

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONTRACTORS EXCAVATING, INC.

and

Case 28--CA--7690

CONSTRUCTION, PRODUCTION & MAINTENANCE
LABORERS' UNION, LOCAL NO. 383, LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA,
AFL--CIO; INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL NO. 428,
AFL--CIO; ARIZONA STATE DISTRICT
COUNCIL OF CARPENTERS, UNITED BROTHERHOOD
OF CARPENTERS & JOINERS OF AMERICA, AFL--CIO;
CONSTRUCTION, BUILDING MATERIALS &
MISCELLANEOUS DRIVERS, TEAMSTERS LOCAL
UNION NO. 83, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed by the Union 16 January 1984, the General Counsel of the National Labor Relations Board issued a complaint 3 February 1984 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 1 March 1984 the General Counsel filed a Motion for Summary Judgment. On 7 March 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 Company filed no response. The allegations in the complaint and in the motion are therefore undisputed.

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

II. Alleged Unfair Labor Practices

At all times material herein the Unions respectively have been designated exclusive collective-bargaining representatives of certain employees of the Respondent and by virtue of Section 9(a) of the Act have been and continue to be exclusive representatives for the purposes of collective bargaining.

Since 5 December 1983 the Unions have requested and the Respondent has failed and refused to furnish them with information pertaining to the relationship between the operation of the Respondent's business and that of a new company joined by the Respondent's owners. In the absence of an answer we deem admitted the allegation that this information is relevant and necessary to the Unions' performance of their functions as the respective exclusive collective-bargaining representatives of the Respondent's employees and we therefore so find.

Conclusions of Law

By failing and refusing on and after 5 December 1983 to furnish relevant and necessary information requested by the Unions, the Company 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 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.

ORDER

The National Labor Relations Board orders that the Respondent, Contractors Excavating, Inc., Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Unions by refusing to furnish them information which is relevant and necessary to the performance of their duties as exclusive collective-bargaining representatives of the Respondent's employees.

(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) On request, forthwith furnish to the Unions information which is necessary to the performance of their duties as exclusive collective-bargaining representatives of the Respondent's employees.

(b) Post at its facility in Phoenix, Arizona, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 28, 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.

² 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.'"

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 allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated 21 February 1984, notified the Company that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, an Arizona corporation, is engaged as a pipeline construction contractor in the building and construction industry with its principal place of business in Phoenix, Arizona, where it annually purchases goods and materials valued over \$50,000 directly from outside the State. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

¹ Chairman Dotson regards this proceeding as a default judgment and accords it no precedential value.

(c) 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. 10 July 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

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 bargain with Construction, Production & Maintenance Laborers' Union, Local No. 383, Laborers' International Union of North America, AFL--CIO; International Union of Operating Engineers, Local No. 428, AFL--CIO; Arizona State District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL--CIO; Construction, Building Materials & Miscellaneous Drivers, Teamsters Local Union No. 83, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America which are your exclusive collective-bargaining representatives by refusing to furnish them information which is relevant and necessary to the performance of their duties as collective-bargaining representatives.

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, on request, forthwith furnish to the Unions information which is relevant and necessary to the performance of their duties as collective-bargaining representatives.

CONTRACTORS EXCAVATING, 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, 3030 North Central Avenue, Second Floor, Phoenix, Arizona 85012, Telephone 602--241--2362.