

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NRC, INC.

and

Case 7--CA--30487

LOCAL 149, UNITED UNION OF
ROOFERS, WATERPROOFERS, AND
ALLIED WORKERS, AFL--CIO

DECISION AND ORDER

By Members Cascraft, Sevaney, and Oviatt

Upon a charge filed by the Union on April 24, 1990, the General Counsel of the National Labor Relations Board issued a complaint on June 7, 1990, against NRC, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On July 26, 1990, the General Counsel filed a Motion for Summary Judgment. On July 31, 1990, 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.

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

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 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional Attorney, by letter dated July 2, 1990, notified the Respondent's attorney that unless an answer was received by July 13, 1990, a Motion for Summary Judgment would be filed. The Respondent has failed to file an answer.

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.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Michigan corporation, has an office and place of business in Highland Park, Michigan, where it is engaged as a roofing contractor in the building and construction industry. During the 12 months preceding the issuance of the complaint, the Respondent has been a member of the Southeastern Michigan Roofing Contractors Association (Association), which is an organization composed of employers engaged in the construction industry and which exists, in whole or in part, for the purpose of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. During that same period, the employer-members of the Association collectively had gross revenues in excess of \$1 million and, in the course and conduct of their

business operations, purchased and caused to be delivered to their facilities located in the State of Michigan, products, goods, and materials valued in excess of \$50,000 received directly from points located outside the State of Michigan. During that same period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 for Ford Motor Company, an enterprise within the State of Michigan, that annually manufactures automobiles and related products and causes products valued in excess of \$50,000 to be shipped directly to points 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 the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute an appropriate unit for the purposes of collective bargaining pursuant to Section 9(b) of the Act:

All journeymen roofers, registered apprentices, apprentices and probationary apprentices employed by Respondent, but excluding guards and supervisors as defined in the Act.

Since approximately 1983 the Respondent, through its power of attorney to the Association, and the Union have been parties to successive collective-bargaining agreements, the most recent of which is effective by its terms from June 1, 1989, through May 31, 1992.

At all material times, the Union has been the recognized exclusive bargaining representative of the unit employees within the meaning of Section 8(f) of the Act. See John Deklewa & Sons, 282 NLRB 1375 (1987).

The collective-bargaining agreement provides in article 8, "Employer - Employer Contributions," that the Respondent will pay moneys into various fringe benefit funds on behalf of employees in the unit, submit monthly fringe benefit reports to the plan administrator, and pay liquidated damages for the

late payment of fringe benefit funds. The collective-bargaining agreement further provides in article 3, "'Hiring,'" that the Respondent deduct from new member applicants' pay the minimum of \$4 per day or more when authorized in writing to do so by the employee, and remit this money to the Union's office.

Since about January 1, 1990, and continuing to date, the Respondent has unilaterally and without the agreement of the Union, failed and refused, and continues to fail and refuse, to apply the terms of the collective-bargaining agreement by failing to make fringe benefit fund payments, to submit fringe benefit reports, to pay any liquidated damages, and to remit initiation fees deducted by the Respondent from new member applicants' pay.

About April 20, 1990, the Respondent, by demanding that the unit employees work under terms other than those set forth in the collective-bargaining agreement, caused the termination of employee Paul Mark Schick because he joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection and in order to discourage employees from engaging in such activities.

Since about April 23, 1990, certain unit employees employed out of the Respondent's Highland Park facility ceased work concertedly and engaged in a strike. The strike was caused by the unfair labor practices of the Respondent.

We find that, by the acts and conduct described above, the Respondent has violated Section 8(a)(1), (3), and (5) of the Act as alleged.

Conclusions of Law

1. By refusing to bargain collectively with the Union by failing to apply the terms of the collective-bargaining agreement and by unilaterally failing to make fringe benefit fund payments, to submit fringe benefit reports, to pay any liquidated damages, and to remit initiation fees deducted from new member

applicants' pay, the Respondent 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.

2. By causing the termination of unit employee Paul Mark Schick because he refused to work under terms other than those set forth in the collective-bargaining agreement and because he engaged in union and concerted activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

3. The strike that commenced on or about April 23, 1990, is an unfair labor practice strike.

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.

