

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BUCKEYE STATE PLUMBING, INC.
AND R. E. POWELL PLUMBING &
HEATING, INC.

and

Case 8--CA--15572

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPEFITTING INDUSTRY, LOCAL
UNION NO. 776

DECISION AND ORDER

Upon a charge filed on 9 March 1982, and an amended charge filed on 28 April 1982,¹ by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 776, hereinafter called Local 776, and duly served on Buckeye State Plumbing, Inc. and R. E. Powell Plumbing & Heating, Inc., a single employer, hereinafter called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued a complaint on 30 April against Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and complaint and notice of hearing before

¹ Unless otherwise noted all dates are in 1982.

an administrative law judge were duly served on the parties to this proceeding.

The complaint alleges that the Respondent, through contractor associations of which it is a member, and Local 776 executed and are bound by collective-bargaining agreements covering the Respondent's employees in the following units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen plumbers and apprentices in the employ of employers who are members of the Contractors Negotiating Committee and of other companies, employer associations and organizations who have authorized the Committee to bargain for them, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

All plumbing, heating, air conditioning and refrigeration journeymen and trainees in the employ of employers who are members of the Management Committee and of other companies, employer associations and organizations who have authorized the Management Committee to bargain for them, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

The complaint also alleges that Local 776 has been, and is now, the exclusive representative of all employees in said units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment; and, further, that the most recent applicable collective-bargaining agreements executed on behalf of the employees comprising said units are effective from 1 July 1981, through 30 June 1984, and from 1 August 1981, through 31 July 1982, respectively.

Regarding the unfair labor practices, the complaint alleges that since on or about 1 July 1981, and continuing to date, the Respondent repudiated its collective-bargaining agreements with Local 776 and, since such date, refuses to apply all the provisions of said collective-bargaining agreements in that the Respondent has engaged in a course of conduct constituting bad-faith bargaining by, unilaterally and without prior notification to and/or

consultation or discussion with Local 776, and contrary to past practice and custom: (a) discontinuing contributions required by the agreements to the National Pension Fund, the Union Local 776 Pension Fund, the Ohio State Plumbers & Pipefitters Health and Welfare Fund, the Union Local 776 Health and Welfare Fund, and the Apprenticeship Training Fund; and (b) discontinuing deduction and remittance to Local 776 of union dues and vacation savings plan deductions.

On October 21, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with appendixes attached. Subsequently, on October 29, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Respondent has not filed a response to the Notice to Show Cause. Consequently, the allegations of the Motion for Summary Judgment stand uncontroverted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing, issued on 30 April and duly served on Respondent on 11 May specifically states that the Respondent shall, within

10 days of service thereof, file an answer with the Regional Director for Region 8, and that, unless it does so, all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board. Further, according to the uncontroverted allegations of the Motion for Summary Judgment, on 1 October counsel for the General Counsel notified the Respondent and its counsel of record that no answer had been received and that a motion for summary judgment would be filed if an answer was not received by 12 October. The Respondent neither filed an answer nor responded in any way to the General Counsel's communication. On 21 October counsel for the General Counsel filed the Motion for Summary Judgment herein, and on 29 October the Board issued a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent did not file a response thereto, and, no good cause to the contrary having been shown in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted and found to be true. Accordingly, we grant the Motion for Summary Judgment.²

On the basis of the entire record, the Board makes the following:

Findings of Fact

1. The Business of the Respondent

Buckeye State Plumbing, Inc., is, and has been at all times material herein, a corporation with its main office and principal place of business in Columbus, Ohio, where it is engaged in the business of general residential plumbing, heating, and air-conditioning installation. During the calendar years 1980 and 1981, which periods are representative of all times material

² In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

herein, Buckeye State Plumbing, in the course and conduct of its business, received goods valued in excess of \$50,000 directly from points located outside the State of Ohio.

R. E. Powell Plumbing & Heating, Inc., is, and has been at all times material herein, a corporation with its main office and principal place of business in Columbus, Ohio, where it is engaged in the business of commercial plumbing, heating, and air-conditioning installation. During the calendar years 1980 and 1981, which periods are representative of all times material herein, Powell Plumbing & Heating, in the course and conduct of its business, received goods valued in excess of \$50,000 directly from points located outside the State of Ohio.

Buckeye State Plumbing, Inc. and R. E. Powell Plumbing & Heating, Inc., by virtue of being affiliated businesses with common officers, ownership, directors, and operators, and a common labor policy formulated by said officers, constitute, and at all times material herein have constituted, a single integrated business enterprise.

