

271 NLRB No. 208

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D--2118  
Baton Rouge, LA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROYAL INDUSTRIAL CONTRACTORS, INC.  
PRINCE CONSTRUCTION CORPORATION AND  
HIGHLAND EQUIPMENT CORPORATION

and

Case 15--CA--9042

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 406

DECISION AND ORDER

Upon a charge filed by the Union on 6 July 1983 and an amended and second amended charge filed respectively on 28 and 29 July 1983 the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on 5 August 1983 against the Companies, which constitute a single employer and/or alter egos, Royal Industrial Contractors, Inc., Prince Construction Corporation and Highland Equipment Corporation, the Respondents, alleging that they have violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, on 30 April 1984 the Companies withdrew their 18 August 1983 answers indicating that no additional answers or contest would be forthcoming.

On 1 May 1984 the General Counsel filed a Motion for Summary Judgment. On 10 May 1984 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 Companies filed no responses. 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.

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## 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 10 days from service of the complaint unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegation in the Motion for Summary Judgment discloses that the Companies, by letter dated 30 April 1984, notified the Region that the previous answers filed were being withdrawn and that no additional answers or contest would be forthcoming.

In the absence of good cause being shown for the withdrawal of the previous answers and failure to file a new answer, we grant the General Counsel's Motion for Summary Judgment.<sup>1</sup>

## I. Jurisdiction

Companies Royal and Prince, Louisiana corporations, are each engaged as contractors in the building and construction industry at their respective facilities in Baton Rouge, Louisiana, where they each annually purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Louisiana. Company Highland, a Louisiana corporation, is engaged in the rental and/or leasing of construction equipment at its facilities in Baton Rouge, Louisiana, where it annually purchased and received goods and materials in excess of \$50,000 directly from firms within

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<sup>1</sup> In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondents 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.

the State of Louisiana which in turn purchased the goods and materials directly from outside the State of Louisiana. We find that the Companies are employers engaged in 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.

The Companies are 92 percent owned by Royal Group, Inc., a holding company. The Companies are affiliated business enterprises with common officers, ownership, directors, management, and supervision; share common premises and facilities; provide services for each other; interchange personnel; and hold themselves out to the public as a single integrated business enterprise. We find that the Companies constitute a single integrated business enterprise and single employer and/or alter egos within the meaning of the Act.

## II. Alleged Unfair Labor Practices

### The Facts

The Union has been and continues to be the designated exclusive collective-bargaining representative of the Respondents' employees in the following appropriate unit:

All employees employed in operating engineer craft classifications employed by Respondents Prince, Royal, and Highland.

Since about 14 July 1977, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of a majority of the Respondents' unit employees and since that date until about 1 May 1983 the Union has been recognized as such by the Respondents. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period 1 May 1982 to and including 30 April 1984.

About 23 May 1983 the Union requested in writing, and has continued to request, that the Respondents furnish certain information pursuant to specific questions propounded, regarding the Respondents' relationship to each other and, in particular, the Union requested of the Respondents:

1. What positions in (non union companies) are held by each officer, shareholder, director or other management representative of your company?
2. State the name of each person who has a function related to labor relations for your company for (non union companies).
3. What customers of (non union companies) are now or were formerly customers of your company?
4. State the difference, if any, in the type of business engaged in by your company and (non union companies).
5. Which services, including clerical, administrative, bookkeeping, managerial, engineering, estimating, or other services are performed for (non union companies) by or at the offices or premises of your company?
6. What supervisory functions, including, but not limited to job superintendency, are performed by employees or executive officers of your company over employees of (non union companies).
7. What insurance or other employee benefits are shared in common by employees of your company and employees of (non union companies)?
8. What skills do the employees of (non union companies) possess that employees of your company possess?
9. Please list all former employees or executive officers of your company that are now employed by (non union companies) and their respective job titles.
10. State whether (non union companies) are a member of the Associated General Contractors of Louisiana, Inc. or BRICA.
11. Do (non union companies) have separate contractor licenses, bank accounts, books, insurance policies, or tax returns other than those produced, issued or maintained by your company?
12. Was there any leasing of equipment or services between your company and (non union companies) during the last year and, if so, was it done by written agreement?
13. Was there interchange of employees in the field during the last year between your company and (non union companies)?

14. Please identify the person or persons responsible for job estimating for your company.

15. Please identify the person or persons responsible for job estimating for (non union companies).

16. Please identify the person or persons responsible for renting out equipment (manned and maintained) for your company.

17. Please identify the person or persons responsible for renting out equipment (manned and maintained) for (non union companies).

