

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

UL MANAGEMENT a/k/a
UNION LABOR MAINTENANCE INC.

and

Case 22-CA-28415

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 32BJ

Robert Gonzalez, Esq., Newark, New Jersey
for the General Counsel
Katherine Dunn, Esq., (*Service Employees International
Union Local 32BJ*), New York, New York
for the Charging Party

DECISION

Statement of the Case

MINDY E. LANDOW, Administrative Law Judge. This case was tried in Newark, New Jersey, on February 3, 2009.

The charge in this matter was filed on June 23, 2008¹ and an affidavit of service shows that the charge was mailed to the Respondent on June 24. Thereafter, a first amended charge was filed on August 8, and an affidavit of service shows that it was mailed to the Respondent on August 11. A second amended charge was filed on August 15 and an affidavit of service shows that it was mailed to the Respondent on August 15.

A complaint and notice of hearing dated November 18 was issued by the Regional Director of Region 22 of the National Labor Relations Board. The complaint provided, inter alia, that an answer was due by December 2.

As no answer had been filed by the date specified in the complaint, on December 16, Maria E. Balzano, the Regional Attorney for Region 22 sent a letter to Respondent, addressed to its president, John A. Reed, stating that the Regional Office had issued a complaint and advising Respondent that pursuant to the Board's Rules and Regulations, the Respondent was required to file an answer to the complaint within 14 days from service thereof. The letter further stated that on December 3, Respondent had been provided an extension of time until December 10 to file an answer, and none had been received. Ms. Balzano further advised Respondent that the time to file an answer had been extended until December 30, and that a failure to file an answer by that date would result in a motion for default judgment. The United States Postal Office return receipt shows that this letter was received by Respondent on December 17.

¹ The dates referred to herein are in 2008 until otherwise specified.

Cranford, New Jersey; 20 Commerce Drive, Cranford, New Jersey; 100 Walnut Avenue, Cranford, New Jersey; and its 150 JFK Parkway, Short Hills, New Jersey locations.

5 6. Since on or about January 5, 2005, and at all material times, the Union has been the exclusive collective bargaining representative of the above-described Unit and since then Respondent has been recognized as such representative by Respondent. This recognition has been embodied in a collective-bargaining agreement, which is effective from January 5, 2005 until December 31, 2007 and thereafter until a successor agreement shall have been executed.

10 7. At all times since January 5, 2005, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

15 8. Since about January 10, 2008, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit over a successor collective-bargaining agreement.

20 9. On or about January 1, 2008 Respondent failed to continue in effect all the terms and conditions of the agreement described above by:

(a) Failing to provide wage increases as required under Article 25 of the collective-bargaining agreement and applicable Riders to the collective-bargaining agreement.

25 (b) Modifying Article 21 Section 5 of the collective-bargaining agreement by paying employees bi-weekly instead of weekly as required by the collective-bargaining agreement.

(c) Failing and refusing to remit contributions to the Building Services 32BJ Legal Services Fund.

30 (d) Failing and refusing to remit contributions to the Building Services 32BJ Health Fund.

(e) Failing and refusing to remit contributions to the Building Services 32BJ Thomas Shortman Training, Scholarship and Safety Fund.

35 10. Respondent engaged in the conduct described above without the Union's consent.

11. The terms and conditions of employment, described above, are mandatory subjects for the purpose of collective bargaining.

40 12. By the conduct described above Respondent has been failing and refusing 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, in violation of Section 8(a)(1) and (5) of the Act.

45 13. The unfair labor practices of the Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Remedy

50 Having determined that Respondent has violated the Act, I shall recommend that Respondent be ordered to cease and desist from those practices and to take certain affirmative action designed to effectuate the Act.

5 Having found that the Respondent violated the Act by failing and refusing to meet and bargain in good faith with the Union for a successor collective-bargaining agreement, I shall recommend that Respondent be ordered to do so upon request and, if an understanding is reached, to embody that understanding in a signed agreement.

10 Having found that Respondent violated the Act by: failing to provide wage increases as required under Article 25 of the collective-bargaining agreement and applicable riders to the collective-bargaining agreement; by modifying Article 21 Section 5 of the collective-bargaining agreement by paying employees bi-weekly instead of weekly as required by the collective-bargaining agreement and by failing and refusing to remit contributions to the Building Services 32BJ Legal Services Fund the Building Services 32BJ Health Fund and the Building Services 32BJ Thomas Shortman Training, Scholarship and Safety Fund, (the Benefit Funds) I shall recommend that Respondent be ordered to make unit employees whole for any wages and other benefits lost as a result of Respondent's unfair labor practices, computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970) enfd. 444 F.2d 502 (6th Cir. 1971). I shall further recommend that the Respondent make whole the Benefit Funds described above for any failure to make contractually required contributions, with any additional amount due the Benefit Funds computed in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). I shall further recommend that Respondent be ordered to reimburse employees for any losses they may have suffered for Respondent's failure to make contributions to the Benefit Funds, in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F2d. 940 (9th Cir. 1981). All make-whole payments to employees shall be made with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁴

