

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

MANCINI ROOFING

and

Case 4--CA--19208

RESIDENTIAL REROOFING UNION  
LOCAL 30 B OF THE UNITED UNION  
OF ROOFERS, WATERPROOFERS AND  
ALLIED WORKERS; AFL--CIO

*May 10, 1991*

DECISION AND ORDER

*By Chairman Stephens and Members Nevaney and Raudabaugh*  
Upon a charge filed by the Union on September 12, 1990, the General

Counsel of the National Labor Relations Board issued a complaint on October 30, 1990, against Mancini Roofing, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. On January 24, 1991, the General Counsel issued an amendment to the complaint. Although properly served copies of the charge, complaint, and amendment to the complaint, the Respondent has failed to file an answer.

On February 20, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On February 26, 1991, 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 to be true and may be so found by the Board."

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 Pennsylvania corporation engaged in residential roofing and reroofing, has a place of business in Philadelphia, Pennsylvania. In the year preceding issuance of the complaint, the Respondent derived gross revenues in excess of \$500,000 and purchased and received materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. 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

1. At all times material, the Respondent and the Union have been parties to a collective-bargaining agreement which is effective from December 1, 1989, to October 31, 1992. The Respondent has recognized the Union as the exclusive representative of the Respondent's employees in a bargaining unit referred to in article II, section 3 of this agreement. The unit is appropriate for bargaining within the meaning of Section 9(b) of the Act. By virtue of Section

8(f) of the Act, the Union is now, and has been at all times material, the limited exclusive representative of unit employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On about August 29, 1990,<sup>1</sup> the Respondent, acting through its president, Mark Seligsohn (a/k/a Mark Mancini), informed the Union by telephone that the Respondent was repudiating the parties' collective-bargaining agreement and would no longer recognize the Union as the exclusive representative of the bargaining unit. Since about August 30, 1990, the Respondent has failed and refused to abide by all the terms and conditions of the agreement by, inter alia, ceasing to make required contributions on behalf of unit employees to the Union's Pension Fund, Health and Welfare Fund, Vacation Fund, and Annuity Fund. We find that the Respondent's unilateral midterm repudiation of contract terms and its withdrawal of recognition from the Union violated Section 8(a)(5) and (1) of the Act.

2. During the first 2 weeks of September, the Respondent, acting through Seligsohn, interrogated employees at its facility concerning their union membership and sympathies. We find that these interrogations coerced employees in violation of Section 8(a)(1) of the Act.

3. On about August 29, the Respondent, acting through Seligsohn, discharged employee Steven G. Price and thereafter has failed and refused to reinstate him because he refused to resign from the Union. On about that same date, Seligsohn conditioned the continued employment of employees Salvatore

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<sup>1</sup> All dates are in 1990, unless otherwise indicated.

Chirico, Bernard Pecora, Don Guiliano, Arthur Pacheco, and Ed Hesson on their abandonment of the right to bargain collectively through the Union. On or about August 30, these employees informed the Respondent that they could no longer work under the conditions described above. On or about August 31, Chirico, Pecora, Guiliano, Pacheco, and Hesson requested the Respondent to rehire them to their former or substantially equivalent positions of employment. Since about August 31, the Respondent has refused to rehire Guiliano and Hesson and, except on unknown periodic dates, has refused to rehire Chirico, Pecora, and Pacheco to their former or substantially equivalent positions of employment. The Respondent has engaged in the foregoing conduct because the employees involved supported and are members of the Union. We find that the Respondent discharged Price and caused the termination of Chirico, Pecora, Guiliano, Pacheco, and Hesson in violation of Section 8(a)(3) and (1) of the Act.

#### Conclusions of Law

1. By withdrawing recognition from the Union and by failing to abide by the terms of a current collective-bargaining agreement with the Union, including, inter alia, provisions for payments to the Union's Health and Welfare Fund, Pension Fund, Vacation Fund, and Annuity Fund, 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 interrogating employees about their union membership and sympathies, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and 7 of the Act.

3. By unlawfully discharging and refusing to reinstate Steven G. Price for engaging in union and other protected concerted activities, and by causing

the termination of and refusing to rehire Salvatore Chirico, Bernard Pecora, Don Guiliano, Arthur Pacheco, and Ed Hesson because of their support of and membership in the Union, 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.

