

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FELS COMPANY, INC.

and

Case 34-CA-5077

UNITED ASSOCIATION OF JOURNEYMEN  
AND APPRENTICES OF THE PLUMBING  
AND PIPE FITTING INDUSTRY OF THE  
U.S. AND CANADA, LOCAL 305,  
AFL-CIO

*August 12, 1991*

DECISION AND ORDER

*By Chairman Stephens and Members Cracraft and Raudabaugh*

Upon a charge filed by the Union on February 4, 1991,<sup>1</sup> the General Counsel of the National Labor Relations Board issued a complaint<sup>2</sup> on March 21 against Fels Company, Inc., 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 May 24, the General Counsel filed a Motion for Summary Judgment. On May 29 the Board issued an order transferring the proceeding to the Board and

<sup>1</sup> Dates are 1991 unless otherwise specified.

<sup>2</sup> The Postal Service returned the initial complaint, dated March 21 and directed to the Respondent's business address in Portland, Maine, with the notation, "Fels Co. moved, left no address unable to forward return to sender." Thereafter, a copy of the complaint and notice of hearing was sent by certified mail and was received on April 10 at the Respondent's Hartford, Connecticut business address.

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 shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by certified letter dated April 30, notified the Respondent that unless an answer was received by the close of business May 7, 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 Maine corporation with its principal office and place of business located at 390 Presumpscot Street, Portland, Maine, and a jobsite located in Versailles, Connecticut, has been engaged as a contractor in the building and construction industry in the installation of plumbing, heating, and air-conditioning systems. During the 12-month period ending February 28, 1991, the Respondent provided services valued in excess of \$50,000 for Federal Paperboard Company, an enterprise located within the State of Connecticut.

Federal Paperboard Company, in the course of its business operations, purchased and received at its facilities in Connecticut products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Connecticut.

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

### A. The Bargaining Relationship

The Eastern Connecticut Mechanical Contractors Association (Association) is an organization composed of employers engaged in the construction industry. The Association exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Local 305.

On or about November 13, 1987, the Respondent entered into an agreement wherein it adopted the collective-bargaining agreement then in effect between Local 305 and the Association, thereby recognizing Local 305 as the exclusive collective-bargaining representative of the Respondent's employees in the unit described in the collective-bargaining agreement at article I, section 1. That unit of employees constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. The Respondent granted recognition to Local 305 without regard to whether the majority status of Local 305 had ever been established under the provisions of Section 9(a) of the Act.

On or about July 20, 1988, the Respondent agreed to be bound by any future collective-bargaining agreements between Local 305 and the Association. On or about September 27, 1989, Local 305 and the Association executed a

successor collective-bargaining agreement, effective by its terms from August 1, 1989, through July 31, 1991. For the period from November 13, 1987, through July 31, 1991, by virtue of Section 8(f) and 9(a) of the Act, Local 305 has been the limited exclusive collective-bargaining representative of the employees in the unit.<sup>3</sup>

B. The Refusal to Bargain

The Respondent has unilaterally, and without the consent of Local 305, failed to continue in full force and effect all the terms of the 1989--1991 collective-bargaining agreement, by failing since on or about October 26, 1990, to make contributions on behalf of the unit employees as required by article IX of the agreement; and, since on or about December 15, 1990, by failing to pay such employees in accordance with article II, section 5 of the agreement. These articles involve terms and conditions of employment that are mandatory subjects of bargaining. We find that these midterm modifications of contractual terms of employment constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1).

