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303 NLRB No. 71

D-145
Bayville, NJ

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DESIGNED FIRE SYSTEMS, INC.

and

Case 22--CA--16963

SPRINKLER FITTERS AND APPRENTICES,
LOCAL UNION 696, NEWARK, NEW JERSEY
a/w THE UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPEFITTING INDUSTRY OF
THE UNITED STATES AND CANADA

July 17, 1991
DECISION AND ORDER

By Members Crockett, Donovan, and Cinst

Upon a charge filed by the Union April 24, 1990, and amended charges filed August 2, 1990, and September 6, 1990, the General Counsel of the National Labor Relations Board issued a complaint February 28, 1991,¹ against Designed Fire Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although served with copies of the charges and complaint, the Respondent has failed to file an answer.

On April 4, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On April 8, 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.

¹ The General Counsel issued an erratum on March 1, 1991.

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 found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the regional attorney for Region 22, by letter dated March 18, 1991, notified the Respondent that unless an answer was received by the close of business on March 25, 1991, a Motion for Default Judgment would be filed. To date, the Respondent has failed to file an answer and has failed to file a response to the Notice to Show Cause.

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 corporation with an office and place of business in Bayville, New Jersey, has been engaged in the installation of automatic fire sprinkler systems at various jobsites located throughout the States of New York and New Jersey, including a jobsite in Newark, New Jersey. During the year preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 for the United States Government within the State of New Jersey.

Additionally, during that same period, the Respondent purchased goods and materials directly from suppliers located outside the State of New Jersey. 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 journeymen sprinkler fitters and their apprentices employed by Respondent and engaged in any and all work within the City of Newark, New Jersey to the City Limits and 25 miles beyond City Limits, but excluding any territory in New York State.

Since about October 12, 1989, and at all times material the Union, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the employees in the unit described above, and the Union has been recognized as the representative by the Respondent. Recognition has been embodied in a collective-bargaining agreement which is effective for the period July 1, 1989, to June 30, 1992.

Since about October 24, 1989, and at all times material to date, the Respondent has refused to abide by and adhere to the provisions of the collective-bargaining agreement relating to wages; benefit fund contributions including the health and welfare fund, pension fund, apprentice fund, and supplemental pension fund; exclusive hiring hall provisions; and other terms and conditions of employment. The Respondent has thereby repudiated the agreement.

Based on the above, we find that the Respondent has, since about October 24, 1989, refused to bargain collectively and in good faith with the Union as

the exclusive representative of the unit employees in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing to abide by and adhere to the provisions of the collective-bargaining agreement relating to wages; benefit fund contributions including the health and welfare fund, pension fund, apprentice fund, and supplemental pension fund; exclusive hiring hall provisions; and other terms and conditions of employment, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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 the terms of the parties' collective-bargaining agreement concerning wage rates, fringe benefit contributions, and the exclusive hiring hall provisions² and to make whole its bargaining unit employees for any losses they may have suffered by reason of the Respondent's failure and refusal to abide by the terms of the contract. Specifically, we shall order the Respondent to make whole unit employees for losses suffered as a result of the Respondent's failure to pay contractual wage rates, such sums to be computed in the manner prescribed in Ogle Protection Service, 183 NLRB 682 (1970). We also shall order the Respondent to make whole the unit

² If there are employees who were denied an opportunity to work for Respondent because of the latter's refusal to abide by its collective-bargaining agreement with the Union, the make-whole order herein shall encompass them. A determination as to whether such employees exist is best left to the compliance stage of this proceeding. Wayne Electric, Inc., 226 NLRB 409 (1976).

employees by making all fringe benefit fund contributions as provided in the collective-bargaining agreement,³ and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make such required payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to the employees shall be made with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Designed Fire Systems, Inc., Bayville, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Sprinkler Fitters and Apprentices, Local Union 696, Newark, New Jersey a/w The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, by refusing to abide by and adhere to the provisions of the collective-bargaining agreement relating to wages; benefit fund contributions including the health and welfare fund, pension fund, apprentice fund, and supplemental pension fund; exclusive hiring hall provisions; and other terms and conditions of employment.

(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.

³ Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our 'make-whole' remedy. See Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

(a) Abide by and adhere to the terms of the parties' collective-bargaining agreement and make whole the unit employees, with interest, for any losses they may have suffered by reason of the Respondent's refusal to apply the terms of the parties' collective-bargaining agreement, including the failure to pay contractual wage rates, make fringe benefit contributions, and follow the exclusive hiring hall provisions.

(b) 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.

(c) Post at its facility in Bayville, New Jersey, copies of the attached notice marked "'Appendix.'"⁴ Copies of the notice, on forms provided by the Regional Director for Region 22, 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.

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.'"

(d) 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.

July 17, 1991

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 with Sprinkler Fitters and Apprentices, Local Union 696, Newark, New Jersey a/w The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada by refusing to abide by and adhere to the provisions of the collective-bargaining agreement relating to wages; benefit fund contributions including the health and welfare fund, pension fund, apprentice fund, and supplemental pension fund; exclusive hiring hall provisions; and other terms and conditions of employment.

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 abide by and adhere to the terms of our collective-bargaining agreement with the Union and WE WILL make whole our unit employees, with interest, for any losses they may have suffered by reason of our failure to pay contractual wage rates, make fringe benefit contributions, and follow the exclusive hiring hall provisions.

DESIGNED FIRE SYSTEMS,
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, 970 Broad Street, Room 1600, Newark, New Jersey 07102-2570, Telephone 201--341--3652.