

Total Property Services, Inc. and Total Property Services of New England, Inc. and Carpenters Local No. 33, United Brotherhood of Carpenters & Joiners of America. Case 1-CA-27908

April 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

Upon a charge, amended charge, and second amended charge filed by Carpenters Local No. 33, United Brotherhood of Carpenters & Joiners of America (the Union), the General Counsel of the National Labor Relations Board issued a complaint on February 5, 1991, against Respondent Total Property Services, Inc. (Respondent Property), and an amended complaint on January 13, 1992, against Total Property Services of New England, Inc. (Respondent New England) and Respondent Property alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaints, the Respondents have failed to file an answer.

On March 25, 1992, the General Counsel filed a Motion for Summary Judgment. On March 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. The Respondents 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 the 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 January 30, 1992, informed Respondents that if no answer was received by February 10, 1992, a Motion for Summary 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.

307 NLRB No. 60

FINDINGS OF FACT

I. JURISDICTION

Respondent Property, a Massachusetts corporation with its principal office and place of business in Sandwich, Massachusetts, has been engaged as a general contractor in the building and construction industry, constructing commercial facilities.

Respondent New England, a Delaware corporation with its principal office and place of business in Sandwich, Massachusetts, and a jobsite in Darien, Connecticut, has been engaged as a general contractor in the building and construction industry, constructing commercial facilities.

Respondents have been affiliated business enterprises with common officers, ownership, management, and supervision. Respondents have formulated and administered a common labor policy affecting employees of their operations. Respondents have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise.

Based on their operations, we find that Respondents constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

During the 12-month period ending December 31, 1990, Respondents, collectively and individually, in the course and conduct of their business operations, purchased and received at the Sandwich facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Massachusetts.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Recognition

The Union has executed a series of collective-bargaining agreements with Associated General Contractors of Massachusetts, Inc., Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and Labor Relations Division of Construction Industries of Massachusetts (the Associations), the most recent of which was effective for the period August 1, 1987, through July 31, 1991. On June 15, 1989, Respondents executed an Acceptance of Agreement with the Union by which they agreed to be bound to the 1987 to 1991

agreement between the Union and the Associations.

All employees of Respondents in the classification set forth in the 1987 to 1991 agreement but excluding all other employees, guards, and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all times relevant the Union has been and is the exclusive collective-bargaining representative of the employees in the unit pursuant to Section 9(a) of the Act.

B. *Refusal to Abide by Agreement*

In or about October and November 1990, Respondents performed construction work covered under the 1987 to 1991 agreement in the Reebok store located at the Fanueil Hall Marketplace, Boston, Massachusetts. The Respondents failed to apply the provisions of the 1987 to 1991 contract to this construction work.

CONCLUSIONS OF LAW

By their failure and refusal in or about October and November 1990 to apply the provisions of the 1987 to 1991 contract to construction work performed at the Reebok store located at the Fanueil Hall Marketplace, Boston, Massachusetts, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondents to restore and adhere to the terms and conditions of the 1987 to 1991 agreement. We shall order the Respondents to make whole all employees in the unit for any loss of earnings resulting from the Respondents' conduct in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), and *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with additional amounts to be paid into employees benefit funds.¹ All payments to employ-

¹ Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondents 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).

ees 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 Respondents, Total Property Services, Inc., Sandwich, Massachusetts, and Total Property Services of New England, Inc., Sandwich, Massachusetts, and Darien, Connecticut, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Carpenters Local No. 33, United Brotherhood of Carpenters & Joiners of America, the exclusive representative of its employees in the bargaining unit set forth below by failing to adhere to the 1987 to 1991 contract between the Union and Associated General Contractors of Massachusetts, Inc., Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and Labor Relations Division of Construction Industries of Massachusetts (the Associations) for work performed in or about October and November 1990 in the Reebok store located at the Fanueil Hall Marketplace, Boston, Massachusetts. The bargaining unit consists of all employees of Total Property Services, Inc. and Total Property Services of New England, Inc. as set forth in the contract by classifications but excluding all other employees, guards, 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) Restore and place in effect all terms and conditions of employment provided by the 1987 to 1991 contract between the Union and the Associations.

(b) Make employees whole with interest for any wages or other benefits they may have lost as a result of the Respondent's failure to abide by the 1988 to 1991 collective-bargaining contract between the Union and the Associations for work performed in or about October and November 1990 in the Reebok store located at the Fanueil Hall Marketplace, Boston, Massachusetts, as prescribed 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 facilities in Sandwich, Massachusetts, and Darien, Connecticut, 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 Respondents' authorized representative, shall be posted by the Respondents 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 Respondents 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 Respondents have taken to comply.

²If 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 or refuse to recognize and bargain with Carpenters Local No. 33, United

Brotherhood of Carpenters & Joiners of America, the exclusive collective-bargaining representative of our employees in the unit set forth below by failing to adhere to the terms of the 1987 to 1991 contract between the Union and Associated General Contractors of Massachusetts, Inc., Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and Labor Relations Division of Construction Industries of Massachusetts (the Associations) for work performed in October and November 1990 at the Reebok store located at the Fanueil Hall Marketplace, Boston, Massachusetts. The unit consists of the employees of Total Property Services, Inc. and Total Property Services of New England, Inc. in the classifications set forth in the contract between the Union and the Associations but excluding all other employees, guards, 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 you by Section 7 of the Act.

WE WILL restore and place in effect all terms and conditions of employment provided by the 1987 to 1991 collective-bargaining agreement between the Union and the Associations.

WE WILL make our employees whole for any wages or other benefits they may have lost resulting from our failure to abide by the 1987 to 1991 collective-bargaining agreement between the Union and the Associations.

TOTAL PROPERTY SERVICES, INC.
AND TOTAL PROPERTY SERVICE OF
NEW ENGLAND, INC.