Conclusions of Law

By refusing to comply with the terms of the collective-bargaining agreement by failing since October 26, 1990, to make contributions on behalf

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<sup>3</sup> Although the complaint at par. 13 alleges that the Union is the exclusive representative of the unit employees by virtue of Sec. 9(a), it is clear, based on complaint par. 10, which alleges that the Respondent granted recognition to the Union without regard to whether the majority status of the Union had ever been established, that the Respondent and the Union have established an 8(f) relationship. Under the principles of John Deklewa & Sons, 282 NLRB 1375 (1987), enfd. sub nom. Iron Workers Local 3 v. NLRB, 843 F.2d 770 (3d Cir. 1988), an 8(f) signatory union does not acquire full 9(a) status. Rather, it has a limited Sec. 9 status confined to the terms of the contract. Accordingly, we find that the Union is the limited Sec. 9 representative of the Respondent's unit employees for the periods when a contract was in effect. Id. at 1386--1387.

of employees as required by article IX of the agreement, and since December 15, 1990, to pay employees in accordance with article II, section 5 of the agreement, 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 honor its bargaining obligation to the Union by complying with the terms of the 1989--1991 agreement, including making whole its unit employees by making all contributions required by article IX of the agreement that have not been paid since October 26, 1990, and that would have been paid but for the Respondent's unlawful discontinuance of the contributions, computed in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970).<sup>4</sup> In addition, the Respondent shall reimburse unit employees for any expenses or loss of benefits ensuing from the Respondent's failure to make such required payments, as set forth in Kraft Plumbing, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).

We shall further order the Respondent to make whole the unit employees by paying them the amounts of pay required by article II, section 5 of the agreement that they should have been paid but were not since December 15, 1990, in the manner set forth in Ogle, supra. In calculating all backpay sums owed to employees, the Respondent shall include interest as computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

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<sup>4</sup> Any interest applicable to such delinquent contributions shall be paid in accordance with the criteria set forth in Merryweather Optical Co., 240 NLRB 1213 (1979).

## ORDER

The National Labor Relations Board orders that the Respondent, Fels Company, Inc., a Maine corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, Local 305, AFL--CIO by unilaterally, and without the Union's consent, failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the Union by failing and refusing: to make contributions on behalf of its employees in the bargaining unit as required by article IX of the agreement, and to pay such employees in accordance with article II, section 5 of the agreement. The unit consists of all employees described in article I, section 1 of the agreement.

(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 and give full force and effect to all the terms and conditions of its collective-bargaining agreement with the Union, effective by its terms for the period August 1, 1989, through July 31, 1991, including, but not limited to, article IX and article II, section 5 of the agreement.

(b) Make whole its unit employees for any loss of pay they suffered as a result of the Respondent's failure, since December 15, 1990, to pay them as required by article II, section 5 of the agreement, and reimburse them for any expenses or loss of benefits that they incurred from the Respondent's failure,

since October 26, 1990, to make the contributions required by article IX of the agreement, in the manner set forth in the remedy section of this decision.

(c) Pay the contributions required by article IX of the agreement that have become due since October 26, 1990, in the manner set forth in the remedy section of this decision.

(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) Post at its facility in Versailles, Connecticut, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, 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.

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<sup>5</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."

(f) 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 12, 1991

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James M. Stephens, Chairman

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Mary Miller Cracraft, 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.

WE WILL NOT refuse to bargain with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, Local 305, AFL--CIO by unilaterally failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the Union by failing and refusing: to pay contributions on behalf of our employees in the bargaining unit as required by article IX of the agreement; and to pay such employees in accordance with article II, section 5 of the agreement. The unit consists of all employees described in article I, section 1 of the agreement.

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 and give full force and effect to all the terms and conditions of the collective-bargaining agreement with the Union, effective by its terms for the period August 1, 1989, through July 31, 1991, including, but not limited to, article IX and article II, section 5 of the agreement.

WE WILL make whole our unit employees, with interest, for any loss of pay they suffered as a result of our failure, since December 15, 1990, pay them as required by article II, section 5 of the agreement, and reimburse them for any expenses or loss of benefits that they incurred from our failure, since October 26, 1990, to make the contributions required by article IX of the agreement.

WE WILL pay the contributions required by article IX of the agreement that have become due since October 26, 1990.

FELS COMPANY, 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, 1 Commercial Plaza, 21st Floor, Hartford, Connecticut 06103-3599, Telephone 203--240--3373.