

York Printing Company and its successor, York Printing Services Company, Ltd. and Des Moines Graphic Communications Union, Local No. 86-C, Graphic Communications International Union. Case 18-CA-11289

September 30, 1992

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On April 30, 1992, Administrative Law Judge Richard J. Boyce issued the attached decision. The Respondent filed exceptions and a supporting brief.¹

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

The Board has considered the supplemental decision and the record² in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, York Printing Company and its successor, York Printing Services Company, Ltd., Des Moines, Iowa, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ Member Oviatt would have denied the Respondent's motion to file exceptions out-of-time.

² The Respondent's exceptions include a request to reopen the record to consider a variety of additional evidence. There is no indication in the record that the Respondent was precluded from presenting any relevant information at the hearing, and there is no basis for finding that the proffered evidence is newly discovered and previously unavailable. The Respondent's request, therefore, is denied.

³ We modify the judge's recommended Order to provide that any additional amounts owed the benefit fund shall be determined by the procedure set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

A. Marie Simpson, Esq., for the General Counsel.
Robert B. Garver, Esq., of Des Moines, Iowa, for York Printing Services Company, Ltd.

SUPPLEMENTAL DECISION

I. INTRODUCTION

RICHARD J. BOYCE, Administrative Law Judge. I heard this matter in Des Moines, Iowa, on February 27, 1992.

By Decision and Order dated September 27, 1990, reported at 299 NLRB No. 149 (not reported in Board volumes), the National Labor Relations Board (the Board) grant-

ed the General Counsel's motion for a summary judgment against York Printing Company (Respondent); and, so doing, directed Respondent, its officers, agents, successors, and assigns, to make certain trust fund contributions as required by the prevailing collective-bargaining agreement and to make unit employees whole "for any losses resulting from the Respondent's failure to make" those contributions due since October 18, 1989.

The United States Court of Appeals for Eighth Circuit, enforced the Board's order by unreported judgment entered on July 25, 1991.

On November 27, 1991, the Regional Director for Region 18 of the Board issued a compliance specification alleging that Respondent and York Printing Services Company, Ltd. (Ltd.) as "a successor to Respondent . . . liable for remedying the unfair labor practices," owed certain amounts under the Board's order.

Respondent did not file an answer to the specification or appear at the hearing. Ltd. filed an answer on about December 24, 1991, specifically denying that it is a successor to Respondent and thus liable herein, and denying the allegations of amounts owing on the ground of insufficient knowledge.

At the outset of the hearing, the General Counsel amended the specification concerning the amounts owing, and Ltd. stipulated that those amounts are correct. They are:¹

GCU-Employer Retirement Fund	\$1,638.00
Medical Expenses, Richard L. Boylan	5,161.14

The only issue before me, therefore, is whether Ltd. is liable.²

II. LTD.'S LIABILITY

A. Evidence

Respondent, owned and managed by Victor R. Erickson, provided printing services to commercial customers from March 1988 until ostensibly closing on Friday, April 27, 1990. The shop was located at 1961 Indianola Road in Des Moines.

Ltd., an Iowa corporation formed by Elizabeth Hintz, began operating the business on Monday, April 30, 1990. Beyond continuing the business under a nearly identical name and with only a weekend's hiatus, Ltd. retained the same address and telephone number and most of the same machinery.³ It retained two of Respondent's three unit em-

¹ Plus amounts accruing to the date of payment and interest.

² Respondent, having failed to answer the specification, is bound by it. *Bell Co.*, 243 NLRB 977, 977 (1979).

³ Ltd.'s articles of incorporation state that Hintz is the incorporator, registered agent, and sole director; that its principal place of business is 1961 Indianola Road; and that its registered office is Hintz' home address. Hintz signed the articles on April 15, 1990. They were filed with the Iowa secretary of state on May 7, 1990, and with the Polk County recorder on June 4.

ployees, as well;⁴ and services a significant number, although less than a majority of, Respondent's former customers.⁵

Hintz and Erickson met in July 1988, and she presently began working for Respondent. She then had a floral-design business, called Parkway Floral Designs, which she moved to 1961 Indianola Road upon joining Respondent. She continues to operate that business, at that location, only now under the same name as the printing business.⁶

Erickson has lived in Hintz' home since September 1989. She describes their relationship as "very close."

Hintz ran the printing business for 4 weeks in January 1990 while Erickson was in the hospital,⁷ and Erickson ran the business for about a month in May-June 1990 while Hintz was ill. Hintz testified that Erickson still "comes down and helps me." She elaborated that he

sets his own schedule. . . . He comes in every day, every other day. Sometimes he is there, sometimes he's not. I just leave it up to him. If there is something I need help with, he is there.

