

**Advanced Fireproofing, Inc. and International  
Brotherhood of Painters and Allied Trades  
Local Union 845, AFL-CIO. Case 7-CA-32480**

February 27, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge filed by the International Brotherhood of Painters and Allied Trades Local Union 845, AFL-CIO on October 23, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Advanced Fireproofing, Inc., 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 January 28, 1992, the General Counsel filed a Motion to Transfer Case to the Board and for Default Summary Judgment on the Pleadings. On January 30, 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.<sup>1</sup> 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 admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that the Regional Attorney, by letter dated December 13, 1991, notified the Respondent that unless an answer was received by December 27, 1991, a Motion for Default 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

<sup>1</sup> The order transferring to the Board and Notice to Show Cause were captioned correctly but recited the case number incorrectly. On January 31, 1992, an errata corrected this mistake.

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Michigan corporation, at its facility in Okemos, Michigan, is engaged in the construction industry as a drywall taping and finishing contractor. During the representative 12-month period ending September 30, 1991, the Respondent performed services valued in excess of \$50,000 for the Christmas Company which purchased in excess of \$50,000 in goods and materials 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 is a labor organization within the meaning of Section 2(5) of the Act.

**A. Recognition**

Pursuant to Section 8(f) of the Act, the Respondent and the Union are parties to a collective-bargaining agreement which is effective by its terms from May 10, 1991, to May 10, 1993. The unit employees covered by this agreement are as follows:

All journeymen and apprentice drywall tapers and finishers employed by the Respondent, but excluding guards and supervisors as defined in the Act.

This constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

During the term of the agreement, based on the principles established in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir. 1988), cert denied 488 U.S. 889 (1988), the Union has been, and is, the limited exclusive collective-bargaining representative of the unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

**B. Refusal to Bargain**

The Respondent has failed to continue in full force and effect all the terms and conditions of the agreement referred to above by failing to make contractually required monthly payments to certain designated fringe benefit funds including the hospitalization, pension, vacation, and apprenticeship funds for the months of August, September, and October 1991 and any subsequent months for which such fringe benefit contributions are owed. The Respondent engaged in the above acts without giving notice or an opportunity to bargain to the Union.

## CONCLUSIONS OF LAW

1. By engaging in these acts, the Respondent modified the collective-bargaining agreement without the consent of the Union as required by Section 8(d) of the Act. The Respondent has thereby failed and refused and is failing and refusing to bargain collectively with the limited exclusive representative of its employees.

2. By its failure to make contractually required monthly payments to certain designated fringe benefit funds including the hospitalization, pension, vacation, and apprenticeship funds for the months of August, September, and October 1991 and any subsequent months for which such benefit contributions are owed, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), (5), and 8(d), and 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 agreement and to make whole unit employees for its failure to adhere to the terms of that agreement relating to contractually required monthly payments to certain designated fringe benefit funds including hospitalization, pension, vacation, and apprenticeship funds for the months of August, September, and October 1991 and any subsequent months for which such benefit contributions are owed. 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), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>2</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, Advanced Fireproofing, Inc., Okemos, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with International Brotherhood of Painters and

Allied Trades Local Union 845, AFL-CIO, as the limited exclusive representative of its employees by failing and refusing to continue in full force and effect all the terms and conditions of employment of its collective-bargaining agreement with the Union by failing to make contractually required monthly contributions to certain designated fringe benefit funds including the hospitalization, pension, vacation, and apprenticeship funds for the months of August, September, and October 1991 and any subsequent months for which such fringe benefit contributions are owed.

(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 agreement with International Brotherhood of Painters and Allied Trades Local Union 845, AFL-CIO, requiring monthly contributions to certain designated fringe benefit funds including the hospitalization, pension, vacation, and apprenticeship funds for the months of August, September, and October 1991 and any subsequent months for which such fringe benefit contributions are owed and make whole unit employees for its failure to adhere to the terms of that agreement.

(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 Okemos, Michigan, copies of the attached notice marked "Appendix."<sup>3</sup> 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.

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

<sup>2</sup> 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 to the Union for the designated fringe benefit funds in order to satisfy our "make whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

<sup>3</sup> 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 continue in full force and effect the terms of the collective-bargaining agreement with International Brotherhood of Painters and Allied Trades Local Union 845, AFL-CIO, by failing to make contractually required monthly payments to certain designated fringe benefit funds including the hospitalization, pension, vacation, and apprenticeship funds for the months of August, September, and October 1991

and any subsequent months for which such fringe benefit contributions are owed.

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 continue in full force and effect our collective-bargaining agreement with the Union and make whole unit employees for failure to adhere to the terms of that agreement relating to contractually required monthly payments to certain designated fringe benefit funds including the hospitalization, pension, vacation, and apprenticeship funds for the months of August, September, and October 1991 and any subsequent months for which such fringe benefit contributions are owed.

ADVANCED FIREPROOFING, INC.