

Medic-Bus Service, Inc. d/b/a A-Medic Ambulance Service and International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO, CLC, Local 204. Case 1-CA-21606

13 March 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

Upon a charge filed by International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO, CLC, Local 204, the Union, on 25 November 1983, the National Labor Relations Board issued a complaint on 9 January 1984 against Respondent Medic-Bus Service, Inc. d/b/a A-Medic Ambulance Service. The complaint alleges that the Respondent is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

On 23 July 1984 all parties to the proceeding filed a "Stipulation of Facts and Motion to Transfer Proceeding to the Board." The parties agreed therein to waive a hearing before or decision by an administrative law judge and to submit the case directly to the Board for findings of fact, conclusions of law, and an order based solely on a stipulated record consisting of the charge, complaint, answer to the complaint, and the stipulation of facts.

On 26 September 1984 the Board approved the parties' stipulation and ordered that the proceedings be transferred to the Board. Thereafter the General Counsel and the Respondent filed briefs.

On the basis of the stipulation of facts, the briefs, and the entire record in this proceeding, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Massachusetts corporation with an office and place of business in Lowell, Massachusetts, where it is engaged in the operation of an ambulance service. The Respondent annually derives gross revenues in excess of \$500,000 and annually purchases and receives at its Lowell facility goods and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. The parties stipulated and we find that the Respondent is an employer engaged in commerce within the meaning of Section 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. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Since 1981 the Union has represented the Respondent's emergency medical technicians, wheelchair specialists, and dispatchers employed at its Lowell facility. The Union's most recent collective-bargaining agreement with the Respondent was entered into about 10 February 1983, remaining in effect by its terms until 30 September 1983.

On 1 September 1983 the Respondent failed to implement a scheduled 25-cent-per-hour wage increase required by the agreement. Thereafter, the Respondent also refused the Union's 28 September 1983 written request during negotiations over a new agreement for certain economic and other information.¹ Throughout negotiations the Respondent also took the position that it could not discuss any economic proposals put forward by the Union or sign any new agreement reached by the parties because Chester Kelly, the owner of the Respondent, was then being sued by another individual claiming to be an equal owner of the Respondent in a derivative shareholder's action in Massachusetts state court. Finally, on 5 December 1983, the Respondent's road supervisor Paul Larkham told an employee that the employees should form their own union "because as long as the union bears an IUE stamp they will never get anything from Kelly."

B. Contentions of the Parties

The General Counsel contends that the Respondent's above-described conduct violated Section 8(a)(1) and (5) of the Act.

The Respondent stipulated to, and therefore admits, that it engaged in each of the acts alleged by the General Counsel. Further, it effectively stipulated, and therefore also admits, that all but one of these acts were in fact unlawful. Thus, the Re-

¹ The Union requested the following information: summary income statements (last 6 years and year to date for current period), monthly sales profit or loss data (last 36 months), capital expenditures and depreciation figures (last 6 years and year to date for current period), new order backlogs (last 6 years and year to date for current period), average employment (last 6 years and year to date for current period), total bargaining unit hours, worked, and compensated or paid (last 6 years and year to date for current period), current average hourly earnings including a breakdown of fringe benefit cost (latest available figures), a description of the plant's products (last 6 years and year to date for current period), product sales by major customers (last 36 months), audited income statements (last 6 years and year to date for current period), interest interim supporting cost and expense schedules (last 36 months), a list of any extraordinary, unusual, or nonrecurring costs, writeoffs, or income (last 6 years and year to date for current period), management reports or analysis of the plant's performance (latest full year, and year to date), balance sheets (latest month and end of the prior year), operating plan budgets and forecasts (latest available figure), Federal income tax returns (last 6 years and year to date for current period), copies of reports for annual survey of manufacturers reports (MA 100)

spondent stipulated that its decision not to implement the 25-cent-per-hour wage increase violated the terms of the collective-bargaining agreement and was made without the consent of the Union; that the economic and other information requested by the Union during negotiations for a new agreement was "necessary for, and relevant to, the Union's performance of the function of negotiating a contract"; and that Supervisor Larkham's statement to an employee about employees forming their own union "interfer[ed] with, restrain[ed] and coerc[ed] its employees in the exercise of their rights as guaranteed in Section 7 of the Act."

The Respondent's only substantive quarrel is with the remaining allegation concerning its refusal during negotiations to discuss the Union's economic proposals or to sign any new agreement ultimately reached. Here, the Respondent interposes the defense that the derivative shareholder's action placed it in a position analogous to that of a debtor-in-possession, thereby relieving it of its bargaining obligations to the Union per the Supreme Court's recent *Bildisco* decision.² Applying the same analogy, the Respondent further urges that the Board should "withhold entering an order or otherwise granting the charging party relief" with respect to any of its alleged unlawful acts until a final disposition by the state court in the derivative shareholder's action.

