

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JULCO FIREPROOFING AND
INSULATION CO.

and

Case 3--CA--16123

LABORERS LOCAL UNION NO. 157

June 25, 1991

DECISION AND ORDER

By Mentira Devaney, Oviatt, and Raudabaugh

Upon a charge filed by the Union, Laborers Local Union No. 157, on

February 4, 1991, the General Counsel of the National Labor Relations Board issued a complaint on March 11, 1991,¹ against Julco Fireproofing and Insulation Co., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On April 25, the General Counsel filed a Motion for Summary Judgment. On April 29, 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.

¹ All dates refer to 1991 unless otherwise indicated.

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 the Resident Officer for Region 3, by letter dated April 4, notified the Respondent that unless an answer was received by April 11, 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, a New York corporation, with an office and place of business in Lockport, New York, is engaged in the installation and application of fireproofing materials. Annually, the Respondent, in the course and conduct of its business operations, derives gross revenues in excess of \$50,000 of which an amount in excess of \$50,000 is derived from providing services to other employers directly engaged in interstate commerce. 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 employed at the State Farm Automobile Insurance Company, North Atlantic Regional Office Building, Malta, New York, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers.

On August 23, 1990, the Respondent and the Union entered into an initial prehire collective-bargaining agreement within the meaning of Section 8(f) of the Act, effective by its terms from August 23, 1990, until April 30, 1991. By virtue of the principles established by the Board in John Deklewa & Sons, 282 NLRB 1375 (1987), the Union has been, and is the limited exclusive collective-bargaining representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The Respondent has failed to continue in full force and effect all the terms and conditions of employment of the agreement by: (1) since about December 1, 1990, and continuing thereafter, failing to abide by and remit moneys owed pursuant to article XXII (fringe benefit funds), and (2) since about August 23, 1990, and continuing thereafter, failing to file monthly report forms as required by article XXII, section 7.

These terms and conditions of employment the Respondent failed to continue in full force and effect are mandatory subjects of bargaining. We find that the Respondent's failure to abide by these terms of the prehire collective-bargaining agreement constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing to bargain with the Union by failing to continue in full force and effect all the terms and conditions of employment of the prehire collective-bargaining agreement by failing to remit moneys owed to fringe benefit funds and failing to file monthly report forms, 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.

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 transmit the required contributions to the fringe benefit funds in accordance with article XXII of the agreement, with any interest or other sums applicable to the payments to be computed in accordance with the Board's decision in Merryweather Optical Co., 240 NLRB 1213 (1979). We shall also order the Respondent to make the unit employees whole for any expenses they may have incurred as a result of its failure to make the contractually required fringe benefit contributions (Kraft Plumbing & Heating, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981)), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). We shall also order the Respondent to file monthly report forms as required by article XXII, section 7 of the collective-bargaining agreement. Because the violations in this case are governed by John Deklewa, we shall not extend the make-whole remedy beyond the expiration date of the 1990--1991 contract.

ORDER

The National Labor Relations Board orders that the Respondent, Julco Fireproofing and Insulation Co., Lockport, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the Laborers Local Union No. 157, as the limited exclusive representative of the employees in the unit described below, by failing to continue in full force and effect all the terms and conditions of its collective-bargaining agreement by failing to make contributions into contractually required fringe benefit funds and by failing to file contractually required monthly report forms. The unit is:

All laborers.

(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) Adhere to the terms and conditions of the prehire collective-bargaining agreement with the Union, by making the contractually required fringe benefit fund contributions, and file the contractually required monthly report forms.

(b) Make whole the unit employees employed at the State Farm Automobile Insurance Company, North Atlantic Regional Office Building, Malta, New York, for any expenses incurred as a result of the failure to make the contributions, with interest.

(c) Post at its facility in Lockport, New York, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director of Region 3, 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.

(d) 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.

(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.

June 25, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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.'"

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 and refuse to continue in full force and effect all the terms and conditions of our prehire collective-bargaining agreement with the Laborers Local Union No. 157, effective August 23, 1990, to April 30, 1991, by failing to make the contractually required fringe benefit fund contributions and to file the contractually required monthly report forms.

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 adhere to the terms and conditions of our prehire collective-bargaining agreement with the Union, by making the contractually required fringe benefit fund contributions, and WE WILL file the contractually required monthly report forms.

WE WILL make whole our unit employees employed at the State Farm Automobile Insurance Company, North Atlantic Regional Office Building, Malta, New York, for any expenses incurred as a result of our failure to make the contributions, with interest. The appropriate unit is:

All laborers.

JULCO FIREPROOFING AND
INSULATION CO.

(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, 111 West Huron Street, Room 901, Buffalo, New York 14202-2387, Telephone 716--846--4951.