

Interiors Unlimited, Inc. and Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO. Case 7-CA-31747

May 22, 1992

DECISION AND ORDER

**BY MEMBERS DEVANEY, MEMBERS OVIATT
AND RAUDABAUGH**

Upon a charge filed by the Union on April 9, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Interiors Unlimited, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On April 23, 1992, the General Counsel filed a Motion for Summary Judgment. On April 24, 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 of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated March 11, 1992, the acting Regional attorney for Region 7 notified the Respondent that unless an answer was received by March 25, 1992, a Motion for Default Judgment would be filed. To date, no answer has been filed by the Respondent.

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 Michigan corporation with an office and place of business in Oak Park, Michigan, has been engaged as a construction contractor, installing interior finishes, drywall metal studs, and acoustical ceilings. During the calendar year ending December 31, 1990, a representative period, the Respondent, in the conduct of its operations, derived gross revenues in excess of \$1 million. During the same period, the Respondent, in the conduct of its business operations, provided services valued in excess of \$50,000 for Ford Motor Company, an enterprise within the State of Michigan directly engaged in interstate commerce. 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.

II. ALLEGED UNFAIR LABOR PRACTICES

At all relevant times, the Union has been the designated collective-bargaining representative of the Respondent's employees in an appropriate bargaining unit, and has been recognized as such by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, including the most recent agreement which by its terms was effective from June 1, 1989, to May 31, 1991, and which by its terms has been automatically renewed for the period from June 1, 1991, to May 31, 1992. The Union has, at all relevant times, been the exclusive bargaining representative of the unit employees within the meaning of Section 9(a) of the Act. The appropriate bargaining unit includes:

All journeymen and apprentice plasterers employed by the Employer at or out of its Oak Park facility, excluding guards and supervisors as defined by the Act.

The parties' current agreement contains provisions covering unit employees' wages, hours, and terms and conditions of employment, including a provision requiring that the Respondent make fringe benefit funds contributions on behalf of unit employees for health and welfare, pension, and vacation. In or about September 1990, the Respondent stopped making the contractually required fringe benefit funds contributions. Thereafter, the Respondent and the Union, in or about April 1991, entered into a non-Board settlement agreement in which the Respondent agreed to pay \$500 per month on delinquent fringe benefit funds contribu-

tions until the arrearage was erased. However, since in or about September 1991, and continuing to date, the Respondent has failed to honor the settlement agreement by failing to make the monthly payments necessary to eliminate the fringe benefit funds contributions delinquency.¹ By engaging in such conduct, without the Union's consent, the Respondent has failed and refused to bargain with the Union in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act, as alleged.

CONCLUSIONS OF LAW

By failing to make fringe benefit funds contributions to the Union on behalf of unit employees, as required by its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 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.

The Respondent shall be ordered to abide by the terms of its collective-bargaining agreement with the Union by making payment to the Union of all past fringe benefit funds contributions that have not been made,² and shall make unit employees whole for any expenses they may have incurred as a result of the Respondent's failure to make the required fringe benefit funds contributions, 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).

ORDER

The National Labor Relations Board orders that the Respondent, Interiors Unlimited, Inc., Oak Park, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to abide by the terms of its collective-bargaining agreement with Local 67, Operative

¹ On May 2, 1991, the Regional Director conditionally approved the Union's request to withdraw the charge contingent on the Respondent fulfilling the conditions of the settlement. The Regional Director on January 22, 1992, issued on "Order Rescinding Conditional Approval of Withdrawal Request" and reinstated the processing of the charge, culminating in the issuance of the complaint in this case.

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 to the Union for the benefit funds in order to satisfy our "make-whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO, as the designated collective-bargaining representative of the Respondent's unit employees, by failing to make fringe benefit funds contributions on behalf of unit employees, as required by the contract. The appropriate bargaining unit consists of:

All journeymen and apprentice plasterers employed by the Employer at or out of its Oak Park facility, excluding guards and supervisors as defined by 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) Comply with the terms of its collective-bargaining agreement by making payment to the Union of all past due fringe benefit funds contributions that have not been paid, and make unit employees whole for any expenses they may have incurred as a result of the Respondent's failure to make such contributions, with interest, as described in the remedy section of this decision.

(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 Oak Park, Michigan, copies of the attached notice marked "Appendix."³ 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.

(e) 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 to abide by our collective-bargaining agreement with Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO, which is the designated bargaining representative of our employees in an appropriate bargaining unit, by failing to make fringe benefit funds contributions on their behalf, as required by the contract. The appropriate bargaining unit includes:

All journeymen and apprentice plasterers employed by us or out of our Oak Park facility, excluding guards and supervisors as defined by 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 comply with the terms of our collective-bargaining agreement with the Union by paying to the Union all past due fringe benefit funds contributions that have not been paid, and WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure to make such contributions, with interest.

INTERIORS UNLIMITED, INC.