25 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ⁵

30 ORDER

The Respondent, UL Management a/k/a Union Labor Maintenance, Inc., Cranford, New Jersey, its officers, agents, successors, and assigns, shall

35 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith over the terms of a successor collective-bargaining agreement with the Union, Service Employees International Union Local 32BJ as the exclusive collective-bargaining representative of the employees in the following unit:

45 ⁴ General Counsel has requested that interest on any monetary compensation be computed on a compounded quarterly basis. In *Bryant Health Center, Inc.*, 353 NLRB No. 80, slip op. at 1 (2009), the Board addressed a similar request: "Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham*, 352 NLRB 516 fn. 1 (2008), citing *Rogers Corp.* 344 NLRB 504 (2005)." Inasmuch as I am bound to apply Board law, the General Counsel's request for interest compounded on a quarterly basis is denied.

50 ⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

All service employees employed by Respondent at its 6
 Commerce Drive, Cranford, New Jersey; 14 Commerce Drive,
 Cranford, New Jersey; 20 Commerce Drive, Cranford, New
 Jersey; 100 Walnut Avenue, Cranford, New Jersey; and its 150
 JFK Parkway, Short Hills, New Jersey locations.

5

(b) Failing to provide wage increases as required under Article 25 of the collective-bargaining agreement and applicable riders to the collective bargaining agreement.

10

(c) Modifying Article 21 Section 5 of the collective-bargaining agreement by paying employees bi-weekly instead of weekly as required by the collective-bargaining agreement.

(d) Failing and refusing to remit contributions to the Building Services 32BJ Legal Services Fund.

15

(d) Failing and refusing to remit contributions to the Building Services 32BJ Health Fund.

(e) Failing and refusing to remit contributions to the Building Services 32BJ Thomas Shortman Training, Scholarship and Safety Fund.

20

(f) 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.

25

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

30

(b) Upon the Union's request, restore and continue the terms and conditions of employment for unit employees: i.e. provide wage increases as required under Article 25 of the collective-bargaining agreement and applicable riders to the collective-bargaining agreement; reinstate its practice of compensating employees on a weekly basis as required by the collective-bargaining agreement and resume making contractually required payments to the Union Benefit Funds described above in the manner set forth in the collective-bargaining agreement and continue such terms and conditions in effect until the parties reach an agreement or a good-faith impasse in bargaining.

35

40

(c) Make whole the unit employees for any losses suffered by reason of its unlawful failure to continue in effect the terms and conditions set forth in the collective-bargaining agreement with the Union in the manner set forth in the remedy section of this decision.

45

(d) 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.

50

(e) Within 14 days after service by the Region, post at its facilities in Cranford, New Jersey and Short Hills, New Jersey copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 22, 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 to all current employees and former employees employed by the Respondent at any time since January 1, 2008.

(f) 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., July 15, 2009.

Mindy E. Landow
Administrative Law Judge

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."

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 over the terms of a successor collective-bargaining agreement with Service Employees International Union Local 32BJ, the Union, as the exclusive collective-bargaining representative of the employees in the following Unit:

All service employees employed by Respondent at its 6
Commerce Drive, Cranford, New Jersey; 14 Commerce Drive,
Cranford, New Jersey; 20 Commerce Drive, Cranford, New
Jersey; 100 Walnut Avenue, Cranford, New Jersey; and its 150
JFK Parkway, Short Hills, New Jersey locations.

WE WILL NOT fail to provide wage increases as required under Article 25 of the collective-bargaining agreement and applicable riders to the collective-bargaining agreement.

WE WILL NOT modify Article 21 Section 5 of the collective-bargaining agreement by paying you bi-weekly instead of weekly as required by the collective-bargaining agreement.

WE WILL NOT fail and refuse to remit contributions to the Building Services 32BJ Legal Services Fund, the Building Services 32BJ Health Fund or the Building Services 32BJ Thomas Shortman Training, Scholarship and Safety Fund.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, upon request, bargain with the Union as the exclusive representative of our employees in the above-described appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, upon the Union's request, restore and continue the terms and conditions of employment that were applicable prior to December 31, 2007 and continue them in effect until the parties reach an agreement or a good-faith impasse in bargaining.

WE WILL make whole our Unit employees for any losses suffered by reason of our unlawful failure to continue the terms and conditions of employment as set forth in our collective-bargaining agreement with the Union, plus interest.

UL MANAGEMENT a/k/a
UNION LABOR MAINTENANCE INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

20 Washington Place, 5th Floor
Newark, New Jersey 07102-3110
Hours: 8:30 a.m. to 5 p.m.
973-645-2100.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784.