

**Northeastern Fireproofing, Inc. and District Council Laborers' International Union of North America, AFL-CIO.** Case 5-CA-22624

January 29, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

Upon a charge filed by the Union on March 25, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Northeastern Fireproofing, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) 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 31, 1992, the General Counsel filed a Motion for Summary Judgment. On January 5, 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. 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 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 by letter dated September 11, 1992, counsel for the General Counsel notified the Respondent that unless an answer was received by close of business September 25, 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 Maryland corporation with an office and place of business in Baltimore, Maryland, has been engaged as a contractor in the building and construction industry including performing construction

and finishing work on public, commercial, and industrial products. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, purchased and received at its Baltimore, Maryland facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Maryland. 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

Since in or about May 1991, and at all material times, the Union has been the designated limited exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, and has, since then, been recognized as such by the Respondent.<sup>1</sup> Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period April 1, 1991, to March 31, 1993. At all times since May 1991, the Union, by virtue of Section 9(a) of the Act, has been and is the limited exclusive representative of the Respondent's unit employees with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment. The appropriate bargaining unit consists of:

All laborers employed by the Employer in the City of Baltimore, Maryland, and the Maryland counties of Allegheny, Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Annes, Somerset, Talbot, Washington, Wicomico and Worcester, excluding office clerical employees, guards and supervisors as defined in the Act.

Article XVII of the parties' agreement requires the Respondent to make weekly contributions to the Con-

<sup>1</sup>The commerce data and the unit description in the complaint suggests that the Respondent is a construction industry employer subject to the provisions of Sec. 8(f) of the Act. However, we are unable to determine from the complaint or from the documents submitted by the General Counsel in support of the motion whether the bargaining relationship between the Respondent and the Union was established pursuant to Sec. 8(f) or pursuant to the Union's showing of 9(a) majority support. Under *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), a union signatory to an 8(f) contract attains only limited 9(a) status confined to the terms of the contract. The burden of showing that a bargaining relationship between a union and a construction industry employer is not an 8(f) relationship is on the party asserting 9(a) status. *Deklewa*, supra at 1385 fn. 41. In the absence of an allegation that the bargaining relationship was based on a showing of 9(a) support, we find that the relationship was entered into pursuant to Sec. 8(f), and that the Union is, therefore, the limited Sec. 9 representative of the Respondent's employees for the period covered by the contract.

struction Workers' Trust Fund, the Laborers' District Council Pension Fund for Baltimore and Vicinity, the Laborers' District Council Vacation Fund for Baltimore and Vicinity, the Laborers' District Council Training Fund for Baltimore and Vicinity, and the Laborers-Employers Cooperation Education Trust. Section 10 of article XVII also provides that along with the contributions to the funds, the Respondent must send a remittance report form for each employee who worked during the month for which the payments are made in the employee's name. Finally, article XVII, section 12 provides that the trustees of the funds shall have the right, through their designated representative, to inspect, audit, and copy the payroll records of the Employer with respect to the employees in the bargaining unit.

Since on or about September 1, 1991, the Respondent has failed to continue in effect all the terms and conditions of its agreement with the Union by failing and refusing to make the required fund contributions, failing and refusing to provide the Union with the required remittance report forms, and by failing and refusing, since on or about March 4, 1992, and at all times since, to allow its payroll records to be audited, as required by article XVII, section 12 of the agreement. The above subjects relate to unit employees' wages, hours, and other terms and conditions of employment and constitute mandatory subjects of bargaining. We find that 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 as the exclusive collective-bargaining representative of the unit employees, and has violated Section 8(a)(5) and (1) of the Act, as alleged.

