

**Stack Contracting Services, Inc. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5726**

November 18, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed on June 15, 1992, by Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO, the General Counsel of the National Labor Relations Board issued a complaint on July 29, 1992, amended on September 24, 1992, against Stack Contracting Services, 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 October 19, 1992, the General Counsel filed a Motion for Summary Judgment. On October 21, 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 amended complaint states that unless an answer is filed within 14 days of service, all the allegations in the complaint (as amended) 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 by letter dated August 17, 1992, the Regional attorney notified the Respondent that unless an answer was received by close of business August 24, 1992, a Motion for Summary 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 Connecticut corporation with an office and place of business in Oakville, Connecticut, has been engaged as a contractor in the building and construction industry. During the 12-month period ending July 31, 1992, a representative period, the Respondent, in the course and conduct of its business operations, purchased and received at its Oakville, Connecticut facility products, goods, and materials valued in excess of \$50,000 from points outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and further find, as alleged in the complaint, that Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On or about April 1, 1991, the Union entered into a collective-bargaining agreement, effective for the period from April 1, 1991, to March 31, 1993, with the Connecticut Construction Industries Association, Inc. (CCIA), "acting for and on behalf of those employers it has been or will be authorized to represent and has agreed or will agree to represent." On or about June 19, 1991, the Respondent granted recognition to the Union, and also executed a "Labor Relations Authorization" authorizing CCIA to act as its sole and exclusive collective-bargaining representative for the classification of employees represented by the Union. The Union represents the Respondent's employees in the following appropriate unit:

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

Since about June 19, 1991, the Respondent has recognized the Union as the exclusive bargaining representative of the unit employees without regard to whether the Union's majority status has ever been established. Pursuant to Section 9(a), the Union has been the limited exclusive bargaining representative of the Respondent's unit employees for the period from June 19, 1991, to March 31, 1993.<sup>1</sup>

<sup>1</sup> In view of the allegation in complaint par. 10 that the Respondent recognized the Union without regard to whether it had attained majority status under Sec. 9(a), and the allegation that the Respondent is a construction industry employer, it is clear that the bargaining relationship between the Respondent and the Union was established pursuant to Sec. 8(f) of the Act. Under *John*  
*Continued*

Since about December 17, 1991, the Respondent, without notifying the Union or affording it an opportunity to bargain, and without its consent, unilaterally failed to continue in full force and effect all the terms and conditions of its agreement with the Union by failing to make contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, and the annuity fund, which matters constitute mandatory subjects of bargaining. By engaging in such conduct, the Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the Union within the meaning of Section 8(d) of the Act, and has violated Section 8(a)(1) and (5) of the Act, as alleged.

#### CONCLUSION OF LAW

By unilaterally failing, without the consent of the Union, to continue in full force and effect all the terms of its collective-bargaining agreement by failing to make contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, and the annuity fund, 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 continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union, and to make the contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, and the annuity fund that have not been made since about December 17, 1991.<sup>2</sup> The Respondent shall also be required to make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to continue in full force in effect all the terms and conditions of its agreement with the Union, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

*Deklewa & Sons, Inc.*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), an 8(f) signatory union does not acquire full 9(a) status based solely on an employer's adoption of an 8(f) agreement. Accordingly, we find that the Union is the limited exclusive representative of the Respondent's employees. Id. at 1386-1387.

<sup>2</sup> Any additional amounts applicable to these payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

#### ORDER

The National Labor Relations Board orders that the Respondent, Stack Contracting Services, Inc., Oakville, Connecticut, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of its collective-bargaining agreement with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, which is the limited exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, by failing to make the contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, and the annuity fund. The appropriate bargaining unit consists of:

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) Continue in effect all the terms and conditions of its collective-bargaining agreement with the Union and make the contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, and the annuity fund that have not been made since about December 17, 1991.

(b) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to continue in effect all the terms and conditions of its agreement with the Union, with interest, as set forth 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 amount of backpay due under the terms of this Order.

(d) Post at its facility in Oakville, Connecticut, copies of the attached notice marked "Appendix."<sup>3</sup> 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

<sup>3</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."

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.

#### 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 continue in effect all the terms and conditions of our collective-bargaining agreement with Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO, which is the limited exclusive bargaining representative of our employees in an appropriate unit, by failing to make contractually required contributions to the health and

welfare fund, the pension fund, the training fund, the legal services fund, and the annuity fund. The appropriate bargaining unit consists of:

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 you by Section 7 of the Act.

WE WILL continue in effect all the terms and conditions of our collective-bargaining agreement with the Union, and WE WILL make contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, and the annuity fund that have not been made since about December 17, 1991.

WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure to continue in effect all the terms and conditions of our agreement with the Union, with interest.

STACK CONTRACTING SERVICES, INC.