We find, on the basis of the foregoing, that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 776, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Units

Since 1972 and at all times material herein, Local 776 has been, and is now, the lawfully designated exclusive collective-bargaining representative of the following appropriate units of the Respondent's employees:

All journeymen plumbers and apprentices in the employ of employers who are members of the Contractors Negotiating Committee and of other companies, employer associations and organizations who have authorized the Committee to bargain for them, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

All plumbing, heating, air conditioning and refrigeration journeymen and trainees in the employ of employers who are members of the Management Committee and of other companies, employer associations and organizations who have authorized the Management Committee to bargain for them, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

B. The 8(a)(5) and (1) Charges

Since 1972 and at times material herein, the Respondent, by and through the various contractor associations and committees of which it is a member, has negotiated collective-bargaining agreements pertaining to the aforesaid units with Local 776. The Respondent is a member of the Lima Mechanical Contractors Association. Said Association is a member of the Contractors Negotiating Committee for Local 776, whom the Respondent, by letter of 14 May 1981, authorized to negotiate a contract embracing the first unit of employees set forth above. The Respondent manifested its intent to be bound by the collective-bargaining agreement born of the negotiations between the parties. As with previous agreements between the parties, said agreement, effective 1 July 1981, through 30 June 1984, provided, inter alia, for the Respondent to deduct and remit to Local 776 union dues and vacation savings plan money and to make contributions to various training, health and welfare, and pension funds.

The Respondent also is a member of the Mechanical Contractors Association of Central Ohio and the Plumbing, Heating and Cooling Contractors Association. Said Associations are, in turn, members of the Management Committee which negotiated the collective-bargaining agreement pertaining to the employees of the Respondent comprising the second unit set forth above. The agreement reached by the Respondent, through the Management Committee, and Local 776 was effective from 1 August 1981 through 31 July 1982. As with previous contracts between the parties, it provided, inter alia, that the Respondent deduct and remit to Local 776 union dues and vacation savings plan money and make contributions to the identical training, health and welfare, and pension funds referred to above. The Respondent manifested its intent to be bound by said agreement.

Since on or about 1 July and 1 August 1981, respectively, and continuing to date, the Respondent has repudiated the collective-bargaining agreement covering each unit by, unilaterally and without prior notice, refusing to make contributions to the National Pension Fund, the Union Local 776 Pension Fund, the Ohio State Plumbers & Pipefitters Health and Welfare Fund, the Union Local 776 Health and Welfare Fund, and the Apprenticeship Training Fund, and likewise failing to deduct from wages and remit to Local 776 union dues and vacation savings plan money, as prescribed by the agreements.

Accordingly, we find that the Respondent has, since on or about July 1, 1981, with respect to the first unit, and since on or about 1 August 1981, with respect to the second unit, refused to bargain collectively with Local 776 as the exclusive representative of the employees in those units by unilaterally repudiating its contracts with Local 776, and, in so doing, has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 8(d) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The conduct of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, has a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and Section 8(d) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate units. See Cauthorne Trucking, 256 NLRB 721 (1981).

We shall further order the Respondent to make whole the Union and the employees in the units found appropriate herein by remitting to the Union dues and vacation savings plan money and by paying all contributions to the National Pension Fund, the Union Local 776 Pension Fund, the Ohio State Plumbers & Pipefitters Health and Welfare Fund, the Union Local 776 Health and Welfare Fund, and the Apprenticeship Training Fund, as provided in the agreements of 1 July and 1 August 1981, to which the Respondent is or was bound, and which would have been paid absent Respondent's unlawful discontinuance of such payments, and to post the attached notice.³ See J. F.

³ 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 fund payments. We leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds 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 (continued)

Swick Insulation Co., 247 NLRB 626 (1980), and Dura-Vent Corp., 257 NLRB 430, 433 (1981). This make-whole remedy shall include reimbursing employees for contributions they themselves may have made for the maintenance of their coverage for benefits after the Respondent unlawfully ceased making contributions, for any premiums they may have paid to third-party insurance companies for coverage heretofore provided by the funds, and for any medical or dental bills employees have paid to health care providers that the funds would have covered, together with interest as provided in Florida Steel Corp., 231 NLRB 651 (1977).⁴ See Hudson Chemical Co., 258 NLRB 152 (1981), and Kraft Plumbing, 252 NLRB 891 (1980). The Respondent will also be required to preserve and, upon request, make available to authorized agents of the Board all records necessary or useful in determining compliance with the Order herein.

Conclusions of Law

1. Buckeye State Plumbing, Inc. and R. E. Powell Plumbing & Heating, Inc., are a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 776, is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeymen plumbers and apprentices covered by the agreement between the Contractors Negotiating Committee of which the Respondent is a member and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union 776, excluding all office clerical

³ 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. See Merryweather Optical Co., 240 NLRB 1213 (1979).

