

Aero Quality Plating Co., Inc. and Metal Polishing, Buffers, Platers, and Allied Workers International Union Local No. 128, AFL-CIO. Case 32-CA-7552

22 August 1986

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND STEPHENS

Upon a charge filed by the Union on 7 October 1985, the General Counsel of the National Labor Relations Board issued a complaint on 26 December 1985 against the Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 25 February 1986 the General Counsel filed a Motion for Summary Judgment. On 28 February 1986 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 Company 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 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by telegram dated 21 January 1986, notified both the Company and its counsel that unless an answer were received by close of business 23 January 1986, a Motion for Summary Judgment would be filed.¹

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

¹ On 24 January 1985 the Company's counsel informed counsel for the General Counsel in a telephone conversation that the Company did not intend to file an answer because the Company was "shut down." Certified letters confirming this were sent to the Company and its counsel, and receipt was confirmed 5 February 1986

FINDINGS OF FACT

I. JURISDICTION

The Company, a California corporation, is engaged in the metal plating of various products at its facility in Oakland, California, where it annually sold goods or provided services valued in excess of \$50,000 to customers or business enterprises within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or outflow standards.

We find that the Company 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. ALLEGED UNFAIR LABOR PRACTICES

The factual aspects of the allegations in the complaint show that on 22 August 1985² employees Arturo Castillo, Brant Downson, Harold Emerson, Mike Garcia, William Jacobsen, Arquimedes Mercado, Mariano Recinos, and Ray Rios, all represented by the Union, ceased work concertedly and engaged in a strike.

On 1 October the Respondent, by letter, informed the striking employees that they had no future employment rights or benefits because they engaged in the strike. That same day the Respondent discharged the strikers. Thereafter, on 7 October, the Union on behalf of all the striking employees made an unconditional offer to return to work. Since that time, the Respondent has failed, and continues to refuse, to reinstate the striking employees.

It is well settled that an economic strike is protected activity under Section 7 of the Act. Employees engaged in an economic strike remain employees of the employer and have reinstatement rights contingent upon their unconditional offers to return to work and depending on whether they have been permanently replaced.³ Further, it is an unfair labor practice for an employer to threaten or discharge an employee for engaging in an economic strike.⁴

It is undisputed that the Respondent's plating employees engaged in an economic strike. Thereafter, the Respondent threatened and coerced its striking employees by informing them that they had no future employment rights or benefits. We find that this conduct interfered with the employ-

² All dates hereafter are 1985

³ *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375, 378 (1967)

⁴ *Medallion Kitchens*, 275 NLRB 58 (1985)

ees' Section 7 rights to engage in protected activity and violated Section 8(a)(1) of the Act as alleged. We also find that as a result of these actions of the Respondent the economic strike was converted into an unfair labor practice strike.

It is also undisputed that on the same day the Respondent threatened and coerced its striking employees, the Respondent discharged them. We find that this further conduct violated Section 8(a)(3) and (1) of the Act as alleged.

It is also undisputed that on 7 October the Union on behalf of the striking employees made an unconditional offer to return to work and that the Respondent refused to reinstate them. We find that the Respondent's refusal to reinstate the strikers further violated Section 8(a)(3) and (1) of the Act as alleged.⁵

CONCLUSIONS OF LAW

1. By informing its employees that they had no future employment or benefits, 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.

2. By discharging its employees for having engaged in a strike and refusing and failing to reinstate them, the Respondent has violated Section 8(a)(3) and (1) of the Act.

REMEDY⁶

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.

We have found that the Respondent violated Section 8(a)(1) of the Act by informing its employees that they had no future employment or benefits because they engaged in a strike. We have also found that the Respondent violated Section 8(a)(3) and (1) by discharging its employees and by refusing to reinstate them after the Union, on behalf of the employees, made an unconditional offer to return to work. In order to dissipate the effects of these unfair labor practices, we shall order the Respondent to cease and desist from such conduct and to offer the employees named below immediate and full reinstatement to their former positions or,

⁵ *Sun World, Inc.*, 271 NLRB 49, 55 (1984); *Laidlaw Corp.*, 171 NLRB 1366 (1968), enf'd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970).

⁶ The General Counsel has requested that our Order include a visitatorial clause authorizing the Board, for compliance purposes, to obtain discovery from the Respondent under the Federal Rules of Civil Procedure under the supervision of the United States court of appeals enforcing this Order. Under the circumstances of this case, we find it unnecessary to include such a clause. Accordingly, we deny the General Counsel's request.

if such positions have been abolished or changed in the Respondent's operations, then to any substantially similar position, without prejudice to any rights and privileges that they may have, and that the Respondent make them whole for any loss of earnings and other benefits that they may have suffered by reason of the Respondent's discriminatory terminations of them by payment to each of them of a sum equal to that which he would have normally earned in pay and benefits from 1 October 1985, the date of their terminations, until the Respondent offers them reinstatement, less any net earnings for the interim period.⁷ Backpay is to be computed on a quarterly basis as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977). Also, we shall order the Respondent to notify each of the employees named below that it has removed from its files any references to his discharge and that the discharge will not be used against him in any way.

The employees are:

Arturo Castillo	Brant Downson
Harold Emerson	Mike Garcia
William Jacobsen	Arquimedes Mercado
Mariano Recinos	Ray Rios

ORDER

The National Labor Relations Board orders that the Respondent, Aero Quality Plating Co., Inc., Oakland, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they have no future employment rights or benefits because they engaged in a strike.

(b) Discharging and failing or refusing to reinstate or otherwise retaliating against employees because they have engaged in a strike.

(c) 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) Offer the employees named in the remedy section of this decision immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions,

⁷ See, e.g., *Abilities & Goodwill*, 241 NLRB 27 (1979), enf. denied on other grounds 612 F.2d 6 (1st Cir. 1979); *NLRB v. Trident Seafoods Corp.*, 642 F.2d 1148, 1149-1150 (9th Cir. 1981). Chairman Dotson would overrule *Abilities & Goodwill*, and would, in the event the striking employees were not permanently replaced prior to the discharge, date the Respondent's backpay obligation to the discharged strikers from the time they made an unconditional offer to return to work.

without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) 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.

(d) Post at its facility in Oakland, California, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 32, 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.

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

⁸ 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.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT tell our employees that they have no future employment rights or benefits because they engaged in a strike.

WE WILL NOT discharge our employees or refuse to reinstate them because they have engaged in a strike.

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 offer the employees listed below immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole, with interest, each of the employees listed below for any loss of earnings or other benefits resulting from his discharge, and

WE WILL notify each of them that we have removed from our files any reference to his discharge and that the discharges will not be used against him in any way

Arturo Castillo	Brant Downson
Harold Emerson	Mike Garcia
William Jacobsen	Arquimedes Mercado
Mariano Recinos	Ray Rios

AERO QUALITY PLATING CO., INC.