#### 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.

Having found that the Respondent unlawfully withdrew recognition from the Union, we shall order the Respondent to recognize and bargain with the Union as the limited exclusive representative of employees in the appropriate bargaining unit described in the parties' December 1, 1989, through October 31, 1992 collective-bargaining agreement. Having found that the Respondent unlawfully repudiated the terms of that agreement, including the contractual provisions for payments to the Union's Health and Welfare Fund, Pension Fund, Vacation Fund, and Annuity Fund, we shall order the Respondent to make whole unit employees for any expenses ensuing from its unlawful failure to make the required benefit fund payments. Such sums shall be computed in the manner set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). We shall also order the Respondent to resume all contractual benefit fund payments and to make all contractually required payments which it unlawfully failed to make to the benefit funds.<sup>2</sup>

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<sup>2</sup> Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for the payment of a fixed rate of interest on unlawfully withheld fund payments at the adjudicatory stage of  
(Footnote continued)

Having found that the Respondent unlawfully discharged and refused to reinstate Steven G. Price and that it unlawfully caused the termination of and refused to rehire Salvatore Chirico, Bernard Pecora, Don Guiliano, Arthur Pacheco, and Ed Hesson, we shall order the Respondent to offer these employees 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. We shall also order the Respondent to make Price, Chirico, Pecora, Guiliano, Pacheco, and Hesson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Such sums shall be computed in the manner set forth in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, supra. We shall also order the Respondent to remove from its files any reference to the unlawful discriminatory actions against these employees and to notify them in writing that these actions will not be used against them in any way.

## ORDER

The National Labor Relations Board orders that the Respondent, Mancini Roofing, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain collectively with Residential Reroofing Union Local 30 B of the United Union of Roofers, Waterproofers and Allied Workers, AFL--CIO, as the limited exclusive bargaining representative of the

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a proceeding. We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our make-whole remedy. Such additional amounts shall be determined in the manner set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

Respondent's employees in an appropriate unit described in article II, section 3 of the parties' collective-bargaining agreement effective from December 1, 1989, through October 31, 1992, and repudiating that agreement by failing to adhere, inter alia, to provisions requiring payments to the Union's Health and Welfare Fund, Pension Fund, Vacation Fund, and Annuity Fund.

(b) Interrogating employees about their union sympathies and membership status.

(c) Discharging and refusing to reinstate any employee for engaging in union and other protected concerted activities.

(d) Conditioning the continued employment of employees on their abandonment of the right to bargain collectively through a union and terminating and refusing to rehire employees unwilling to abide by this unlawful condition.

(e) 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) Recognize and, on request, bargain with the Union as the limited exclusive representative of the Respondent's employees in an appropriate bargaining unit.

(b) Make unit employees whole, in the manner set forth in the remedy section of this decision, by reimbursing them, with interest, for any expenses they incurred as a result of the Respondent's failure to abide by the terms of the current collective-bargaining agreement, including provisions requiring benefit fund payments.

(c) Abide by the terms of the current collective-bargaining agreement with the Union, including provisions requiring payments to the Union's Health and Welfare Fund, Pension Fund, Vacation Fund, and Annuity Fund, and make these benefit funds whole, in the manner set forth in the remedy section of this decision, for any payments which the Respondent has unlawfully failed to make.

(d) Offer Steven G. Price, Salvatore Chirico, Bernard Pecora, Don Guiliano, Arthur Pacheco, and Ed Hesson 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 make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(e) Remove from its files any reference to the unlawful discharge, termination, or refusal to rehire Price, Chirico, Pecora, Guiliano, Pacheco, and Hesson and notify these employees in writing that this has been done and that the Respondent's unlawful actions will not be used against them in any way.

(f) 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 backpay due under the terms of this Order.

(g) Post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided

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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."

by the Regional Director for Region 4, 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.

(h) 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.

May 10, 1991

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John N. Raudabaugh, 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain collectively with Residential Reroofing Union Local 30 B of the United Union of Roofers, Waterproofers and Allied Workers, AFL--CIO, as the limited exclusive bargaining representative of our employees in an appropriate unit described in the collective-bargaining agreement which is effective from December 1, 1989, through October 31, 1992, and WE WILL NOT repudiate that agreement with the Union by failing to adhere, inter alia, to provisions requiring payments to the Union's Health and Welfare Fund, Pension Fund, Vacation Fund, and Annuity Fund.

WE WILL NOT interrogate employees about their union sympathies and membership status.

WE WILL NOT discharge and refuse to reinstate any employee for engaging in union and other protected concerted activities.

WE WILL NOT condition the continued employment of our employees on their abandonment of the right to bargain collectively through a union and WE WILL NOT terminate and refuse to rehire employees who are unwilling to abide by this unlawful condition.

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 recognize and, on request, bargain with the Union as the limited exclusive representative of our employees in an appropriate bargaining unit.

WE WILL make our bargaining unit employees whole by reimbursing them, with interest, for any expenses they incurred as a result of our unlawful failure to abide by the terms of our current collective-bargaining agreement with the Union, including provisions requiring benefit fund payments.

WE WILL abide by the terms of our current collective-bargaining agreement with the Union, including provisions requiring payments to the Union's Pension Fund, Health and Welfare Fund, Vacation Fund and Annuity Fund, and WE WILL

make these benefit funds whole for any payments which we have unlawfully failed to make.

WE WILL offer Steven G. Price, Salvatore Chirico, Bernard Pecora, Don Guiliano, Arthur Pacheco, and Ed Hesson 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 our discrimination against them, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful discharge, termination, or refusal to rehire Price, Chirico, Pecora, Guiliano, Pacheco and Hesson and WE WILL notify them that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel action against them in any way.

MANCINI ROOFING

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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, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106-4404, Telephone 215--597--7643.