⁴ See, generally, Isis Plumbing Co., 138 NLRB 716 (1962).

employees, professional employees, guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. All plumbing, heating, air-conditioning, and refrigeration journeymen and trainees covered by the agreement between the Management Committee of which the Respondent is a member and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 776, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. Since 1972, the above-named labor organization has been and is now the exclusive representative of all employees in the aforesaid appropriate units for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

6. By unilaterally repudiating provisions of its contracts with Local 776 with respect to said units on or about 1 July and 1 August 1981, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 8(d) of the Act.

7. By the aforementioned actions, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The above-mentioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Buckeye State Plumbing, Inc. and R. E. Powell Plumbing & Heating, Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Refusing or failing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 776, as the exclusive bargaining representative of the Respondent's employees in the following appropriate units:

All journeymen plumbers and apprentices in the employ of employers who are members of the Contractors Negotiating Committee and of other companies, employer associations and organizations who have authorized the Committee to bargain for them, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

All plumbing, heating, air conditioning and refrigeration journeymen and trainees in the employ of employers who are members of the Management Committee and of other companies, employer associations and organizations who have authorized the Management Committee to bargain for them, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

(b) Refusing or failing to bargain in good faith with Local 776 by unilaterally repudiating the Respondent's contracts with Local 776, by failing to make the prescribed monetary contributions to the training, health and welfare, and pension funds, and by failing to deduct and remit to Local 776 union dues and vacation savings plan money.

(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 to effectuate the policies of the Act:

(a) Honor, abide by and apply the terms of the applicable collective-bargaining agreements.

(b) Upon request, bargain collectively and in good faith with Local 776 as the exclusive collective-bargaining representative of the Respondent's employees in the units set forth above with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(c) Make whole the Union and the employees in the appropriate units by remitting to the Union dues and vacation savings plan money by transmitting the contributions owed to the aforementioned fringe benefit funds pursuant to the terms of the Respondent's collective-bargaining agreements with Local 776, and by reimbursing unit employees for any medical, dental, or any other expenses ensuing from the Respondent's unlawful failure to make such required contributions. This shall include reimbursing employees for any contributions they themselves may have made for the maintenance of the Union's health and welfare, training, and pension funds after the Respondent unlawfully discontinued contributions to those funds, for any premiums they may have paid to third-party insurance companies for coverage heretofore provided by the funds, and for any medical or dental bills they have paid directly to health care providers that the contractual policies would have covered. All payments to the Union and employees shall be made with interest as set forth in the section of this Decision entitled "'The Remedy.'"

(d) 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 payments due under the terms of this Order.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT fail or refuse to bargain collectively and in good faith concerning rates of pay, wages, hours, and other terms and conditions of employment with United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 776, as the exclusive representative of the employees in the following units appropriate for the purposes of collective bargaining:

All journeymen plumbers and apprentices covered by the agreement between the Contractors Negotiating Committee and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 776, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees

All plumbing, heating, air conditioning and refrigeration journeymen and trainees covered by the agreement between the Management Committee and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 776, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT repudiate or fail to honor, abide by, and apply the terms of the collective-bargaining agreements between the Committees and the Union referred to above.

WE WILL NOT unilaterally discontinue the contributions to the health and welfare, pension, and training funds provided for in the applicable collective-bargaining agreements referred to above.

WE WILL NOT unilaterally discontinue dues and vacation checkoffs provided for in the applicable collective-bargaining agreements referred to above.

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

WE WILL, on request, bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the bargaining units described above, and WE WILL embody in a signed agreement any understanding which may be reached.

WE WILL honor, abide by, and apply the terms of the existing collective-bargaining agreements referred to above.

WE WILL make whole the Union and unit employees by remitting to the Union dues and vacation savings plan money, by transmitting the contributions owed to the National Pension Fund, the Union Local 776 Pension Fund, the Ohio State Plumbers & Pipefitters Health and Welfare Fund, the Union Local 776 Health and Welfare Fund, and the Apprenticeship Training Fund pursuant to the terms of the above-referred-to collective-bargaining agreements with the Union, and by reimbursing unit employees for any medical, dental, or any other expenses ensuing from our unlawful failure to make such required contributions. This shall include reimbursing employees for any contributions they themselves may have made for the maintenance of the Union's health and welfare, pension, and training funds after we unlawfully discontinued contributions to those funds, for any premiums they may have paid to third-party insurance companies for coverage heretofore provided by the funds, and for any medical or dental bills they have paid directly to health care providers that the funds would have paid.

WE WILL pay to the employees appropriate interest on such money.

BUCKEYE STATE PLUMBING, INC.
AND R. E. POWELL PLUMBING &
HEATING, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

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 Board's Office, Anthony J. Celebrezze Federal Building, Room 1695, 1240 East Ninth Street, Cleveland, Ohio 44199, Telephone 216--522--3733.