The information requested by the Union is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

Since about 22 June 1983 the Respondents have refused and continue to refuse to provide the Union with the requested information.

Since about 1 May 1983 and continuing thereafter the Respondents have refused, and continue to refuse, to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by

(a) Discontinuing their business pursuits about May 1983 and transferring bargaining unit work.

(b) Refusing to recognize and bargain with the Union as the collective-bargaining representative of their unit employees.

(c) Failing and refusing to apply the current collective-bargaining agreement to the unit employees.

(d) Unilaterally and without giving prior notice to or bargaining with the Union changing the wages, hours of work, and other conditions of employment of the unit employees.

About late May and 20 and 21 June 1983 the Respondents respectively terminated the employment of unit employees Robert Tarver, Don R. Pierce, and E. J. Landry, and thereafter failed and refused to reinstate them because of their union activities.

Since about 1 May 1983 the Respondents have refused and continue to refuse to recognize the Union as the collective bargaining representative of unit employees.

Since about 1 May 1983 the Respondents have refused and continue to refuse to apply the terms and conditions of the current collective-bargaining agreement.

We find that the Companies have engaged in unfair labor practice affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the Act.

#### Remedy

Having found that the Respondents have engaged in and are engaging in unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents will be directed to supply information pursuant to specific questions propounded as aforescribed to the Union and to bargain with the Union as the exclusive representative of its unit employees. We shall direct the Respondents to comply with the contract retroactively to its effective date, apply the contract to unit employees, and reinstate and make whole employees Robert Tarver, Don R. Pierce, and F. J. Landry with backpay to be computed in the manner set forth in Ogle Protection Service, 138 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest thereon as set forth in Florida Steel Corp., 231 NLRB 651 (1977).<sup>2</sup>

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<sup>2</sup> See generally Isis Plumbing Co., 138 NLRB 716 (1962).

## CRDER

The National Labor Relations Board orders that the Respondents, Royal Industrial Contractors, Inc., Prince Construction Corporation and Highland Equipment Corporation, Baton Rouge, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide International Union of Operating Engineers, Local 406 with requested information that is relevant and necessary for the Union's performance of its function as the exclusive collective-bargaining representative of its unit employees.

(b) Refusing to bargain collectively with the Union by discontinuing their business pursuits and transferring bargaining unit work; by refusing to recognize and bargain with the Union as the collective-bargaining representative of their unit employees; by refusing to apply the collective-bargaining agreement to unit employees; and by unilaterally and without prior notice to or bargaining with the Union changing the wages, hours, and other conditions of employment of the unit employees.

(c) Laying off or discharging employees in order to discourage membership in or activities on behalf of the Union.

(d) 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) Provide the Union with any and all requested information that is relevant and necessary to the collective-bargaining process.

(b) On request, bargain collectively with the Union as the exclusive representative of all employees in the following unit:

All employees employed in operating engineer craft classifications employed by Respondents Prince, Royal and Highland.

(c) Apply the contract to the unit employees.

(d) Offer the following named employees immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole, with interest, for any loss of earnings and/or benefits suffered by reason of their unlawful layoff about May and June 1983: Robert Tarver, Don R. Pierce, and E. J. Landry.

(e) Post at their facilities in Baton Rouge, Louisiana, copies of the attached notice marked 'Appendix.'<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 15, 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 Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

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<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.'

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

Dated, Washington, D.C. 31 August 1984

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Donald L. Dotson, Chairman

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Don A. Zimmerman, Member

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Robert P. Hunter, 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to supply International Union of Operating Engineers, Local 406 with requested information that is relevant and necessary to the collective-bargaining process.

WE WILL NOT refuse to bargain with the Union by discontinuing our business pursuits and transferring bargaining unit work; by refusing to recognize the Union as the collective-bargaining representative of our unit employees; by refusing to apply the collective-bargaining agreement to our unit employees; and by unilaterally changing the wages, hours, and other conditions of employment of our unit employees.

WE WILL NOT terminate our employees because of their union activities.

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 supply the Union with any and all requested information that is necessary and relevant to the collective-bargaining process, recognize and bargain collectively with the Union, and give effect to the collective-bargaining agreement.

WE WILL offer Robert Tarver, Don R. Pierce, and F. J. Landry immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

ROYAL INDUSTRIAL CONTRACTORS, INC.

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(Employer)

PRINCE CONSTRUCTION CORPORATION

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(Employer)

HIGHLAND EQUIPMENT CORPORATION

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(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, F. Edward Hebert Federal Building, Room 600, 600 South Maestri Place, New Orleans, Louisiana 70130, Telephone 504--589--6389.