

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MID-AMERICAN CONCRETE
CONSTRUCTION, INC.

and

Case 13--CA--29803

TECHNICAL ENGINEERING DIVISION
LOCAL UNION 130, U.A., AFL--CIO,
AFFILIATED WITH UNITED ASSOCIATION
OF JOURNEYMEN AND APPRENTICES OF
THE PLUMBING AND PIPE FITTING
INDUSTRY OF THE UNITED STATES AND
CANADA, AFL--CIO

May 20, 1991

DECISION AND ORDER

By Chairman Stephens and members Donovan and Randalough

Upon a charge filed by the Union on October 29, 1990, the General Counsel of the National Labor Relations Board issued a complaint on February 25, 1991, against Mid-American Concrete Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. Although properly served copies of the charge and the complaint, the Respondent has failed to file an answer.

On April 5, 1991, the General Counsel filed a Motion to Transfer Proceedings to the Board and Motion for Summary Judgment, with exhibits attached. On April 10, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion for Summary Judgment 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 shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated March 20, 1991, notified the Respondent that unless an answer was filed by March 22, 1991, 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.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, an Illinois corporation with an office and place of business located in Maywood, Illinois, has been engaged in the business of concrete construction. During the calendar year ending on December 31, 1990, the Respondent in the course and conduct of its business operations had gross revenues in excess of \$500,000. During the same 12-month period, the Respondent purchased and received at its Maywood, Illinois facility products, goods and materials valued in excess of \$50,000 directly from points outside the State of Illinois. 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 Respondent and the Union have a collective-bargaining agreement, effective from June 1, 1990 through May 31, 1991, which applies to the Respondent's employees performing line and grade work in the following classifications: layout technician (foreman); layout technician (journeyman); instrument man; and rodman. This agreement contains provisions requiring the Respondent to make contributions to various union fringe benefit funds on behalf of covered employees.

About August 1990,¹ employee William Albrecht had a conversation with Mark Manfredi, the Respondent's chief financial officer, at the Sears construction site located in Hoffman Estates, Illinois. Albrecht requested that the Respondent comply with the collective-bargaining agreement by paying all outstanding delinquent contributions to the fringe benefit funds. About October 19, Albrecht attended a meeting with the Respondent and the Union which he had previously arranged for the purpose of discussing the Respondent's fringe benefit fund delinquency.

About October 24, the Respondent discharged and has continuously failed and refused to reinstate Albrecht. The Respondent engaged in this conduct because Albrecht requested that it comply with the collective-bargaining agreement's fringe benefit fund contribution provisions and/or because of his union activities including, but not limited to, his having arranged and attended the October 19 meeting to discuss the Respondent's fringe benefit fund delinquency. Based on the foregoing, we find that the Respondent discharged Albrecht in violation of Section 8(a)(3) and (1) of the Act.

¹ All dates are in 1990, unless otherwise indicated.

Conclusions of Law

By discharging and refusing to reinstate employee William Albrecht because he engaged in union and other protected 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.

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. Specifically, we shall order the Respondent to offer William Albrecht 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 shall also order the Respondent to make Albrecht whole for any loss of earnings suffered as a result of his discharge on about October 24, 1990. Backpay shall be computed in the manner prescribed in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest to be computed as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Finally, we shall order the Respondent to remove from its files any reference to Albrecht's unlawful discharge and to notify him in writing that this has been done and that the discharge will not be used against him in any way. Sterling Sugars, Inc., 261 NLRB 472 (1982).

ORDER

The National Labor Relations Board orders that the Respondent, Mid-American Concrete Construction, Inc., Maywood, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they seek to enforce the terms of a collective-bargaining agreement or engage in union activities on behalf of Technical Engineering Division Local Union 130, U.A., AFL--CIO, affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL--CIO, or any other labor organization.

(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) Offer William Albrecht 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 the decision.

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

(c) 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.

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 order 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 discharge employees because they seek to enforce the terms of a collective-bargaining agreement or engage in union activities on behalf of Technical Engineering Division Local Union 130, U.A., AFL--CIO, affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL--CIO, or any other labor organization.

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 offer William Albrecht 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 WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

