

Renco, Inc. and International Union of Operating Engineers, Local 478, AFL-CIO. Case 34-CA-5350

January 17, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

Upon a charge filed by the Union on August 6, 1991,¹ as amended on September 9 and 17, the General Counsel of the National Labor Relations Board issued a complaint on September 19 against the Company, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, the amended charges and the complaint, the Company has failed to file an answer.

On November 20, the General Counsel filed a Motion for Summary Judgment. On November 25, 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 Company 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 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 15, notified the Company that unless an answer was received by October 22, a Motion for Summary Judgment would be filed. The Respondent did not file an answer to the complaint.

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 Company, with an office and place of business in North Clarendon, Vermont, and jobsites located in Danbury and Colchester, Connecticut, is engaged as a contractor in the building and construction industry. During the 12-month period ending August 31, 1991, the Respondent, in the course and conduct of its business operations, performed services in excess of \$50,000 in States other than the State of Vermont. We find that the Company 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

At all times material the Associated General Contractors of Connecticut and the Connecticut Construction Industries Association, Inc. (Associations) have been multiemployer organizations which represent their employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including the Union. About May 21, 1991, the Respondent agreed to be bound by the collective-bargaining agreement (Standard Agreement) between the Associations and the Union, effective for the period May 1, 1990, through March 31, 1993, and to sign a copy of the Standard Agreement when presented to it.

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

All employees of the Respondent engaged in construction work as set forth in Articles II, III, and IV of the Standard Agreement.

At all times material the Union has been recognized as the exclusive collective-bargaining representative of the Respondent's employees in the unit described above. Recognition has been embodied in the current Standard Agreement. The Union continues to be the exclusive representative of the unit employees for the period from May 21, 1991, through March 31, 1993, by virtue of Section 9(a) of the Act without regard to whether the majority status of the Union has ever been established under the provisions of Section 9(a) of the Act.

Since on or about May 28, 1991, the Respondent has failed to continue in full force and effect all the terms and conditions of employment contained in the Standard Agreement, these provisions being mandatory subjects of bargaining. These actions

¹ Unless otherwise indicated, all dates are in 1991.

were taken without notice to, and the consent of, the Union, and thus the Union was not afforded an opportunity to bargain with the Respondent as the exclusive representative of the unit employees with respect to these acts. Further, since about July 1, the Union has requested the Respondent to sign a copy of the Standard Agreement and since that date the Respondent has failed and refused to do so.

The Respondent, at its Danbury location, bypassed the Union and dealt directly with its unit employees about June concerning hours of work and about July 24, concerning rates of pay. Since about August 7, the Union has requested the Respondent to furnish the Union with the name, address, date of hire, date of termination, and equipment operated, for all employees performing the work of operating engineers at any of the Respondent's construction projects located within the State of Connecticut, information that is necessary for, and relevant to, the Union's function as the unit employees' exclusive collective-bargaining representative. Since that date, the Respondent has failed and refused to furnish the requested information.

Accordingly, we find that the Respondent, as specified in the conclusions of law below, has refused to bargain in good faith with the representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

About July 1991, the Respondent informed employees at its Danbury jobsite that it would be operating that jobsite as a nonunion job and would no longer be bound by union rules. About July 24, the Respondent impliedly threatened employees at the Danbury jobsite with job loss and other unspecified reprisals because its employees engaged in activities on behalf of the Union. Further, the Respondent, about July 22, informed prospective employees that its Colchester jobsite would be operated as an open shop, and, about August 2, disparaged the Union by stating that members of the Union would not be hired because of the Union's business agent and informed employees that they would not be hired because of their union membership.

Accordingly, we find that the Respondent has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights and thereby has violated Section 8(a)(1) of the Act.

About July 24, 1991, the Respondent conditioned the continued employment of employee Raymond Busca on his abandonment of his Section 7 rights and thereby caused his termination. About August 2, the Respondent refused to hire employee Ed Taggart. The Respondent engaged in that conduct because of the two named employees' union and

other protected concerted activities and to discourage employees from engaging in such activities.

Accordingly, we find that the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization and violating Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. By failing since about May 28, 1991, to continue in full force and effect all the terms of the collective-bargaining agreement (Standard Agreement) effective from May 1, 1990, to March 31, 1993; by failing and refusing to sign a copy of the Standard Agreement though requested to do so by the Union; by bypassing the Union and dealing directly with its unit employees concerning hours of work and rates of pay; and failing and refusing to honor the Union's request for information relevant to its function as the unit employees' exclusive collective-bargaining representative, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

2. By informing employees that it would operate its job sites as nonunion or open shops; by impliedly threatening employees with job loss and other reprisals because of their union activities; and by disparaging the Union by stating that union members would not be hired because of their union business agent and their union membership, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. By causing the termination of employee Raymond Busca by conditioning his continued employment on his abandonment of his Section 7 rights, and by refusing to hire employee Ed Taggart, because of their union and other protected concerted activities and to discourage its employees from engaging in such activities, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. The aforesaid unfair labor practices 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 sign a copy of the Standard Agreement effective for the period from May 1, 1990, to March 31, 1993, and to continue in full force and effect the terms and condi-

tions of that collective-bargaining agreement. We shall also order the Respondent to make the unit employees whole for any losses of wages or benefits they may have suffered as a result of the Respondent's unlawful failure to adhere to the terms of the Standard Agreement, with lost earnings and interest to be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987), respectively.

