

**C & M Construction Corporation and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5511**

July 24, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Funds December 17, 1991, the General Counsel of the National Labor Relations Board issued a complaint on January 30, 1992, against C & M Construction Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although the Respondent initially filed an answer to the complaint, on June 12, 1992, the Respondent filed a withdrawal of its answer to the complaint.

Thereafter, on June 22, 1992, the General Counsel filed a Motion for Summary Judgment with the Board. On June 26, 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 considered 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 although the Respondent initially filed an answer to the complaint, it subsequently withdrew its answer. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be deemed to be admitted as true.<sup>1</sup> Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> See *Maislin Transport*, 274 NLRB 529 (1985).

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Connecticut corporation, with an office and place of business in Hamden, Connecticut, has been engaged as a general contractor in the building and construction industry. During the 12-month period ending December 31, 1991, the Respondent, in conducting its business operations performed services valued in excess of \$50,000 to the City of New Haven, Connecticut, and to the town of Southington, Connecticut, each of whom are 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**

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

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

About December 16, 1987, the Respondent entered into an "Acceptance of Agreements" whereby it accepted and approved the collective-bargaining agreement between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. (the AGC) effective May 1, 1987, and the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. (the CCIA) effective June 1, 1987, and agreed to be bound to such future agreements unless timely notice was given.

About December 16, 1987, the Respondent, an employer engaged in the building and construction industry as described above, granted recognition to the Union as the exclusive collective-bargaining representative of the unit and since that date the Union has been recognized as such representative by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which are effective by their terms for the period April 1, 1991, to March 31, 1993.

About July 1, 1991, the Respondent unilaterally and without the consent of the Union failed to con-

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.

#### 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 or refuse to bargain in good faith with Connecticut Laborers' Funds a/w Laborers' International Union of North America,

AFL-CIO, in the unit described below, by failing to make contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund:

All laborers employed by us; but excluding all other 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 them by Section 7 of the Act.

WE WILL make whole our unit employees by making delinquent payments to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund, and by reimbursing the employees for any expenses ensuing from the Respondent's unlawful failure to make such payments.

C & M CONSTRUCTION CORPORATION

tinue in full force and effect all the terms and conditions of the agreements by failing to make the contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund. The subjects of these funds relate to terms and conditions of employment and are mandatory subjects of bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

#### CONCLUSION OF LAW

By unilaterally failing to make contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative of its union employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and 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. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any interest applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682

(1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, C & M Construction Corporation, Hamden, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Union in the unit described below by failing to make contractually required contributions to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund:

All laborers employed by Respondent; but excluding all other 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) Make whole the unit employees by making delinquent payments to the Health and Welfare Fund, the Pension Fund, the Training Fund, the Legal Services Fund, the Annuity Fund, and the New England Laborers and Employers Education Trust Fund, and by reimbursing the employees for any expenses ensuing from the Respondent's unlawful failure to make such payments, in the manner set forth in the remedy section of this Decision and Order.

(b) Preserve and, on request, make available to the Board or its agents for examining and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust and benefit fund statements, and all other documents or records necessary to analyze the amount of payments due under the terms of the Board's Order.

(c) Post at its facility in Hamden, Connecticut, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative,

<sup>2</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."