

Construction Specialties Erection Co., Inc. and Sheet Metal Workers Local Union No. 17 Insurance, Pension and Annuity Funds. Case 1-CA-28514

April 21, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

Upon a charge filed by the Sheet Metal Workers Local Union No. 17 Insurance, Pension and Annuity Funds, the General Counsel of the National Labor Relations Board issued a complaint against Construction Specialties Erection Co., Inc., the Respondent, on September 13, 1991, 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 March 18, 1992, the General Counsel filed a Motion for Summary Judgment. On March 20, 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 to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated October 28, 1991, notified the Respondent that unless an answer was received by November 6, 1991, a Motion for Summary Judgment would be filed. By letter dated December 10, 1991, counsel for the General Counsel again notified the Respondent of the need to file an answer and stated that if no answer was filed by close of business on December 18, 1991, he would immediately file a Motion for Summary Judgment.

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 corporation with an office and place of business in Randolph, Massachusetts, has been engaged in the installation and repair of partitions, lockers, shelving, and doors. During the calendar year ending December 31, 1990, the Respondent purchased and received at its Randolph facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. During the calendar year ending December 31, 1990, Respondent provided services in excess of \$50,000 to employers including Penni Corporation, Hyman Construction, and Jackson Construction. These employers 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 Sheet Metal Workers Local Union No. 17 a/w Sheet Metal Workers International Association, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about 1968 and continuing to date, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the employees in the unit described below for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period August 1, 1988, to July 31, 1991. The unit of employees covered by the collective-bargaining agreement is set forth by classification and excludes all other employees, guards, and supervisors as defined in the Act. This constitutes a unit appropriate for collective bargaining within the meaning of the Act.

Since on or about April 1, 1991, the Respondent has failed to comply with the terms of its collective-bargaining agreement with the Union by failing and refusing to make payments to the fringe benefit funds as set out in the 1988-1991 agreement for pension, insurance, annuity, apprenticeship and training, and equality. These subjects relate to wages, hours, and other terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By its failure on and after April 1, 1991, to abide by the terms of its 1988-1991 collective-bargaining agreement with the Union regarding fringe benefit fund payments for pension, insurance, annuity, apprenticeship and training, and equality, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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 give full force and effect to its 1988-1991 collective-bargaining agreement and to make whole unit employees for its failure to adhere to the terms of that agreement relating to fringe benefit fund payments for pension insurance, annuity, apprenticeship and training, and equality. 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).¹

ORDER

The National Labor Relations Board orders that the Respondent, Construction Specialties Erection Co., Inc., Randolph, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Sheet Metal Workers Local Union No. 17 a/w Sheet Metal Workers International Association, AFL-CIO, the exclusive collective-bargaining representative of our employees set forth in the contract by classification and excluding all other employees, guards, and supervisors as defined in the Act by failing and refusing to give full force and effect to the terms and conditions of employment of its 1988-1991 collective-bargaining agreement with the Union by failing to adhere to the terms of that agreement relating to fringe benefit payments for pension, insurance, annuity, apprenticeship and training, and equality.

¹ 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).

(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 1988-1991 collective-bargaining agreement with Sheet Metal Workers Local Union No. 17 a/w Sheet Metal Workers International Association, AFL-CIO, and make unit employees whole for its failure to adhere to the terms of that agreement relating to fringe benefit payments for pension, insurance, annuity, apprenticeship and training, and equality.

(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 Randolph, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, 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.

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 Sheet Metal Workers Local Union No. 17 a/w Sheet Metal Workers International Association,

AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit appropriate for collective bargaining set forth in the contract by classification and excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to give full force and effect to the terms of our 1988-1991 collective-bargaining agreement with the Union by failing to adhere to the terms of that agreement relating to fringe benefit payments regarding pension, insurance, annuity, apprenticeship and training, and equality.

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 give full force and effect to our 1988-1991 collective-bargaining agreement with the Union and make whole unit employees with interest for our failure to adhere to the terms of that agreement relating to fringe benefit payments regarding pension, insurance, annuity, apprenticeship and training, and equality.

CONSTRUCTION SPECIALTIES ERECTION Co., INC.