In addition, the Respondent shall pay any contractually agreed-on health and welfare, pension, or other trust funds in the amounts of the contributions that the Respondent may have failed to make on behalf of the unit employees since May 28, 1991, in accordance with *Fox Painting Co.*, 263 NLRB 437 (1982), with any additional amounts applicable to such payments to be computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979). The Respondent shall reimburse its employees for expenses resulting from any failure to make contractually required fund or fringe benefit payments in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in *New Horizons for the Retarded*, supra.

Having found that the Respondent has unlawfully withheld information from the Union since August 7, 1991, we shall order the Respondent to provide the Union, on request, with information necessary and relevant for collective bargaining.

Having found that the Respondent unlawfully caused the termination of employee Raymond Busca and unlawfully refused to hire Ed Taggart, we shall order the Respondent to remove from its files any references to these unfair labor practices and to notify them that this has been done and that the unlawful actions will not be used against them in any way. We shall order the Respondent to offer Busca immediate and full reinstatement to his former job, and offer Ed Taggart immediate and full employment in the position for which he applied, or if these jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. The Respondent shall make Busca and Taggart whole for any loss of earnings they may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*.

ORDER

The National Labor Relations Board orders that the Respondent, Renco, Inc., North Clarendon, Vermont, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in full force and effect all the terms of its collective-bargaining agreement with the International Union of Operating Engineers, Local 478, AFL-CIO and by failing and refusing to sign a copy of that collective-bargaining agreement though requested to do so by the Union. The appropriate unit is

All employees of the Respondent engaged in construction work as set forth in Articles II, III, and IV of the Standard Agreement effective from May 1, 1990 to March 31, 1993.

(b) Bypassing the Union and dealing directly with the unit employees concerning hours of work and rates of pay.

(c) Failing and refusing to provide the Union, on request, information necessary and relevant for the purposes of collective bargaining.

(d) Informing employees that it would operate its job sites as nonunion or open shops, impliedly threatening employees with job loss and other reprisals because of their union activities, and disparaging the Union by stating that union members would not be hired because of their business agent and their union membership.

(e) Causing the termination of employment of employees or refusing to hire applicants because of their union or other protected concerted activities and in order to discourage their membership in or activities on behalf of the Union.

(f) 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 by the Union, sign the Standard Agreement embodying the collective-bargaining agreement between the Respondent and the Union.

(b) Continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union covering the employees in the above stated appropriate unit.

(c) Make the unit employees whole for any loss of earnings and benefits suffered as a result of the Respondent's failure to adhere to the terms of the collective-bargaining agreement in the manner set forth in the remedy section of this decision.

(d) Make the appropriate fund and fringe benefits contributions on the employees' behalf as set forth in the remedy section of this decision.

(e) On request, bargain collectively with the Union by furnishing it with the following relevant employment information concerning unit employees: name, address, date of hire, date of termination, and equipment operated by all employees performing the work of operating engineers at any of the Respondent's construction projects located within the State of Connecticut.

(f) Offer Raymond Busca immediate and full reinstatement to his former job and offer Ed Taggart immediate and full employment in the position for which he applied, or, if these jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(g) Remove from its files any references to the unlawful discharge and refusal to hire, respectively, of Raymond Busca and Ed Taggart, and notify them in writing that this has been done and that these unlawful actions will not be used against them in any way.

(h) 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 payments due to employees and benefit funds under the terms of this Order.

(i) Post at its facility in North Clarendon, Vermont, copies of the attached notice marked "Appendix."² 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.

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

²If 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 continue in full force and effect all the terms of our collective-bargaining agreement (Standard Agreement) with the International Union of Operating Engineers, Local 478, AFL-CIO, or fail and refuse to sign a copy of the Standard Agreement though requested to do so by the Union. The appropriate unit is:

All employees of the Employer engaged in construction work as set forth in Articles II, III, and IV of the Standard agreement effective from May 1, 1990 to March 31, 1993.

WE WILL NOT bypass the Union and deal directly with the unit employees concerning hours of work and rates of pay.

WE WILL NOT fail and refuse to provide the Union, on request, information that is necessary and relevant for the purposes of collective bargaining.

WE WILL NOT inform unit employees that we will operate our job sites as nonunion or open shops, impliedly threaten employees with job loss and other reprisals because of their union activities, and disparage the Union by stating that union members would not be hired because of their business agent and their union membership.

WE WILL NOT cause the termination of employment of employees or refuse to hire applicants because of their union or other protected concerted activity and in order to discourage their membership in or activities on behalf of the Union.

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

WE WILL, on request by the Union, sign the Standard Agreement embodying the collective-bargaining agreement between us and the Union.

WE WILL continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the Union covering the employees in the above stated appropriate unit.

WE WILL make the unit employees whole, with interest, for any losses of earnings and benefits suffered as a result of our failure to adhere to the terms of the collective-bargaining agreement.

WE WILL make the appropriate fund and fringe benefits contributions on the employees' behalf.

WE WILL, on request, bargain collectively with the Union by furnishing it with the following relevant employment information concerning unit employees: name, address, date of hire, date of termination, and equipment operated by all employees performing the work of operating engineers at any of our construction projects located within the State of Connecticut.

WE WILL offer Raymond Busca immediate and full reinstatement to his former job and offer Ed Taggart immediate and full employment in the position for which he applied or, if these jobs no

longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges and WE WILL make them whole for any losses of earnings and other benefits they may have suffered as a result of the discrimination against them, with interest.

WE WILL remove from our files any references to the unlawful actions against Busca and Taggart and notify them that this has been done and that our unlawful actions will not be used against them in any way.

RENCO, INC.