did "not willfully avoid meeting and/or bargaining with the employees of 751 St. Marks Avenue." The letter also indicated that "prior to October 1989," the employees and the Respondents had been negotiating a contract and stated that the reason for the Respondents' absence at the bargaining table since that time was J. Leonard Spodek's involvement in a criminal court proceeding. The letter argued that Spodek's presence there was required at all times; that on the conclusion of that trial, he would commence a new trial; and that in April, he would be free of his responsibilities in both cases and could then meet.

On March 2, counsel for the General Counsel sent the Respondents a letter indicating that she was in receipt of the February 21 letter; that as of March 2 an answer to the complaint had not been filed, and that if an answer was not received by March 16, counsel for the General Counsel might seek summary judgment. The Region received no response. On June 5, the Region contacted the Respondents by telephone and the Respondents acknowledged receipt of the March 2 letter. During this telephone conversation, counsel for the General Counsel again informed the Respondent that she might seek summary judgment. On June 8, counsel for the General Counsel sent a letter by certified mail, regular mail, and FAX to the Respondents noting that an answer to the complaint had not yet been filed, and further noting that if an answer was not received by the close of business on June 12, counsel for the General Counsel would seek summary judgment. The Region received no answer from the Respondents by June 12. Subsequently, counsel for the General Counsel moved for summary judgment.

We agree with the General Counsel that the Respondent's February 21 letter does not constitute a proper answer under Section 102.20 of the Board's Rules and Regulations. The letter fails as a proper answer because it does not specifically admit, deny, or explain each of the facts alleged in the complaint.² Moreover, no contention raised in the Respondent's letter warrants denial of the Motion for Summary Judgment. In granting the Motion for Summary Judgment, we further note that the Respondents did not respond to the Notice to Show Cause, and have therefore failed to explain their failure to file a timely and proper answer. Accordingly, in view of the Respondents' failure to file an answer that comports with the Board's Rules, and in the absence of good cause being

² Member Devaney concurs in the result but for a different reason. He finds the reason offered for the failure to meet and bargain, i.e., Spodek's involvement in two court proceedings, to be a legally insufficient defense to the particular violation alleged and as irrelevant consideration in assessing the legality of the Respondent's inaction. See *Interstate Paper Supply Co.*, 251 NLRB 1423, 1425 (1980); *Radiator Specialty Co.*, 143 NLRB 350, 369 (1963).

shown for the failure to file a proper answer, we grant the General Counsel's Motion for Summary Judgment.

FINDINGS OF FACT

I. JURISDICTION

Respondent Spodeks are a New York partnership consisting of J. Leonard Spodek and Rosalind Spodek, co-partners, doing business as and trading under the name of 751 St. Marks Realty Associates. Respondent Paramount is a New York corporation. At all times material, the Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting the employees of the operations; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise and they constitute a single employer within the meaning of the Act.

At all times material, Respondent Spodeks have maintained their principal office and place of business in Brooklyn, New York, where they have been engaged in the operation and management of residential apartments in New York City, including the apartment building located at 751 St. Marks Avenue, Brooklyn, New York. During the year preceding issuance of the complaint, Respondent Spodeks, in the course and conduct of their business operations, derived gross rental revenues in excess of \$500,000 and purchased and received at their various places of business, located in the State of New York, products, goods, and materials, including heating oil, valued in excess of \$50,000 from other enterprises located within the State of New York, each of which other enterprises had purchased and received the products, goods, and materials directly from points outside the State of New York.

At all times material, Respondent Paramount has maintained its principal office and place of business in Brooklyn, New York, where it has been engaged in the operation and management of residential apartments in New York City, including the apartment building located at 751 St. Marks Avenue, Brooklyn, New York, owned by Respondent Spodeks. During the year preceding issuance of the complaint, Respondent Paramount, in the course and conduct of its business operations, collected rents from the buildings it managed in excess of \$500,000 and purchased and received at its various places of business, located in the State of New York, products, goods, and materials, including heating oil, valued in excess of \$50,000 from other enterprises located within the State of New York, each of which other enterprises had purchased and received those products, goods, and materials directly from points outside the State of New York.

We find that the Respondents 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.

II. ALLEGED UNFAIR LABOR PRACTICES

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

All building service employees employed by J. Leonard Spodek and Rosalind Spodek d/b/a 751 St. Marks Realty Associates and Paramount Realty Services, Inc., at 751 St. Marks Avenue, Brooklyn, New York, excluding guards and supervisors as defined in the Act.

Since March 17, 1989, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the employees in the unit described above. About October 17, 1989, representatives of the Respondents and the Union met and discussed, without reaching agreement, certain terms to be included in a collective-bargaining agreement between the parties. About November 3, 1989, the Union orally and by letter requested the Respondents to meet and negotiate a collective-bargaining agreement. That request was renewed orally about November 22, 1989; by certified letters about December 18 and 21, 1989; and again orally about January 8. Accordingly, we find that since about November 3, 1989, the Respondents have failed and refused to meet and bargain with the Union concerning the terms of a collective-bargaining agreement to cover the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees and therefore the Respondents have failed and refused to bargain collectively and have thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing since about November 3, 1989, to meet and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondents, J. Leonard Spodek and Rosalind Spodek d/b/a 751 St. Marks Realty Associates and Paramount Realty Services, Inc., 777 East 31st Street, Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to meet and bargain with the Union as the exclusive bargaining representative of the employees in the bargaining unit concerning the terms of a collective-bargaining agreement to cover the rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit employees.

(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) On request, meet and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All building service employees employed by J. Leonard Spodek and Rosalind Spodek d/b/a 751 St. Marks Realty Associates and Paramount Realty Services, Inc. at 751 St. Marks Avenue, Brooklyn, New York, excluding guards and supervisors as defined in the Act.

(b) Post at their facility in Brooklyn, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous

³If 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."

places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have 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 this notice and we intend to carry out the order of the Board and abide by the following:

WE WILL NOT refuse to meet and bargain with Stationary Engineers, Firemen, Maintenance and Building Service Union, Local 670, affiliated with Retail, Wholesale, Department Store Union, AFL-CIO as the exclusive collective-bargaining representative of our employees in the appropriate unit consisting of all our building service employees excluding guards and all supervisors as defined in the Act, concerning the terms of a collective-bargaining agreement to cover the rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit employees.

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

WE WILL, on request, meet and bargain with the above-named Union as the exclusive collective-bargaining representative of our employees in the appropriate unit described above.

J. LEONARD SPODEK AND ROSALIND
SPODEK D/B/A 751 ST. MARKS REALTY
ASSOCIATES, INC. AND PARAMOUNT RE-
ALTY SERVICES, INC.