Ltd. posted the remedial notice that the Board, in the underlying decision here, had directed Respondent to post. Erickson signed both the notice and the certificate of posting, which then was returned to the Regional Director, on October 19, 1990. Hintz testified that she and Erickson had "a quarrel" over posting the notice at Ltd.'s facility.

No money changed hands in connection with Ltd.'s takeover of the business. On January 7, 1990, Erickson signed a document giving four presses to Hintz; and, on January 8, the two entered into a written agreement whereby he agreed to give her other printing equipment and assorted furniture, together with "training, guidance, and supervision of the use of these products," and she agreed to provide him with a home and specified allotments of meals, clothes, haircuts, medical checkups, etc. Hintz testified that Erickson has received no compensation for helping her in the operation of the business. She added:

[H]e receives room and board and clothing. . . . [O]ur agreement was he would teach me to use the equipment and I would provide him with clothing and shelter

⁴ Respondent's unit employees were Richard Boylan, Kent Taylor, and Rick Thomas. Ltd. retained Taylor and Thomas. Asked if they ran presses after Ltd.'s takeover, Hintz equivocated that they "may have," then that "they did," again that they "may have," and finally that she could not "say that they didn't, but they may have." Ltd. also hired one Terri Killen, who "came in and helped answer the phone and take care of things," according to Hintz.

⁵ Hintz testified that Respondent had "a number of union customers," whereas Ltd. "was not a union shop" and so "had no union business."

⁶ Hintz estimated that over two-thirds of Ltd.'s revenue comes from printing.

⁷ Erickson was hospitalized because of a drinking problem. He directed Hintz to fire everyone and "lock the doors" just before entering the hospital. She "refused to do that."

On May 1, 1990, Hintz, as president of Ltd., entered into a 1-year lease agreement with the owner the facility at 1961 Indianola Road;⁸ on May 21, she entered into lease/option agreement with Midwestern Paper Company concerning two presses and a paper cutter that Midwestern Paper had foreclosed upon but not removed from the premises while being purchased by Respondent; and, on September 5, 1991, she exercised her option to buy those items.

Hintz was aware at all times of the underlying unfair-labor-practice proceeding herein. She signed acknowledging service of the charge on Respondent on April 20, 1990, and acknowledging receipt by Respondent of the General Counsel's Motion for Summary Judgment on June 29, 1990.

The inference is warranted that Hintz also knew, apart from the charge and before deciding to take over the business, that Respondent had breached its obligations under the collective-bargaining agreement to make specified health-and-welfare and pension contributions. She testified: "When I was starting this, I spent a lot of time talking to Vic's accountant." Beyond that, Eric Ander, a union business agent, credibly testified that Hintz was present when he spoke with Erickson on April 16, 17, and 20 regarding Respondent's failure to make contributions on behalf of Richard Boylan.⁹

B. Conclusions

I conclude that Ltd. is, at the very least, Respondent's legal successor. It carried on the same business at the same location without hiatus, with only a slight change in name, and with the same telephone number; it used the same equipment, retained most of the employees, and continued to serve some of the same customers; Hintz was involved in the operation of Respondent before Ltd.'s takeover, and Erickson has remained a participant in the enterprise since that development; and Hintz and Erickson have had a close personal relationship at all times.

I further conclude that Ltd., through Hintz, by taking over the business with knowledge that Respondent might well be implicated in unremedied unfair labor practices, is jointly and severally obligated with Respondent to remedy Respondent's misconduct in accordance with the amended compliance specification.¹⁰

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

⁸ Hintz testified that Erickson owned the property until it was repossessed in 1989.

⁹ Ander filed a grievance over this while visiting the facility on April 17.

¹⁰ See generally *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973); *Lorain Area Ambulance Co.*, 304 NLRB 1139, 1140 (1991); *Proxy Communications*, 290 NLRB 540, 544 (1988); *Appelbaum Industries*, 294 NLRB 981, 982 (1989); *Superior Export Packing Co.*, 284 NLRB 1169, 1171 (1987); *Perma Vinyl Corp.*, 164 NLRB 968, 968-970 (1967).

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, York Printing Company and its successor, York Printing Services Company, Ltd., Des Moines, Iowa, their officers, agents, successors, and assigns, jointly

and severally owe these amounts, plus any further amounts accruing to the date of payment, plus interest:¹²

GCU-Employer Retirement Fund	\$1,638.00
Richard L. Boylan	5,161.14

¹² Interest shall be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).