Smith Industrial Maintenance Corp. d/b/a Quanta *and* West Side Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–50189

February 14, 2008

DECISION AND ORDER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge and an amended charge filed by the Union, West Side Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, on March 1 and March 15, 2007, respectively, the General Counsel issued the original complaint on May 3, 2007,[1] against Smith Industrial Maintenance Corp., d/b/a Quanta, the Respondent, alleging that it violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing payments to unit employees' Individual Retirement Account (IRA) benefits as provided in the current collective-bargaining agreement between the parties.

Thereafter, on June 29, 2007, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director on the same date. Among other things, the settlement agreement required the Respondent to make installment payments to employees for past-due IRA benefits in the aggregate amount of $9919, according to a schedule outlined in the agreement based on the amount of IRA payments that were in arrears at the time that the agreement was approved. The agreement further required the Respondent to make payments to employees for future IRA benefits pursuant to article XIII of the Respondent's 2006–2009 collective-bargaining agreement with the Union, and to post an appropriate notice.

The settlement agreement contained the following clause concerning the Respondent's noncompliance with the agreed-upon terms:

> NONCOMPLIANCE WITH SETTLEMENT AGREEMENT—The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to failure to make timely installment payments of moneys, or failure to make post-June 12, 2007 Individual Retirement Account contributions under Article XIII of the Charged Party's 2006–2009 collective-bargaining agreement with the Charging Party, after 15 days' notice from the Regional Director of such noncompliance, without remedy by the Charged Party, the Regional Director may reissue the complaint dated May 29, 2007 in this case. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the Complaint concerning the violations alleged therein. The Charged Party understands and agrees that the allegations of the aforementioned complaint as they apply to the Charged Party may be deemed to be true by the Board, it will not contest the validity of any such allegations, and the Board may enter findings, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment, the Board will issue an Order requiring the Charged Party to show cause why said motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint as they apply to the Charged Party to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an Order providing full remedy for the violations found as is customary to remedy such violations, including but not limited to the provisions of this Settlement Agreement. The parties further agree that the Board Order and a U.S. Court of Appeals Judgment may be entered herein ex parte.

By letter dated July 13, 2007, the Regional Director sent the Respondent a conformed copy of the settlement agreement and advised it to take the steps necessary to comply with the provisions of the agreement. By letter dated October 24, 2007, the Regional Director reminded the Respondent of its obligation to make the payments owing under the terms of the settlement agreement and warned that its failure to do so may result in the setting aside of the settlement agreement, the reissuance of the

[1] On November 14, 2005, the General Counsel issued a complaint in Case 7–CA–48841 against the Respondent and Human Capital, LLC, alleging that the Respondent violated Sec. 8(a)(5) and (1) of the Act. Case 7–CA–48841 was resolved by an informal settlement agreement that was approved by the Regional Director on December 22, 2005. By order dated May 3, 2007, the Regional Director set aside the informal settlement agreement in Case 7–CA–48841 based on the Respondent's failure to comply with its terms, reissued the complaint in that case, and consolidated it for hearing with Case 7–CA–50189. Upon reconsideration, however, on May 29, 2007, the Regional Director issued an order reinstating settlement agreement in Case 7–CA–48841, order severing cases, and complaint and notice of hearing in Case 7–CA–50189.

complaint, and the filing of a motion for summary judgment. To date, the Respondent has failed to make the IRA payments required under the terms of the settlement agreement.

Accordingly, on November 29, 2007, the Regional Director issued an Order Setting Aside Settlement Agreement and Order Approving Partial Withdrawal of Charge.[2] In addition, pursuant to the terms of the noncompliance provision of the settlement agreement, the Regional Director reissued the amended complaint on December 4, 2007.