#### CONCLUSION OF LAW

By refusing since on or about September 1, 1991, to make the required contributions to the various funds as required by article XVII of its agreement with the Union, refusing to provide the Union with the required remittance report forms, and refusing since on or about March 4, 1992, and at all times since, to allow its payroll records to be audited, as required by article XVII, section 12 of the agreement, the Respondent 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 order the Respondent to continue in effect all the terms and conditions of its collective-bargaining agreement with the Union, and to make all contribu-

tions to the Construction Workers' Trust Fund, the Laborers' District Council Pension Fund for Baltimore and Vicinity, the Laborers' District Council Vacation Fund for Baltimore and Vicinity, the Laborers' District Council Training Fund for Baltimore and Vicinity, and the Laborers-Employers Cooperation Education Trust, that have not been made since on or about September 1, 1991.<sup>2</sup> We shall also order the Respondent to remit to the Union the remittance report forms that have not been provided since on or about September 1, 1991, to allow the trustees of the funds, through their designated representative, to audit its payroll records, and to make unit employees whole for any expenses they may have incurred because of the Respondent's failure to fully comply with all the terms and conditions of its agreement with the Union, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest on such amounts to be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Northeastern Fireproofing, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect all the terms and conditions of its collective-bargaining agreement with District Council Laborers' International Union of North America, AFL-CIO, which is the designated limited exclusive bargaining representative of the Respondent's employees in an appropriate unit, by refusing to make contributions to Construction Workers' Trust Fund, the Laborers' District Council Pension Fund for Baltimore and Vicinity, the Laborers' District Council Vacation Fund for Baltimore and Vicinity, the Laborers' District Council Training Fund for Baltimore and Vicinity, and the Laborers-Employers Cooperation Education Trust, by failing and refusing to provide the Union with remittance report forms, and by failing and refusing to allow the trustees of the funds, through their designated representative, to audit its payroll records with respect to unit employees, as required by the collective-bargaining agreement. The appropriate bargaining unit consists of:

All laborers employed by the Employer in the City of Baltimore, Maryland, and the Maryland counties of Allegheny, Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Annes,

<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).

Somerset, Talbot, Washington, Wicomico and Worcester, excluding office clerical 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) Continue in full force and effect all the terms and conditions of its agreement with the Union, make all required contributions to the Construction Workers' Trust Fund, the Laborers' District Council Pension Fund for Baltimore and Vicinity, the Laborers' District Council Vacation Fund for Baltimore and Vicinity, the Laborers' District Council Training Fund for Baltimore and Vicinity, and the Laborers-Employers Cooperation Education Trust that have not been made since on or about September 1, 1991, provide the Union with the remittance report forms that have not been remitted since on or about the same date, and permit the trustees of the funds, through their designated representative, to conduct the audits of its payroll records with respect to unit employees that have not been allowed since on or about March 4, 1992.

(b) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's refusal to comply fully with the terms 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, 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 Baltimore, Maryland, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, 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.

<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."

## 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 and refuse to continue in effect all the terms and conditions of our collective-bargaining agreement with District Council Laborers' International Union of North America, AFL-CIO, which is the designated limited exclusive collective-bargaining representative of our employees in an appropriate unit, by refusing to make required contributions to the Construction Workers' Trust Fund, the Laborers' District Council Pension Fund for Baltimore and Vicinity, the Laborers' District Council Vacation Fund for Baltimore and Vicinity, the Laborers' District Council Training Fund for Baltimore and Vicinity, and the Laborers-Employers Cooperation Education Trust, WE WILL NOT fail and refuse to provide the Union with remittance report forms as required by article XVII, section 10 of that agreement, and WE WILL NOT fail and refuse to allow the trustees of the funds, through their designated representative, to audit our payroll records as required by article XVII, section 12 of the agreement. The appropriate bargaining unit consists of:

All laborers employed by the Employer in the City of Baltimore, Maryland, and the Maryland counties of Allegheny, Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Annes, Somerset, Talbot, Washington, Wicomico and Worcester, excluding office clerical 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 continue in full force and effect all the terms and conditions of our collective-bargaining agreement with the Union, WE WILL make all required contributions to the Construction Workers' Trust Fund, the Laborers' District Council Pension Fund for Baltimore and Vicinity, the Laborers' District Council Vacation Fund for Baltimore and Vicinity, the Laborers' District Council Training Fund for Baltimore and Vicinity, and the Laborers-Employers Cooperation Education Trust that have not been made since on or about September 1, 1991, WE WILL remit to the Union the remittance report forms that have not been provided since on or about the same date, and WE WILL allow the trustees of the funds, through their designated representative, to conduct audits of our payroll records

with respect to our unit employees that have not been allowed since on or about March 4, 1992.

WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure and refusal to comply fully with all the terms and

conditions of our agreement with the Union, with interest.

NORTHEASTERN FIREPROOFING, INC.