

**Wheeler Manufacturing Corporation and United Steelworkers of America, AFL-CIO-CLC, Local Union 2831, Cases 1-CA-23613, 1-CA-23830, and 1-CA-26034**

August 4, 1989

### DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
HIGGINS AND DEVANEY

Upon charges filed by Local Union 2381, United Steelworkers of America, AFL-CIO-CLC, on March 4 and May 9, 1986, and December 22, 1988, the General Counsel issued complaints alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act. On January 30, 1989, the Regional Director issued an order consolidating cases and notice of hearing. Although properly served copies of the charges and complaints, the Respondent failed to file a timely answer.

On April 24, 1989, the General Counsel filed a Motion for Summary Judgment. On April 28 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On May 12 the Respondent filed a response.

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 of the allegations in the consolidated 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 counsel for the General Counsel, by letter dated February 28, 1989, notified the Respondent that an answer to the complaint was required and that unless an answer was received by close of business March 6, 1989, a Motion for Summary Judgment would be filed.

Responding to the Notice to Show Cause, counsel for the Respondent contends that the Respondent's failure to file a timely answer was caused by its president, William J. McTighe Jr., who is neither an attorney nor familiar with Board's Rules and procedures, attempting to handle the action pro se. The Respondent states that McTighe thought that data he submitted to a Board agent in-

vestigating the Respondent's alleged failure to remit union dues in Case 1-CA-23613 and its alleged failure to timely submit health and dental insurance premiums in Case 1-CA-26034, would also suffice for an answer to the instant complaint. The Respondent resubmitted this data to the Region by letter dated March 6, 1989, in response to the counsel for the General Counsel's letter. The Respondent contends that McTighe never intended to undermine or ignore the Board's processes, and that the Respondent's resubmission of its letters to the Regional Office constituted a good-faith attempt to respond to the instant complaint. Additionally, the Respondent has submitted an answer with its response to the Notice to Show Cause.

We have previously held that conversations and statements of position are insufficient to constitute answers to complaints. See *Printing Methods*, 289 NLRB 1231 (1988). We see no reason to make an exception here. The Board's Rules provide that all allegations of the complaint shall be deemed admitted unless good cause is shown why the failure to file within the allotted period should be excused. Here, the Respondent's failure to file a timely answer has not been supported by a showing of good cause and we therefore decline to accept the answer that the Respondent filed with its response to the Notice to Show Cause.

In the absence of good cause for the failure of the Respondent to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

Wheeler Manufacturing Corporation, a corporation with an office and place of business at Cambridge, Massachusetts, is engaged in the manufacture and sale of ball bearings. During the 12 months preceding issuance of the complaint, in the course and conduct of its business operations, the Respondent sold and shipped from its Cambridge facility products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts.

We find that the Respondent, Wheeler Manufacturing Corporation, is an employer engaged in

<sup>1</sup> The General Counsel also moved the Board to strike the Respondent's March 6, 1989 letter from the record, alleging it to be unresponsive to the complaint and inadequate under the requirements of the Board's Rules and Regulations. Although we agree that the letter is unresponsive and does not constitute an adequate answer, in light of our decision reached here, we find it unnecessary to strike the letter from the record. The General Counsel's motion to strike is therefore denied.

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 following employees of the Respondent 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 employed by Respondent at its Cambridge facility but excluding all clerical employees, executive and managerial employees and supervisors as defined in the Act.

Since about March 1, 1985, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since that date has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period September 1, 1987, through August 31, 1990. The collective-bargaining agreement includes a pension benefits plan, a group health and dental care plan, and a provision requiring remittance of union dues, collected by the Respondent, to the Union.

Since about October 1985, the Respondent, unilaterally and without the agreement of the Union, has failed to remit promptly union dues to the International treasurer of the Union in accordance with article VI of the collective-bargaining agreement. Since about January 1986, the Respondent, unilaterally and without agreement of the Union, has failed to remit on a timely basis pension payments to the National Industrial Group Pension Plan in accordance with article XXII of the collective-bargaining agreement. Since about July 1, 1988, the Respondent, unilaterally and without agreement with the Union, has failed to pay on a timely basis group health insurance and dental care payments in accordance with article XXI and appendix B of the collective-bargaining agreement.

We find that by the acts described above, 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.

## CONCLUSIONS OF LAW

By unilaterally and without agreement with the Union failing to promptly remit union dues promptly pursuant to the parties' collective-bargaining agreement, by unilaterally and without agreement with the Union failing to timely remit

pension payments pursuant to the parties' collective-bargaining agreement, and by unilaterally and without agreement with the Union failing to timely make group health and dental care payments pursuant to the parties' collective-bargaining agreement, 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.

## REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to remit union dues and make timely pension and group health and dental care payments as required by the parties' collective-bargaining agreement, and to make the bargaining unit employees and the Union whole for any losses attributable to the Respondent's failure to timely submit the contractually required payments, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>2</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, Wheeler Manufacturing Corporation, Cambridge, Massachusetts, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Refusing to comply with the terms of the collective-bargaining agreement, including the failure to remit union dues and make timely pension and group health insurance and dental care payments as prescribed therein.

(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 unit employees for any loss of benefits, including making required payments to contractual benefit plans, in the manner set forth in the remedy section of this Decision and Order.

(b) Post at its facility in Cambridge, Massachusetts, copies of the attached notice marked "Appen-

<sup>2</sup> In the event fringe benefit funds are involved, we leave the determination of additional amounts, if any, to the individual provisions of the employee benefit fund agreements as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn 7 (1979)

dix.”<sup>3</sup> 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.

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

<sup>3</sup> 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 by failing to make timely contributions on behalf of unit employees to the Union’s contractual pension benefits plan, by failing to make timely contributions to the Union’s contractual group health and dental care plans, and by failing to promptly remit contractual union dues to the International treasurer as required by the collective-bargaining agreement.

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 unit employees for any loss of benefits, plus interest, including making required payments to contractual benefits and pension plans, in the manner required by the Decision and Order of the National Labor Relations Board.

WE WILL remit to the Union dues owed for those unit employees who had authorized us to deduct and remit those dues to the Union pursuant to the parties’ collective-bargaining agreement.

WHEELER MANUFACTURING CORPORATION