

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRANCIS HARVEY & SONS, INC.

and

Case I-CA-27781

MASSACHUSETTS LABORERS' BENEFIT  
FUNDS

*August 20, 1991*

DECISION AND ORDER

*By Members Cracraft, Devaney, and Oriatt*

Upon a charge filed by the Massachusetts Laborers' Benefit Funds on November 8, 1990, the General Counsel of the National Labor Relations Board issued a complaint on December 17, 1990, against Francis Harvey & Sons, 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 charge and complaint, the Respondent has failed to file an answer.

On June 13, 1991, the General Counsel filed a Motion for Summary Judgment with exhibits attached. On June 17, 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 therefore are 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 certified mail dated February 14, 1991, notified the Respondent that unless an answer was received by the close of business February 21, 1991, a Motion for Summary Judgment would be filed. No answer to the February 14, 1991 letter having been received within the period prescribed, counsel for the General Counsel, by certified letter dated April 10, 1991, again informed the Respondent that if no answer was received by the close of business April 18, 1991, a Motion for Summary 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.

## Findings of Fact

## I. Jurisdiction

The Respondent, a Massachusetts corporation, with an office and place of business in Worcester, Massachusetts, and with various job sites in Massachusetts, has been engaged as a contractor in the construction industry. During the calendar year ending December 31, 1989, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and provided services valued in excess of \$50,000 for

employers within the Commonwealth of Massachusetts, which are themselves 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 the Act.

## II. Alleged Unfair Labor Practices

The following employees of the Respondent, as described in the collective-bargaining agreement referred to below, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of Respondent in the classifications set forth in the 1988-1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act.

The Associated General Contractors of Massachusetts, Inc. (AGC), and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. (the Associations), have been organizations composed of employers engaged in the construction industry, and represent their employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Massachusetts Laborers' District Council of the Laborers' International Union of North America AFL--CIO (the Union). About June 1, 1988, the Associations and the Union entered into a collective-bargaining agreement, which by its terms was effective for the period June 1, 1988, through May 31, 1991. On June 14, 1988, the Respondent became a member of the AGC and entered into an Acceptance of Agreement and Declarations of Trust with the Union by which it agreed to be bound by the 1988--1991 agreement.

Since about June 14, 1988, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and the Union has been recognized as the representative by the

Respondent. Recognition has been embodied in an Acceptance of Agreement and Declarations of Trust, referred to above. At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in 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.

Since July 20, 1990, the Respondent has failed and refused to pay the fringe benefit amounts that have become due under articles XI, XII, XIII, XIV, and XV of the 1988--1991 agreement as follows: health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund. Since about October 20, 1990, the Respondent has failed and refused to remit deducted union dues to the Union under article VIII of the 1988--1991 agreement. These subjects relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

We find that, by the above acts and conduct, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees, and that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### Conclusions of Law

By failing and refusing since about July 20, 1990, to pay the contractually required fringe benefit amounts to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, and by failing, since about October 20, 1990, to remit deducted union dues to the Union, 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.

## 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 make its unit employees whole by making all fringe benefit contributions to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, as required by the 1988--1991 collective-bargaining agreement, which have not been paid and which would have been paid in the absence of the Respondent's unlawful unilateral discontinuance of the payments;<sup>1</sup> and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make the required payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). We also shall order the Respondent to remit deducted union dues to the Union, as required by the collective-bargaining agreement until its expiration. All payments to employees and the Union 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, Francis Harvey & Sons, Inc., Worcester, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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<sup>1</sup> 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. Merryweather Optical Co., 240 NLRB 1213 (1979).

(a) Refusing to bargain with Massachusetts Laborers' District Council of the Laborers' International Union of North America AFL--CIO, as the exclusive bargaining representative of the employees in the appropriate unit set forth below, by failing to pay the fringe benefit amounts to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund as required by the 1988--1991 collective-bargaining agreement, and by failing to remit deducted union dues to the Union, as required by the collective-bargaining agreement until its expiration. The unit is:

All employees of Respondent in the classifications set forth in the 1988--1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act.

(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) Make whole the unit employees by paying the fringe benefit amounts on their behalf to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, as required by the 1988--1991 collective-bargaining agreement with the Union, which have not been paid, and by reimbursing the unit employees for any expenses ensuing from the failure to make those payments, in the manner set forth in the remedy section of this decision.

(b) Remit deducted union dues to the Union, as required by the collective-bargaining agreement until its expiration, plus interest.

(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 amounts due under the terms of this Order.

(d) Post at its facility in Worcester, Massachusetts, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, 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. August 20, 1991

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Mary Miller Cracraft, Member

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Dennis M. Devaney, Member

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Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

<sup>2</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."

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 the Massachusetts Laborers' District Council of the Laborers' International Union of North America AFL--CIO, as the exclusive bargaining representative of the employees in the appropriate unit set forth below by failing to pay the fringe benefit amounts to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, as required by our 1988--1991 collective-bargaining agreement with the Union. The unit is:

All employees of Respondent in the classifications set forth in the 1988--1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to remit deducted union dues to the Union, as required by the collective-bargaining agreement until its expiration.

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 make whole our unit employees by paying the fringe benefit amounts on their behalf to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, as required by the 1988--1991 collective-bargaining agreement, which have not been paid, and by reimbursing our unit employees, with interest, for any expenses ensuing from our failure to make the required payments.

WE WILL remit to the Union all deducted union dues, as required by the collective-bargaining agreement until its expiration, plus interest.

FRANCIS HARVEY & SONS, INC.

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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, 10 Causeway Street, Sixth Floor, Boston, Massachusetts 02222-1072, Telephone 617--565--6739.