On December 13, 2007, the General Counsel filed a Motion for Summary Judgment with the Board, with exhibits attached. Thereafter, on December 19, 2007, 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 Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment[3]

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to remit the agreed-upon payments to unit employees for past-due IRA benefits. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the allegations of the amended complaint are true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.[4]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business at 15801 Huron Street, Taylor, Michigan, has been engaged in the business of warehousing and transporting products used for the manufacture of automobile sealants, sound-deadening material, and other automotive products.

During calendar year 2006, the Respondent, in conducting its business operations described above, performed services valued in excess of $50,000 directly for customers located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that West Side Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Union), and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the International Union) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Bruce Smith has held the position of the Respondent's President and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and its agent within the meaning of section 2(13) of the Act.

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, shipping inspection, and truck drivers employed by Respondent, but excluding office clerical employees and guards and supervisors as defined in the Act.

Since at least May 1, 2004, the International Union has been the designated exclusive bargaining representative of the unit, and 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 from May 1, 2006, to April 30, 2009.

At all times since at least May 1, 2004, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of the unit.

At all material times, the International Union has designated the Union as the servicing representative of the unit.

Since about November 1, 2006, the Respondent has failed to pay IRA benefits for unit employees as provided for in the collective-bargaining agreement.

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purpose of collective bargaining.

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[2] As set forth in the General Counsel's Motion, the Order approved the Union's request that the allegation regarding the joint employer status of Human Capital, LLC and the Respondent be withdrawn. All other aspects of the charge remain in full force and effect.

[3] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[4] In granting summary judgment, Member Schaumber relies on the commitments of the Respondent in the settlement agreement. Cf., *Goer Mfg. Co.*, *Inc*., 341 NLRB 732 (2004).

The Respondent engaged in the conduct described above without the consent of the International Union or the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby 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 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. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to pay the contractually required IRA benefits for unit employees, we shall order the Respondent to make all the required IRA benefit fund payments that have not been made since about November 1, 2006, including any additional amounts applicable to such payments or contributions as set forth in *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, fn. 2 (1980), enfd. mem. 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), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondent, on request, to bargain in good faith with the Union regarding IRA benefits.

ORDER

The National Labor Relations Board orders that the Respondent, Smith Industrial Maintenance Corp., d/b/a Quanta, Taylor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with West Side Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL–CIO and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL–CIO as the exclusive collective-bargaining representative of the employees in the appropriate unit by failing to pay contractually-required IRA benefits on behalf of unit employees pursuant to the Respondent's May 1, 2006 to April 30, 2009 collective-bargaining agreement with the Union. The appropriate unit is:

> All production and maintenance employees, shipping inspection, and truck drivers employed by Respondent, but excluding office clerical employees and guards and supervisors as defined in the Act.

(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 all contractually required IRA benefit fund payments that have not been made since November 1, 2006, and reimburse unit employees for any expenses resulting from its unlawful failure to continue their IRA benefits, with interest, in the manner set forth in the remedy section of this decision.

(b) On request, bargain with the Union concerning the payment of IRA benefits to unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Taylor, Michigan, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

[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."

to all current employees and former employees employed by the Respondent at any time since November 1, 2006.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 14, 2008

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

(SEAL) 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with West Side Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL–CIO and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL–CIO as the exclusive collective-bargaining representative of the employees in the appropriate unit by failing to pay contractually required IRA benefits on behalf of unit employees pursuant to our May 1, 2006, to April 30, 2009 collective-bargaining agreement with the Union. The appropriate unit is:

> All production and maintenance employees, shipping inspection, and truck drivers employed by Respondent, but excluding office clerical employees and guards and supervisors as defined in the Act.

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 all contractually required IRA benefit fund payments that have not been made since November 1, 2006, and reimburse unit employees for any expenses resulting from our unlawful failure to continue their IRA benefits, with interest, in the manner set forth in the remedy section of this decision.

WE WILL, on request, bargain with the Union concerning the payment of IRA benefits to unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

SMITH INDUSTRIAL MAINTENANCE CORP., D/B/A QUANTA