

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRADE CONTRACTING CO., INC.

and

Case 7--CA--31851

TODD A. MAINVILLE, an Individual

and

LOCAL 1132, NORTHERN MICHIGAN DISTRICT
COUNCIL OF THE UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA, AFL--CIO
Party to the Contract

November 7, 1991

DECISION AND ORDER

By Members Devaney, Orviatt, and Raudabaugh
Upon a charge filed by Todd A. Mainville, an individual, the Charging

Party, on May 6, 1991, and an amended charge filed on May 24, 1991, the General Counsel of the National Labor Relations Board issued a complaint on June 19, 1991, against Trade Contracting 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 August 12, 1991, the General Counsel filed a Motion for Summary Judgment. On August 14, 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 true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney notified the Respondent by letter dated June 20, 1991, and the Acting Regional attorney notified the Respondent by letter dated July 26, 1991, that unless an answer to the complaint was received 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 Michigan corporation, engages in construction work at its facility in Royal Oak, Michigan, where it annually derives gross revenues in excess of \$500,000, of which an amount in excess of \$50,000 is derived from enterprises, each of which other enterprises have purchased goods and materials valued in excess of \$50,000 and had transported to their facilities in Michigan directly from points outside the State of Michigan. 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, Local 1132, Northern Michigan District Council of the United Brotherhood of Carpenters & Joiners of

America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All carpenter employees employed by the Respondent, excluding office clerical employees, temporary and casual employees, guards, and supervisors as defined in the Act.

At all times material, the Union, by virtue of Section 8(f) of the Act, has been the exclusive collective-bargaining representative of the Respondent in the unit described above and has been recognized as the representative by the Respondent. Recognition has been embodied in collective-bargaining agreements, the most recent of which is effective from August 8, 1990, to April 30, 1993. By virtue of the principles established in John Deklewa & Sons, 282 NLRB 1375 (1987), the Union is the limited exclusive collective-bargaining representative of the unit for the purposes of collective bargaining with respect to rate of pay, wages, hours of employment, and other terms and conditions of employment.

Since August 1990, the Respondent has failed to continue in full force and effect all the terms and conditions of the agreement by failing to abide by two provisions, article VIII (Fringe Benefit Funds) and article XIV (Wages). In particular, the Respondent has failed to transmit to the Michigan Carpenters' Fringe Benefit Funds, as contractually required, the dues it has deducted from the paychecks of unit employees who have authorized it to do so and/or has submitted the dues to the fund in a tardy manner. The Respondent has also failed to submit fringe benefit reports and to pay fringe benefit contributions to the Michigan Carpenters' Fringe Benefits Funds as

contractually required or has failed to pay the contributions in a timely manner.

We find that the Respondent's failure to abide by the terms of the collective-bargaining agreement, as indicated above, constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing to remit the authorized union dues to the Michigan Carpenters' Fringe Benefit Funds as required by articles VIII and XIV of the 1990--1993 agreement, and by failing to submit fringe benefit reports and to make the fringe benefit contributions as required by these articles, the Respondent has refused to bargain with the Union over mandatory subjects of bargaining, and 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 whole unit employees and the Michigan Carpenters' Fringe Benefit Funds for any loss, including any liquidated damages, suffered as a result of the Respondent's failure to abide by all the terms of the agreement between the Respondent and the Union, including making the required benefit fund contributions.¹ The Respondent shall also reimburse its unit employees for any expenses ensuing from the Respondent's failure to make the

¹ We leave to the compliance stage the question 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, 1216 fn. 7 (1979).

payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 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 remit to the Union those union dues withheld from employees pay, with interest to be computed in the manner prescribed in New Horizons, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Trade Contracting Co., Inc., Royal Oak, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 1132, Northern Michigan District Council of the United Brotherhood of Carpenters & Joiners of America, AFL--CIO, as the limited exclusive bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to adhere to the terms of its collective-bargaining agreement with the Union by failing and refusing to make contractually required fringe benefit contributions and to submit fringe benefit reports, and by failing to remit to the Union the union dues withheld from employees' pay as the contract requires.

(c) 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) Abide by the terms of the collective-bargaining agreement with the Union, including, but not limited to, its provisions governing fringe benefit funds and wages.

(b) Make whole the unit employees for any loss of benefits suffered as a result of the Respondent's failure to abide by the terms of its collective-bargaining agreement with the Union, including making required fringe benefit contributions and reimbursing employees for any expenses ensuing from the failure to make the fringe benefit contributions, in the manner set forth in the remedy section of this decision.

(c) Remit to the Fund office the union dues deducted from the employees' pay with interest, 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 amounts due under the terms of this Order.

(e) Post at its facility in Royal Oak, Michigan, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 7, 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.

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.'"

(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. November 7, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

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 Local 1132, Northern Michigan District Council of the United Brotherhood of Carpenters & Joiners of America, AFL--CIO, as the limited exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT fail and refuse to adhere to the terms of our collective-bargaining agreement with the Union by failing to make fringe benefit contributions, failing to submit fringe benefit reports, and by failing to remit to the Union the union dues withheld from employees' pay as the contract requires.

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 of our collective-bargaining agreement with the Union, including, but not limited to, its provisions governing fringe benefit contributions and union dues remittance.

WE WILL make whole the unit employees for any loss of benefits suffered as a result of our failure to abide by the terms of our collective-bargaining agreement with the Union, including making required payments to the employees' fringe benefit funds and reimbursing employees for any expenses ensuing from the failure to make benefit contributions.

WE WILL remit to the Union with interest the union dues deducted from employees' pay.

TRADE CONTRACTING CO., 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, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226--3219.