

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

W. W. WALKER CONSTRUCTION CO., INC.

and

Case 34--CA--4835

CONNECTICUT LABORERS' DISTRICT
COUNCIL ON BEHALF OF ITS AFFILIATED
LOCAL UNION 611, LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL--CIO

DECISION AND ORDER

By Members Cracraft, Devaney, and Oviatt

Upon a charge filed by the Union July 23, 1990,¹ as amended August 7 and September 21, the General Counsel of the National Labor Relations Board issued a complaint September 28, against W. W. Walker Construction Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent did not file an answer.

On November 15 the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On November 20, 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 uncontroverted.

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

¹ All dates are 1990 unless otherwise stated.

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 the service of the complaint, unless good cause is shown. The complaint states that "an answer to [the] complaint [is due] within 14 days from the issuance thereof, and that [unless the Respondent files an answer,] all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board."² Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by letter dated October 15 (misidentified as October 5 in the motion), notified the Respondent that unless an answer was received by the close of business on October 22, a Motion for Summary Judgment would be filed. The Respondent has failed to file an answer to the complaint or request an extension of time to do so.

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.

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On the entire record, the Board makes the following

Finding of Fact

I. Jurisdiction

At all times material, the Respondent, a Connecticut corporation with an office and place of business in Bristol, Connecticut, has been engaged in the

² The complaint should have stated that an answer was due within 14 days of service of the complaint not within 14 days of its issuance. Nonetheless, in all the circumstances of this case, including the fact that the complaint was served on the date it issued, this error in the complaint was a harmless error.

heavy construction business. During the 12-month period ending August 31, 1990, the Respondent in the course and conduct of its business operations performed services valued in excess of \$50,000 for George A. Tomasso Construction Corporation, an enterprise within the State of Connecticut. Tomasso, a Delaware corporation with an office and place of business in New Britain, Connecticut, and jobsites throughout the State of Connecticut, has been engaged as a general contractor building roads and bridges, and in the 12-month period ending August 31, 1990, Tomasso purchased and received at its various jobsites products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Connecticut. We find that the Respondent is an employer 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.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers employed by the Respondent at its Bristol, Connecticut facility, but excluding all other employees, and guards, professional employees and supervisors as defined in the Act.

About September 12, 1988, the Respondent entered into an acceptance agreement whereby it accepted and approved the June 1, 1987, to March 31, 1991 collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. and, pursuant to that agreement, the Respondent granted recognition to the Union as the exclusive collective-bargaining representative of the employees in the above unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. For the period from September 12, 1988,

to March 31, 1991, by virtue of Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

Since about February 1, 1990, the Respondent has failed to continue in full force and effect all the terms of its agreement described above by failing to make the contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the Connecticut Laborers' Legal Services Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund. The terms and conditions of the agreement that the Respondent failed to continue in full force and effect are terms and conditions of employment of employees in the unit and are mandatory subjects of bargaining. The Respondent engaged in these actions without prior notice to the Union and without affording it an opportunity to negotiate and bargain as the exclusive representative of the employees.

We find that by these acts the Respondent has failed and refused to bargain collectively and in good faith with the Union, and the Respondent thereby has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

Conclusions of Law

By failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. by failing to make the contractually required contributions to the Connecticut Laborers' Health Fund, Connecticut Laborers' Pension Fund, the Connecticut Laborers' Legal Services Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union as the

exclusive collective-bargaining representative of its employees in the unit, and thereby has been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), 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.

We shall order the Respondent to apply to its unit employees the terms of the collective-bargaining agreement between the Union and the Connecticut Construction Association, Inc. We shall order that the Respondent make the employees whole by paying all contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the Connecticut Laborers' Legal Services Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund that have not been paid and that would have been paid in the absence of the Respondent's unlawful discontinuance of such payments.³

ORDER

The National Labor Relations Board orders that the Respondent, W. W. Walker Construction Co., Inc., Bristol, Connecticut, its officers, agents, successors, and assigns, shall

³ We leave to further proceedings the determination of any additional amounts the Respondent may pay into the benefit funds to satisfy our remedy here. Administrative costs, etc., but not collateral losses. See Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

The Respondent shall also reimburse with interest in accordance with our decision in New Horizons for the Retarded, 283 NLRB 1173 (1987), its employees for any expenses ensuing from its failure to make contributions to the funds established by the collective-bargaining agreement. Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981)

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of employment of the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. by failing to make the contractually required contribution to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the Connecticut Laborers' Legal Services Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund.

(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) Continue in effect all the terms and conditions of the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. by paying all contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the Connecticut Laborers' Legal Services Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund.

(b) Make whole the funds and the employees in the unit in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, reports, and all other records necessary to analyze the amount of back pay due under the terms of this Order.

(d) Post at its place of business at Bristol, Connecticut, copies of the attached notice marked 'Appendix.'⁴ Copies of the notice, on forms provided by the Regional Director for Region 34, 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.

(e) 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. February 19, 1991

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁴ 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. by failing to make the contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the Connecticut Laborers' Legal Services Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund.

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 continue in effect all the terms and conditions of the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. by paying all contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the Connecticut Laborers' Legal Services Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund.

WE WILL make whole the trust funds and the employees in the unit represented by the Union.

W. W. WALKER CONSTRUCTION
CO., 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, 1 Commercial Plaza, 21st Floor, Hartford, Connecticut 06103-3599, Telephone 203--240--3373.