

Hillside Avenue Plumbing & Heating Corp. and U.A. District Council No. 12 on Behalf of Plumbers Locals 86, 209 and 299 and the U.A. District Council No. 12 Plumbers Welfare Fund, U.A. District Council No. 12 Plumbers Pension Fund, U.A. District Council No. 12 Plumbers Annuity Fund, U.A. District Council No. 12 Plumbers Vacation and Holiday Fund, and U.A. District Council No. 12 Plumbers Education Fund. Case 2-CA-24474

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union and the Funds, collectively called the Charging Party, on July 10, 1990, the General Counsel of the National Labor Relations Board issued a complaint against Hillside Avenue Plumbing & Heating Corp., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 27, 1992, the General Counsel filed a Motion for Summary Judgment. On March 4, 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 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 a Board agent of Region 2, on January 17, 1992, sent a letter by certified and regular mail to Frank Lucasano, president of the Respondent, informing him that no answer to the complaint had been received and informing him that summary judgment would be recommended if no answer were received by January 31, 1992. Despite an additional letter sent by counsel for the General Counsel by certified and regular mail February 7, 1992, to Frank Lucasano, giving Respondent a few

deadline of February 13, 1992, for the filing of an answer, and despite telephone calls to Frank Lucasano or his office, no answer to the complaint has been 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 New York corporation with an office and place of business in Ossining, New York, has been engaged as a plumbing and heating contractor in the building and construction industry, providing services for both retail and commercial customers. Annually, in the course and conduct of its business, the Respondent purchases and receives at its facility in Ossining, New York, products, goods, and materials valued in excess of \$50,000 from other enterprises located within the State of New York, each of which other enterprises had received the said products, goods, and materials directly from points outside the State of New York. 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 Charging Party District and Locals (the Union) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

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

All journeymen plumbers and apprentices employed by Respondent, but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) At all times material, the Union has been the exclusive collective-bargaining representative of the unit and since said date, the Union has been recognized as such by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period July 1, 1989 to June 30, 1992, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act.

(c) At all times material, the Union, by virtue of Section 8(f) of the Act, has been, and is, the limited exclusive representative of the unit for the purposes

of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

2. (a) The most recent collective-bargaining agreement, described above in paragraph 1, requires the Respondent to make monetary contributions to the Union's Welfare Fund, Pension Fund, Annuity Fund, Vacation and Holiday Fund, and Education Fund, due and payable no later than 10 days after the last day of the month during which the wages of employees employed in the unit have been paid.

(b) The subjects set forth above in subparagraph (a) relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

3. Since on or about February 10, 1990, the Respondent has unilaterally modified the terms of the collective-bargaining agreement by failing and refusing to make the monetary payments to the Funds described above in paragraph 2(a), for the period beginning January 1990, with the exception of November 1990, as required by the most recent collective-bargaining agreement, described above in paragraph 1.

4. The Respondent has engaged in the acts described above in paragraph 3 without the consent of the Union as the exclusive representative of the Respondent's employees with respect to such acts and conduct and the effects of such acts and conduct.

CONCLUSION OF LAW

By the acts and conduct described above in paragraphs 3 and 4, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees, and the Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. 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 make all contractually required monetary payments to the Union's Welfare Fund, Pension Fund, Annuity Fund, Vacation and Holiday Fund, and Education

Fund for the period beginning January 1990 with the exception of November 1990.¹

The Respondent shall also make its employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest to 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, Hillside Avenue Plumbing & Heating Corp., Ossining, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with U.A. District Council No. 12 on behalf of Plumbers Locals 86, 209 and 299 by unilaterally modifying the terms of the collective-bargaining agreement by failing and refusing to make the monetary payments to the Union's Welfare Fund, Pension Fund, Annuity Fund, Vacation and Holiday Fund, and Education Fund for the period beginning January 1990 with the exception of November 1990 as required by the most recent collective-bargaining agreement, effective by its terms for the period July 1, 1989 to June 30, 1992, without the consent of the Union.

(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) Make all monetary payments to the Union's Welfare Fund, Pension Fund, Annuity Fund, Vacation and Holiday Fund, and Education Fund for the period beginning January 1990 with the exception of November 1990, required by the collective-bargaining agreement with the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All journeymen plumbers and apprentices employed by Respondent, but excluding office clerical employees, guards and supervisors as defined in the Act.

¹ Because the provisions of employee 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, 1216 (1979).

(b) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required payments, as set forth in the remedy section of this decision.

(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 amounts due under the terms of this Order.

(d) Post at its facility in Ossining, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 2, 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.

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

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."

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 U.A. District Council No. 12 on behalf of Plumbers Locals 86, 209 and 299 by unilaterally modifying the terms of the collective-bargaining agreement by failing and refusing to make the monetary payments to the Union's Welfare Fund, Pension Fund, Annuity Fund, Vacation and Holiday Fund, and Education Fund for the period beginning January 1990, with the exception of November 1990, as required by the most recent collective-bargaining agreement, effective by its terms for the period July 1, 1989, to June 30, 1992, without the consent of the Union.

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 make all monetary payments to the Union's Welfare Fund, Pension Fund, Annuity Fund, Vacation and Holiday Fund, and Education Fund for the period beginning January 1990 with the exception of November 1990, required by the collective-bargaining agreement with U.A. District Council No. 12 on behalf of Plumbers Locals 86, 209 and 299 for the employees in the following appropriate unit:

All journeymen plumbers and apprentices employed by us, but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL make unit employees whole, with interest, for any loss of benefits or other expenses suffered as a result of our failure to make the contractually required payments.

HILLSIDE AVENUE PLUMBING &
HEATING CORP.