All Type Masonry, Inc. *and* Laborers Fringe Benefit Funds Joint Delinquency Committee and State of Michigan Laborers' District Council, Laborers' International Union of North America, AFL–CIO, Local Unions 334 and 1076, Party to the Contract. Case 7–CA–33736

February 5, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge filed by the Charging Party on September 17, 1992, the General Counsel of the National Labor Relations Board issued a complaint on October 29, 1992, against All Type Masonry, 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 January 11, 1993, the General Counsel filed Motions to Transfer Case to the Board and for Default Judgment. On January 13, 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 Default Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide 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 acting Regional attorney, by letter dated December 3, 1992, notified the Respondent that unless an appropriate answer was received by December 17, 1992, a Motion for Default Judgment would be filed. To date no answer has been 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 Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation, with an office and place of business in Flint, Michigan, has been engaged in the building and construction industry as a masonry contractor. During the calendar year ending December 31, 1991, which period is representative of its operations during all times material hereto, the Respondent realized gross revenues in excess of $100,000. During this same period of time, the Respondent purchased and received at its Flint, Michigan facility goods and supplies valued in excess of $50,000 from Best Block Company located within the State of Michigan, which enterprise had received these goods directly from points located outside the State of Michigan and had, in turn, shipped these products directly to the Respondent.

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 State of Michigan Laborers' District Council, Laborers' International Union of North America, AFL–CIO, Local Unions 334 and 1076 (the Laborers Union) has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

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

> All full-time and regular part-time laborers employed by Respondent at its Flint, Michigan facility, but excluding all others.

On or about September 20, 1991, the Respondent granted recognition to the Laborers Union as the exclusive collective-bargaining representative of its employees in the unit set forth above, by signing an agreement agreeing to be bound by all provisions contained in or pertaining to the current labor agreement between the Laborers Union and the Mason Contractors Association, Inc. (the Association), an organization composed of various employers engaged in the construction industry. The agreement by its terms, is effective from June 1991 to June 1993.

By virtue of the recognition and collective-bargaining agreement, based on Section 8(f) of the Act, the Laborers Union has been the limited exclusive collective-bargaining representative of the unit.

On or about July 24 and August 10, 1992, the Charging Party, as provided for in article VIII of the current collective-bargaining agreement and in order to police the administration of the collective-bargaining agreement requested that the Respondent permit an audit of various books and payroll records of Respondent and requested certain information in order to perform the audit.

The information requested by the Charging Party on behalf of the Laborers Union is necessary for, and relevant to, the Laborers Union's performance of its func-

tion as the exclusive collective-bargaining representative of the employees in the unit.

Since on or about July 24 and August 10, 1992, and continuing to date, the Respondent has refused to bargain with the Laborers Union as the exclusive collective-bargaining representative by failing to provide the information requested above, by refusing to allow an audit.

The Respondent's actions constitute a unilateral modification of the collective-bargaining agreement without compliance with the provisions of Section 8(d) of the Act.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby 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.

ORDER

The National Labor Relations Board orders that the Respondent, All Type Masonry, Inc., Flint, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to allow the Charging Party to conduct an audit of books and payroll records as provided for in article VIII of the collective-bargaining agreement, and failing to provide necessary and relevant information requested by the Charging Party in order to conduct the audit.

(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) Allow an audit of its books and payroll records as requested by the Charging Party.

(b) Provide the Charging Party with the information it requested in order to perform the audit.

(c) Post at its facility in Flint, Michigan, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 7, 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.

(d) 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 allow the Laborers Fringe Benefit Funds Joint Delinquency Committee (the Committee), to conduct an audit of our books and payroll records as provided for in article VIII of our current collective-bargaining agreement with State of Michigan Laborers' District Council, Laborers' International Union of North America, AFL–CIO, Local Unions 334 and 1076, and fail to provide necessary and relevant information requested by the Committee in order to perform the audit.

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 allow an audit of our books and payroll records as requested by the Committee.

WE WILL provide the Committee with the information it requested in order to conduct the audit.

ALL TYPE MASONRY, INC.