

AMI Industries, Inc. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5190

March 16, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Connecticut Laborers' Funds (the Funds) April 22, 1991, and an amended charge filed April 29, 1991, the General Counsel of the National Labor Relations Board issued a complaint on June 6, 1991, and an amended complaint on November 21, 1991, against AMI Industries, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On July 8, 1991, the Respondent filed an answer to the initial complaint.

On December 11, 1991, the Respondent withdrew its answer and informed the General Counsel that it did not intend to file an answer to the amended complaint. On December 18, 1991, the General Counsel filed a Motion for Summary Judgment. On December 30, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. No response has been filed. 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 amended complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the amended complaint shall be deemed to be admitted to be true and shall be so found by the Board."

In light of the withdrawal of the answer to the initial complaint and in the absence of good cause being shown for the failure to file a timely answer to the amended complaint, we grant the General Counsel's Motion for Summary Judgment.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation, is engaged as a contractor in the building and construction industry at its facility in Meriden, Con-

necticut, from which it annually purchased and received goods 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(2), (6), and (7) of the Act and that the Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO (the District Council) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

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; but excluding all other employees, office clerical employees and all guards, professional employees, and supervisors as defined in the Act.

Connecticut Construction Industries Association, Inc. (CCIA) is an organization composed of employers engaged in the construction industry and exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations. At all times material, the Respondent has been, and is now, an employer-member of the CCIA, and has authorized the CCIA to represent it in negotiating and administering collective-bargaining agreements.

At all material times, the District Council has been the exclusive collective-bargaining representative of the employees in the appropriate unit, and has been recognized as such representative by the Respondent, without regard to whether the majority status of the District Council had ever been established under Section 9(a) of the Act.

For the period from June 1, 1987, through March 31, 1993, by virtue of Section 9(a) of the Act, the District Council has been, and is now, the limited exclusive collective-bargaining representative of the unit.

The Respondent's recognition of the District Council has been embodied in successive collective-bargaining agreements, the two most recent of which have been effective by their terms for the period of June 1, 1987, through March 31, 1991, and April 1, 1991, through March 31, 1993. The contract requires, inter alia, payments to certain fringe benefit funds, including Connecticut Laborers' Health and Welfare Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Fund, the Connecticut Laborers' Legal

Services Fund, and the Connecticut Laborers' Annuity Fund.

Since about October 22, 1990, the Respondent has unilaterally and without the consent of the District Council failed and refused to make the fringe benefit contributions to these funds. The terms and conditions of the agreement which the Respondent failed to continue in full force and effect are terms and conditions of employment of employees in the unit and are mandatory subjects of bargaining. The Respondent failed and refused to make these contributions without giving notice to the District Council and affording it the opportunity to negotiate and bargain. It thereby modified the 1991-1993 collective-bargaining agreement without the consent of the District Council. We find that the Respondent has thereby failed and refused to bargain collectively and in good faith with the District Council in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing to abide by all the terms and conditions of the collective-bargaining agreement, including, inter alia, refusing to make payments to fringe benefit funds as required by the agreement, and by making these contractual modifications without the District Council's consent, as the exclusive representative of the Respondent's employees regarding such proposed modifications and their effects, and in derogation of the terms of the recognition and bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 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 abide by all terms and conditions set forth in the collective-bargaining agreement with the District Council, including inter alia, to make whole unit employees and make all contributions to fringe benefit funds that have not been paid and that would have been paid but for the Respondent's unlawful discontinuance of payments,¹ as set forth in *Kraft Plumbing &*

¹ Any additional amounts applicable to delinquent payments shall be made in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), the amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall order the Respondent to, on request, bargain in good faith with the Union as the limited exclusive collective-bargaining representative of the employees in the unit regarding wages, hours, and other terms and conditions of employment.

ORDER

The National Labor Relations Board orders that the Respondent, AMI Industries, Inc., Meriden, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Connecticut Laborers' District Council of the Laborers' International Union of America, AFL-CIO as the limited exclusive representative of its employees in the appropriate unit, by failing and refusing to abide by all the terms and conditions of employment set forth in the collective-bargaining agreement with the District Council, including, inter alia, failure to make fringe benefit fund contributions required by that agreement, and by making contractual modifications without the District Council's consent. The appropriate unit is:

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

(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 District Council as the collective-bargaining representative of the employees in the unit, regarding wages, hours, and other terms and conditions of employment.

(b) Abide by all the terms and conditions of employment embodied in the 1987-1993 collective-bargaining agreements with the District Council.

(c) Tender all contractually required fringe benefit fund contributions and make any bargaining unit employees whole for any loss suffered as a result of its failure to do so, 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 records that are needed to analyze and de-

termine the amounts of money due under the terms of this Order.

(e) Post at its facility in Meriden, Connecticut, 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 Respondent AMI Industries authorized representative, shall be posted by Respondent AMI Industries 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 Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) 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 refuse to bargain collectively with Connecticut Laborers' District Council of the La-

borers' International Union of America, AFL-CIO, as the limited exclusive representative of its employees in the appropriate unit, by failing and refusing to abide by all the terms and conditions of employment set forth in the collective-bargaining agreement with the District Council, including, inter alia, failure to make fringe benefit fund contributions required by that agreement, and by making contractual modifications without the District Council's consent. The appropriate unit is:

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

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 bargain with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO as the representative of our employees in the appropriate unit.

WE WILL abide by all the terms and conditions of employment embodied in the 1987-1993 collective-bargaining agreements with the District Council.

WE WILL tender any delinquent fringe benefit fund contributions required under the contract and WE WILL reimburse our unit employees for any expenses ensuing from the failure to make those payments, with interest.

AMI INDUSTRIES, INC.