C. Analysis and Conclusion

We find the Respondent's defense without merit. The Respondent has nothing in common with a debtor-in-possession. A debtor-in-possession's status vis-a-vis its obligations under the National Labor Relations Act is unique, being the product of the specific statutory provisions of Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101 et seq. Clearly nothing in those provisions, or in the Supreme Court's *Bildisco* decision interpreting them, can be read to provide similar status to a party which is merely the defendant in a derivative shareholder's suit.³

Nor will we stay our order herein in favor of the state court suit as urged by the Respondent. It is well established that the obligations imposed by the National Labor Relations Act are paramount to any conflicting obligation which a state court order

might impose on a party.⁴ In any event, the Respondent has offered no evidence that any such order has or would issue from the Massachusetts court in the derivative shareholder's suit. As far as the stipulated record reveals, that court has issued no restraining order at all, much less an order specifically excusing the Respondent from its obligations under the Act. Nor has the Respondent offered any explanation as to how its compliance with the Act might ultimately subject it to liability in the state action. Indeed, not so much as the complaint in that action has been made part of the stipulated record.

Accordingly, we find that the Respondent has violated the Act as alleged.

CONCLUSIONS OF LAW

1. By failing to implement a scheduled 25-cent-per-hour wage increase on 1 September 1983 as required under its contract with the Union, the Respondent has 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.

2. By refusing since about 28 September 1983 to provide the Union with the information it requested, which is necessary and relevant to its function as exclusive bargaining representative, the Respondent has 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.

3. By refusing at various times during September, October, and November 1983 to discuss any economic proposals put forward by the Union for a new contract, or to sign any new agreement reached between the parties, the Respondent has 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.

4. By telling an employee that the employees "should form their own union because as long as the union bears an IUE stamp they will never get anything" from the Respondent, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action to effectuate the policies of the Act.

The Respondent having unlawfully failed to implement a contractually agreed-upon wage in-

² *NLRB v Bildisco & Bildisco*, 104 S Ct 1188 (1984)

³ Moreover, the *Bildisco* decision specifically states that a debtor-in-possession "remains obligated to bargain in good faith over the terms and conditions of a possible new contract" 104 S Ct at 1201 Thus, even if the Respondent was itself a debtor-in-possession *Bildisco* would not support its refusal to even discuss the Union's economic proposals during negotiations for a new agreement

⁴ See *Grace Co.*, 84 NLRB 435 (1949), *Zoe Chemical Co.*, 160 NLRB 1001, 1034 (1966)

crease, we shall order the Respondent to make whole its employees covered by that agreement for any loss of earnings and other benefits they suffered as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

In addition, the Respondent having unlawfully refused to supply the Union with the necessary and relevant information it requested or to discuss any economic proposals or sign any agreement reached, we shall order the Respondent to furnish the Union with the requested information and to bargain in good faith with the Union over provisions for a new agreement and sign any such agreement reached.

ORDER

The National Labor Relations Board orders that the Respondent, Medic-Bus Service, Inc. d/b/a A-Medic Ambulance Service, Lowell, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain over a new agreement with International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO, CLC, Local 204, as the exclusive bargaining representative of the employees in the following appropriate unit.

All emergency medical technicians, wheelchair specialists and dispatchers employed at its Lowell and Lawrence bases, exclusive of office clerical employees, guards, and all supervisors as defined in Section 2(11) of the Act.

(b) Refusing to furnish the Union with information which is necessary and relevant to its function as the exclusive bargaining representative of the employees in the bargaining unit.

(c) Unilaterally changing and refusing to comply with the provisions of its collective-bargaining agreement with the Union by failing to implement scheduled wage increases.

(d) Encouraging unit employees to abandon the Union as their exclusive bargaining representative.

(e) 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, bargain with the Union as the exclusive representative of the unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request, make available to the Union the information it requested on 28 September 1983.

(c) Make whole unit employees for any loss of wages they sustained as a result of the failure to implement the scheduled 1 September 1983 25-cent-per-hour wage increase, in the manner set forth in the section of the decision entitled "Remedy."

(d) 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.

(e) Post at its Lowell, Massachusetts facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 1, 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.

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

⁵ 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."

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 over a new collective-bargaining agreement with International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO, CLC, Local 204, as the exclusive bargaining representative of the employees in the following appropriate unit:

All emergency medical technicians, wheelchair specialists and dispatchers employed at our Lowell and Lawrence bases, exclusive of

office clerical employees, guards, and all supervisors as defined in Section 2(11) of the Act.

WE WILL NOT refuse to furnish the Union with information which is necessary and relevant to its function as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT unilaterally change and refuse to comply with the provisions of our collective-bargaining agreement with the Union by failing to implement scheduled wage increases.

WE WILL NOT encourage unit employees to abandon the Union as their exclusive bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exer-

cise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

WE WILL, on request, make available to the Union the information it requested on 28 September 1983.

WE WILL make whole unit employees for any loss of wages they sustained as a result of the failure to implement the scheduled 1 September 1983 25-cent-per-hour wage increase, with interest.

MEDIC-BUS SERVICE, INC. D/B/A A-
MEDIC AMBULANCE SERVICE