

**New England Piping, Inc. and Sprinkler Fitters
Local 676. Case 34-CA-5645**

August 10, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union, the General Counsel of the National Labor Relations Board issued a complaint on May 21, 1992, against New England Piping, 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 July 14, 1992, the General Counsel filed a Motion for Summary Judgment. On July 15, 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 the Region, by letter dated June 8, 1992, notified the Respondent that unless an answer was received by close of business June 15, 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.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation, with an office and place of business in Amston, Connecticut, has been engaged as a contractor in the building and construction industry. During the 12-month period ending April 30, 1992, the Re-

spondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 to the State of Connecticut, which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(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 the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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

About October 12, 1990, the Respondent entered into a "Short-Form Agreement for Independent Employers" whereby it accepted and approved the collective-bargaining agreement between the Union and the National Automatic Sprinkler and Fire Control Association, effective August 1, 1990, through July 31, 1992 (the 1990-1992 agreement), and agreed to be bound to such future agreements unless timely notice was given.

For the period October 12, 1990, to July 31, 1992, the Union has been recognized pursuant to Section 9(a) of the Act as the limited exclusive collective-bargaining representative without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

About December 1, 1991, the Respondent unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the Union by failing to make the contractually required contributions to the National Automatic Sprinkler Industry Welfare Fund, the National Automatic Sprinkler Industry Pension Fund, and the Sprinkler Local Union Education Fund. These subjects relate to wages, hours, and other terms and conditions of employment of the employees in the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct. By failing and refusing to bargain collectively and in good faith with the limited exclusive bargaining representative

of the employees in the unit, the Respondent has violated Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 1, 1991, to make the contractually required contributions to the National Automatic Sprinkler Industry Welfare Fund, the National Automatic Sprinkler Industry Pension Fund, and the Sprinkler Local Union Education Fund, 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.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments for pension, welfare, and education funds, 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 additional amounts 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. 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, New England Piping, Inc., Amston, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Sprinkler Fitters Local 676, the limited exclusive representative of its employees in the bargaining unit, by failing on and after December 1, 1991, to make contractually required contributions to the National Automatic Sprinkler Industry Welfare Fund, the National Automatic Sprinkler Industry

Pension Fund, and the Sprinkler Local Union Education Fund.

(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) Bargain in good faith with the Union as the limited exclusive representative of the employees in the following appropriate unit:

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

(b) Honor the terms of the 1990-1992 collective-bargaining agreement including making all required payments to the National Automatic Sprinkler Industry Welfare Fund, the National Automatic Sprinkler Industry Pension Fund, and the Sprinkler Local Union Education Fund.

(c) Make unit employees whole in the manner set forth in the remedy section of this Decision and Order by reimbursing them for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the required welfare, pension, and education fund payments.

(d) 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.

(e) Post at its facility in Amston, Connecticut, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 34, 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.

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

¹ 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 Sprinkler Fitters Local 676 as the limited exclusive bargaining representative of our employees in the following bargaining unit:

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

WE WILL NOT fail or refuse to honor all the terms of our 1990-1992 agreement with the Union by failing to make all required payments to the Na-

tional Automatic Sprinkler Industry Welfare Fund, the National Automatic Sprinkler Industry Pension Fund, and the Sprinkler Local Union Education Fund.

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 honor all the terms of our 1990-1992 agreement with the Union.

WE WILL make all required payments to the National Automatic Sprinkler Industry Welfare Fund, the National Automatic Sprinkler Industry Pension Fund, and the Sprinkler Local Union Education Fund.

WE WILL make our unit employees whole by reimbursing them for any loss of benefits or other expenses suffered as a result of our failure to make the required payments for welfare, pension, and education funds.

NEW ENGLAND PIPING, INC.