

Peterson Engineering Co. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5337

March 9, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO (the Funds), on July 29, 1991, and an amended charge filed on September 26, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Peterson Engineering 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, amended charge, and complaint, the Respondent has failed to file an answer.

On January 27, 1992, the General Counsel filed a Motion for Summary Judgment. On February 3, 1992, 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 the allegations in the complaint shall be considered 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 Respondent was advised, by letter dated December 30, 1991, that unless an answer was received by close of business January 3, 1992,¹ 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

¹ The General Counsel's motion refers to "January 3, 1991," an obvious typographical error.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation with an office and place of business in Milford, Connecticut, has been engaged as a contractor in the building and construction industry erecting equipment. At all times material, Labor Relations Division of Associated General Contractors of Connecticut, Inc. (the Association) has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO (the Union). At all times material, the Respondent has been an employer-member of the Association and has authorized the Association to represent it in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. During the 12-month period ending September 30, 1991, the employer-members of the Association, in conducting their business operations described above, collectively purchased and received for use within the State of Connecticut goods valued in excess of \$50,000 directly from points outside the State of Connecticut. At all times material, the Association and each of its members have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times, the Respondent has been engaged in commerce within the meaning of Section 2(5) of the Act. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

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

All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About 1987, the Respondent, an employer engaged in the building and construction industry, as described above, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union effective May 1, 1987, without regard to whether the majority status of the Union had ever been established under the pro-

visions of Section 9 of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period April 1, 1991, to March 31, 1993, which succeeded the agreement effective by its terms for the period April 3, 1989, to March 31, 1991. Both agreements provide, among other things, for the recognition of the Union as the limited exclusive collective-bargaining representative of the Respondent's employees in the unit.

For the period from 1987 to March 31, 1993, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

About February 1, 1991, the Respondent unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the agreements described above by failing to make the contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSIONS OF LAW

1. By unilaterally failing to make contractually required contributions to the funds described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and in violation of Section 8(a)(1) and (5) of the Act.

2. The unfair labor practices of the Respondent described above affect commerce within the meaning of 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 continue in full force and effect its collective-bargaining agreements and to make whole unit employees for its failure to continue in full force and effect the terms and conditions of the collective-bargaining agreements entered into with the Union, effective by

their terms from April 3, 1989, to March 31, 1991, and from April 1, 1991, to March 31, 1993, relating to contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund. The Respondent shall also reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to make these payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²

ORDER

The National Labor Relations Board orders that the Respondent, Peterson Engineering Co., Milford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, as the limited exclusive representative of its employees in the bargaining unit, by unilaterally and without the consent of the Union failing to continue in full force and effect all terms and conditions of the agreements entered into with the Union effective by their terms for the periods April 3, 1989, to March 31, 1991, and April 1, 1991, to March 31, 1993, including making contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

(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) Give full force and effect to the collective-bargaining agreements with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, effective by their terms for the periods from April 3, 1989, to March 31, 1991, and April 1, 1991, to March 31, 1993, and make whole unit employees, in the manner set forth in the remedy section of this Decision and Order, for the Respondent's failure to adhere to the terms of those agreements relating to contractually required contributions to the Health

² Because the provisions of employment 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. See *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund and the Annuity Fund.

(b) 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.

(c) Post at its facility in Milford, Connecticut, copies of the attached notice marked "Appendix."³ 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.

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

³ 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 bargain collectively with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, as the limited exclusive representative of our employees in the bargaining unit, by unilaterally and without the consent of the Union failing to continue in full force and effect all terms and conditions of the agreements entered into with the Union effective by their terms for the periods April 3, 1989, to March 31, 1991, and April 1, 1991, to March 31, 1993, including making contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

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 give full force and effect to the collective-bargaining agreements with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, effective by their terms for the periods from April 3, 1989, to March 31, 1991, and April 1, 1991, to March 31, 1993, and WE WILL make whole unit employees for our failure to adhere to the terms of those agreements relating to contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, and the Annuity Fund.

PETERSON ENGINEERING CO.