

Testa Excavating Co., Inc. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5832

January 8, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed 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 October 26, 1992, against Testa Excavating Co., 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 December 7, 1992, the General Counsel filed a Motion for Summary Judgment. On December 10, 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 November 12, 1992, notified the Respondent that unless an answer was received by close of business November 20, 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 Stamford, Connecticut, is engaged in excavation work and laying of under-

ground pipe. During the 12-month period ending September 30, 1992, the Respondent purchased and received at its facility goods valued in excess of \$50,000 from other enterprises, including Capitol Pipe Co., Inc., located within the State of Connecticut; the other enterprises had received these goods directly from points outside the State of Connecticut. Capitol Pipe Co., Inc., a Connecticut corporation with an office and place of business in Newington, Connecticut, has been engaged in the manufacture and sale of underground concrete pipe and other products. During the 12-month period ending September 30, 1992, Capitol Pipe Co., Inc. received at its Newington, Connecticut facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Connecticut. 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 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

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

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

About November 25, 1991, the Respondent entered into an "Acceptance of Agreements and Declaration of Trust" whereby it accepted and approved the collective-bargaining agreements between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. (AGC) and the Union and the Connecticut Construction Industries Association, Inc. (CCIA) effective April 1, 1991, through March 31, 1993.

About November 25, 1991, the Respondent, an employer engaged in the building and construction industry granted recognition to the Union 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. For the period November 25, 1991, through March 31, 1993, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the employees in the unit.

Since about April 1, 1992, the Respondent has 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 agreements by failing to make the contractually required contributions to the Connecticut Laborers Health Fund, the Connecticut Laborers Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity 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.

CONCLUSION OF LAW

By failing to bargain in good faith with the Union by failing to make the contractually required contributions to the Connecticut Laborers Health Fund, the Connecticut Laborers Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity 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 health, pension, training, legal services, and annuity, 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), enf. 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), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Testa Excavating Co., Inc., Stamford,

Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to honor the terms of its collective-bargaining agreements with the Union by failing to make the contractually required contributions to the Connecticut Laborers Health Fund, the Connecticut Laborers Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity 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 Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO as the limited exclusive bargaining representative of the employees in the following unit appropriate for purposes of collective bargaining:

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

(b) Make all contractually required payments to the Connecticut Laborers Health Fund, the Connecticut Laborers Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity Fund.

(c) Make its employees whole, with interest, for all losses ensuing from failure to make these contractually required 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 Stamford, 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

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."

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.

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 honor the terms of our collective-bargaining agreements with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL-CIO covering our employees in the following appropriate unit:

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 fail to make contractually required contributions to the Connecticut Laborers Health Fund, the Connecticut Laborers Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity 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 the terms of our collective-bargaining agreements with the Union and WE WILL make all contractually required contributions to the Connecticut Laborers Health Fund, the Connecticut Laborers Pension Fund, the New England Laborers' Training Trust Fund, the Connecticut Laborers' Legal Services Fund, and the Connecticut Laborers Annuity Fund.

WE WILL make our unit employees whole, with interest, for any losses they incurred as a result of our failure to make these contributions.

TESTA EXCAVATING CO., INC.