We shall order the Respondent to make the appropriate fringe benefit fund payments ¹ together with any liquidated damages required as a result of the obligations of the Respondent under article 8 of the collective-bargaining agreement. Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). We shall also order the Respondent to remit to the Union all initiation fees deducted from new member applicants' pay required as a result of the Respondent's obligation under article 3 of the collective-bargaining agreement, including interest to be computed in the manner set forth in New Horizons for the Retarded, 283 NLRB 1173 (1987). We shall also

¹ See Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

order the Respondent to submit the required monthly fringe benefit reports not yet filed with the fringe benefit fund.

We shall also order the Respondent to offer Paul Mark Schick immediate and full reinstatement to his former position or, if his job no longer exists, to a substantially equivalent position, without prejudice to any rights and privileges that he previously may have had, and that the Respondent make him whole for any loss of earnings and other benefits that he may have suffered by reason of the discrimination against him, less any net interim earnings, as prescribed in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, above.

We shall also order the Respondent to remove from its files any reference to the unlawful discharge of Schick and to notify him that this has been done and that the unlawful discharge will not be used against him in any way.

We shall also order the Respondent, on the strikers unconditional application, to offer the striking employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to seniority or other rights and privileges.

ORDER

The National Labor Relations Board orders that the Respondent, NRC, Inc., Highland Park, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Local 149, United Union of Roofers, Waterproofers, and Allied Workers, AFL--CIO, by failing to abide by the terms of the collective-bargaining agreement and by unilaterally failing to make fringe benefit fund payments, to submit fringe benefit reports, to pay

any liquidated damages, and to remit initiation fees deducted from new member applicants' pay for unit employees.

(b) Causing the termination of employees because they refuse to work under terms other than those set forth in the collective-bargaining agreement and because they engage in union and concerted activities.

(c) 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 payments to the various fringe benefit funds, including all liquidated damages, required as a result of the obligations of the Respondent under article 8 of the collective-bargaining agreement in the manner set forth in the remedy section of this decision.

(b) Submit the required monthly fringe benefit reports not yet filed with the fringe benefit funds.

(c) Remit to the Union all initiation fees deducted from new member applicants' pay required as a result of the obligation of the Respondent under article 3 of the collective-bargaining agreement in the manner set forth in the remedy section of this Decision and Order.

(d) Offer Paul Mark Schick immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this Decision and Order.

(e) Remove from its files any reference to the unlawful discharge of Schick and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(f) Offer the striking employees, on their unconditional application for reinstatement, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, any replacements.

(g) 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 amounts due under the terms of this Order.

(h) Post at its facility in Highland Park, Michigan, copies of the attached notice marked "'Appendix.'"² 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 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.'"

(g) 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. September 28, 1990

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., 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 in good faith with Local 149, United Union of Roofers, Waterproofers, and Allied Workers, AFL--CIO, by failing to abide by the terms of the collective-bargaining agreement and by unilaterally failing and refusing to make fringe benefit fund payments, to submit fringe benefit reports, to pay liquidated damages, and to remit initiation fees deducted from new member applicants' pay for our employees in the following appropriate unit for the purposes of collective bargaining:

All journeymen roofers, registered apprentices, apprentices and probationary apprentices employed by Respondent, but excluding guards and supervisors as defined in the Act.

WE WILL NOT cause the termination of employees because they refuse to work under terms other than those set forth in the collective-bargaining agreement and because they engage in union and concerted 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 make all payments to the various fringe benefit funds, including all liquidated damages, required as a result of our obligations under article 8 of the collective-bargaining agreement, with interest.

WE WILL submit the required monthly fringe benefit reports not yet filed with the fringe benefit funds.

WE WILL remit, with interest, to the Union all initiation fees deducted from new member applicants' pay required as a result of our obligation under article 3 of the collective-bargaining agreement.

WE WILL offer Paul Mark Schick immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make whole, with interest, Paul Mark Schick for any loss of earnings or other benefits he may have suffered as a result of his discharge.

WE WILL notify Paul Mark Schick that we have removed from our files any reference to his unlawful discharge and that his discharge will not be used against him in any way.

