

Adirondack Foundries, Inc. and United Steelworkers of America Local 3521, AFL-CIO. Case 3-CA-13754

30 September 1987

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND CRACRAFT**

On a charge filed by the Union 10 April 1987, the General Counsel of the National Labor Relations Board issued a complaint on 20 May 1987¹ against the Company (Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.²

On 27 July the General Counsel filed a Motion for Summary Judgment. On 30 July 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's response was not timely filed and has not been considered. 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." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by certified mail dated 10 July, notified the Respondent that unless an answer was received by 17 July a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely and proper answer, we grant the General Counsel's Motion for Summary Judgment.

¹ All dates refer to 1987 unless otherwise designated

² As noted *infra*, the Respondent was notified by certified mail on 10 July of the need to file an answer in this case. On 14 July the Respondent submitted a letter in which the Respondent stated that "[y]our accusations are essentially correct," but that it was in bankruptcy and it "didn't have the money." The Respondent's letter is insufficient to constitute an answer because it does not specifically admit, deny, or explain each of the allegations in the complaint. See *Goldstein Co.*, 274 NLRB 682 (1985).

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a New York corporation, is engaged in the manufacture of steel castings at its facility in Watervliet, New York, where in the past 12 months it derived gross revenues in excess of \$500,000, of which an amount in excess of \$50,000 was derived from the sale and shipment of products directly to points located outside the State of New York. 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, United Steelworkers of America Local 3521, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Company constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: "All production and maintenance employees."

At all times material, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the employees in the above-described unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Such recognition has been embodied in collective-bargaining agreements, the most recent of which runs from 1 June 1986 until 1 June 1989.

Since about 10 October 1986 the Respondent has failed to continue in full force and effect all the terms and conditions of the agreement by failing to abide by article XVI, "Health Security Program." The terms and conditions of the agreement the Respondent failed to continue in full force and effect are mandatory subjects of bargaining.

Based on the above, we find that the Company, since 10 October 1986, has refused to bargain collectively with the Union as the exclusive representative of the unit employees, and that the Company thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By ceasing to abide by the collective-bargaining agreement and failing to continue in full force and effect article XVI, Health Security Program, the Company has refused to bargain collectively with the Union, and thereby has engaged in unfair

labor practices within the meaning of Section 8(a)(5) of the Act.

2. By the aforesaid conduct, the Respondent has interfered with, restrained, and coerced the unit employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby 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 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.³

We shall order the Respondent to make whole its unit employees by abiding by article XVI, Health Security Program, of the collective-bargaining agreement and making all contributions that have not been paid and that would have been paid absent the Respondent's unlawful discontinuance of the payments,⁴ and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make such required payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*,⁵ and to post an appropriate notice.

ORDER

The National Labor Relations Board orders that the Respondent, Adirondack Foundries, Inc., Watervliet, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America Local 3521 by failing to abide by article XVI, Health Security Program, as required by the applicable collective-bargaining agreement with the Union.

(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) Make whole the unit employees by abiding by article XVI, Health Security Program, and making all contributions that have not been paid and that would have been paid absent the Respondent's unlawful discontinuance of such payments, and by reimbursing them for any expenses ensuing from the Respondent's unlawful failure to make such payments, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to agents of the National Labor Relations Board, for examination and copying, all records that are needed to analyze and determine the amounts of money due under the terms of the Board's Order.

(c) Post at its facility in Watervliet, New York, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 3, 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.

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

CHAIRMAN DOTSON, dissenting.

For the reasons set forth in my dissent in *Rapid Fur Dressing*, 278 NLRB 905 (1986), I dissent from the majority's finding that the Respondent violated Section 8(a)(5) by failing to make premium payments pursuant to its contract with the Union. There is no evidence that the Respondent has engaged in conduct reflecting a repudiation of the collective-bargaining agreement in any way tantamount to a violation of the Act or otherwise re-

⁶ 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."

³ The General Counsel requested a visitatorial provision. Under the circumstances of this case, we find it unnecessary.

⁴ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld payments. We leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit fund in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

⁵ In accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on and after 1 January 1987 shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior to 1 January 1987 (the effective date of the 1986 amendment to 26 U.S.C. § 6621) shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).

fused to bargain. By finding a violation in these circumstances, the Board is once again allowing itself to be used as a collection agency for the Charging Party. Accordingly, I would deny the Motion for Summary Judgment.

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 with United Steelworkers of America Local 3521, AFL-CIO as

the exclusive representative of the employees in the bargaining unit by ceasing to abide by article XVI, Health Security Program, as provided for in our collective-bargaining agreement with the Union. The unit is:

All production and maintenance employees.

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 make whole our unit employees by paying all contributions required by our collective-bargaining agreement with the Union, and by reimbursing our unit employees for any expenses ensuing from the failure to make such payments.

ADIRONDACK FOUNDRIES, INC.