

Maximum Fire Protection System, Inc. and Sprinkler Fitters and Apprentices Local Union No. 268, St. Louis, Missouri, of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. Case 14-CA-22163

April 9, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Union on October 27, 1992, the General Counsel of the National Labor Relations Board issued a complaint on December 4, 1992, against Maximum Fire Protection System, Inc., the Respondent, alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act. On December 18, 1992, the Respondent filed an answer to the complaint, and on January 12, 1993, the Respondent filed an amended answer. In its amended answer, the Respondent admitted all the allegations contained in the complaint.

On January 19, 1993, the General Counsel filed a Motion for Summary Judgment. On January 21, 1993, 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 to the Notice to Show Cause. 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

All the allegations contained in the complaint have been admitted to be true and the Respondent has raised no defense. In the absence of any disputed allegations, we grant the General Counsel's uncontested Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Missouri corporation with an office and place of business in Florissant, Missouri, has been engaged in the installation and maintenance of automatic sprinkler systems in the building and construction industry. During the 12-month period ending November 30, 1992, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for Kloster Company, Inc., a Missouri corporation with an office and place of business in St. Louis, Missouri. At all material times, Kloster Company, Inc. has been engaged as a contractor in the building and construction industry. During the 12-

month period ending November 30, 1992, Kloster Company, Inc., in conducting its business operations, performed services valued in excess of \$50,000 in states other than the State of Missouri. 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 unit of employees covered by the collective-bargaining agreements described below constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

About August 15, 1989, the Respondent granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union for the period September 1, 1989, through August 31, 1992, without regard to whether the majority status of the Union has ever been established under Section 9 of the Act.

About October 9, 1992, the Respondent granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union for the period September 1, 1992, through August 31, 1995, without regard to whether the majority status of the Union has ever been established under Section 9 of the Act.

For the period August 1, 1989, through August 31, 1995, the Union has been the limited exclusive collective-bargaining representative of the unit.

Since about September 1, 1992, the Respondent has failed to pay its employees the wages specified in the agreements, and since about September 20, 1992, the Respondent has failed to make contractually required contributions to the health and welfare, pension, vacation, and apprentice funds specified in the agreements. Payments of contractually required wages and benefit fund contributions are mandatory subjects for purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent. Accordingly, we find that the Respondent, by such conduct, has failed to bargain collectively and in good faith with the representative of its employees and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing to pay contractually required wages and by failing to make contractually required contributions to the health and welfare, pension, vacation, and apprentice funds, the Respondent has refused to bargain with the Union over mandatory subjects of bargaining, and has 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 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, inter alia, order the Respondent to make whole employees for any loss of wages resulting from the Respondent's unlawful conduct, in the manner prescribed 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). We shall also order the Respondent to make whole unit employees by making all payments required by the terms of the collective-bargaining agreements, including making the required benefit fund contributions.¹ We shall order the Respondent to reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to make such payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons*, supra. Finally, we shall require the Respondent to post and abide by a notice to its employees.

ORDER

The National Labor Relations Board orders that the Respondent, Maximum Fire Protection System, Inc., Florissant, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally failing to make contractually required contributions to the health and welfare, pension, vacation, and apprentice funds.

(b) Unilaterally failing to pay contractual wages owed to unit employees.

(c) 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) Adhere to the terms of the collective-bargaining agreement with the Union, including, but not limited to, its provisions governing wages and fringe benefit contributions.

(b) Make whole unit employees for any loss of wages, benefits, and other expenses suffered as a result of the Respondent's failure to abide by the terms of the collective-bargaining agreement with the Union, in-

cluding making required payments on behalf of unit employees to the health and welfare, pension, vacation, and apprentice funds, in the manner 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, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Florissant, Missouri, the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 14, 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.

(e) 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 unilaterally fail to make contractually required contributions to the health and welfare, pension, vacation, and apprentice funds.

WE WILL NOT unilaterally fail to pay contractual wages owed to you.

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 adhere to the terms of our collective-bargaining agreement with the Union, including, but not limited to, its provisions governing wages and fringe benefit contributions.

WE WILL make you whole for any loss of wages, benefits, and other expenses suffered as a result of our failure to abide by the terms of our collective-bargaining agreement with the Union, including making re-

¹ We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make whole" remedy. *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

quired payments on your behalf to the health and welfare, pension, vacation, and apprentice funds.

MAXIMUM FIRE PROTECTION SYSTEM,
INC.