

305 NLRB No. 171

SDR

D--2471
Westboro, MA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAC'S CONSTRUCTION CO., INC.

and

Case 1--CA--28264

MASSACHUSETTS LABORERS' BENEFIT FUNDS

CORRECTION

On January 10, 1991, the National Labor Relations Board issued a Decision and Order in the above-captioned case.

On page 1, first sentence, please change the word 'Union' to 'Massachusetts Laborers' Benefit Funds'.

Dated: January 16, 1992

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Sac's Construction Co., Inc. and Massachusetts Laborers' Benefit Funds. Case 1-CA-28264

January 10, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on May 8, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Sac's Construction Co., 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 November 6, 1991, the General Counsel filed a Motion to Transfer Proceeding to the Board and for Summary Judgment. On November 12, 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.

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 October 9, 1991, informed the Respondent that unless an answer was received by the close of business on October 18, 1991, a Motion for Summary Judgment would be filed. The Respondent failed to file an answer.

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 Massachusetts corporation with an office and place of business in Westboro,

Massachusetts, is engaged as a general contractor in the construction industry. The Respondent, in the course and conduct of its business operations, annually purchases and receives within Massachusetts products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. 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 Unit

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 laborers employed by the Respondent in the territorial jurisdiction of the Union, but excluding all other employees, guards and supervisors as defined in the Act.

B. The Refusal to Bargain

Since about March 11, 1988, the Union has been recognized as the exclusive collective-bargaining representative of the unit employees. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from June 1, 1988, to May 31, 1991.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about November 8, 1990, and continuing to the present, the Respondent has failed and refused to pay the fringe benefit payments due to the Massachusetts Laborers' Pension Fund, the New England Laborers' Training Trust Fund, the Massachusetts Laborers' Legal Services Fund, the Massachusetts Laborers' Annuity Fund, and the Massachusetts Laborers' Health and Welfare Fund pursuant to articles XI, XII, XIII, XIV, and XV of the 1988-1991 contract. Since about March 18, 1991, the Respondent has repudiated an agreement with the Funds and the Union, entered into on February 22, 1991, whereby the Respondent agreed to pay all amounts due to the fringe benefit funds since August 1990. The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the bargaining unit and are manda-

Massachusetts Laborers' Benefit Funds

tory subjects of collective bargaining. The Respondent engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and conduct and the effects of such acts and conduct.

We find that the Respondent, by refusing to bargain collectively with the representative of its employees by refusing to pay the contractually required fringe benefit payments due to the fringe benefit funds and by repudiating its agreement with the Funds and the Union to pay the amounts due to the Funds since August 1990, has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1), Section 2(6) and (7), and Section 8(d) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to bargain collectively with the representative of the unit employees by failing and refusing to pay the contractually required fringe benefit payments due to the Massachusetts Laborers' Pension Fund, the New England Laborers' Training Trust Fund, the Massachusetts Laborers' Legal Services Fund, the Massachusetts Laborers' Annuity Fund, and the Massachusetts Laborers' Health and Welfare Fund, and by repudiating its agreement with the Funds and the Union to pay the amounts due to the Funds since August 1990, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), 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 comply with the collective-bargaining agreement and its February 22, 1991 agreement with the Funds and the Union by making the contractually required fringe benefit contributions.¹ The Respondent shall make its employees whole for any losses resulting from its failure to make contractually required fringe benefit contributions in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2

¹ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed sum on unlawfully withheld fund payments. Any additional amounts owed with respect to the funds will be determined in accordance with the procedure set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

(1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). This shall include reimbursing employees for any contributions they themselves may have made, with interest, for the maintenance of any fund after the Respondent made its unilateral changes.² Interest on any money due and owing employees shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Sac's Construction Co., Inc., Westboro, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to comply with the terms of its collective-bargaining agreement with the Union and its February 22, 1991 agreement with the Funds and the Union by failing to make contractually required fringe benefit contributions.

(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) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and comply with the collective-bargaining agreement effective from June 1, 1988, to May 31, 1991, and its February 22, 1991 agreement with the Funds and the Union by making the contractually required fringe benefit contributions. The appropriate bargaining unit is:

All laborers employed by Respondent in the territorial jurisdiction of the Union, but excluding all other employees, guards and supervisors as defined in the Act.

(b) Make the unit employees whole, with interest, for any expenses or loss of benefits they may have suffered because of the Respondent's failure to comply with the terms of its collective-bargaining agreement with the Union and its February 22, 1991 agreement with the Funds and the Union, as set forth in the remedy section of this Decision and Order.

(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.

² See *Concord Metal*, 295 NLRB No. 94, slip op. at 8-9 (June 30, 1989).

(d) Post at its facility in Westboro, Massachusetts, copies of the attached notice marked "Appendix."³ 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.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³If 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 to comply with our collective-bargaining agreement with the Massachusetts Laborers' District Council, effective from June 1, 1988, to May 31, 1991 and its February 22, 1991 agreement with the Funds and the Union, by failing to make contractually required fringe benefit contributions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the limited exclusive representative of the employees in the appropriate unit and comply with the collective-bargaining agreement effective from June 1, 1988, to May 31, 1991 and its February 22, 1991 agreement with the Funds and the Union, by making the contractually required fringe benefit contributions.

WE WILL make the unit employees whole, with interest, for any loss of benefits they may have suffered because of our failure to comply with the terms of the collective-bargaining agreement.

SAC'S CONSTRUCTION CO., INC.