

**Associated Electrical Contractors and Local Union 494, International Brotherhood of Electrical Workers, AFL-CIO. Case 30-CA-11890**

January 12, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

Upon a charge filed by the Union September 28, 1992, the General Counsel of the National Labor Relations Board issued a complaint on October 30, 1992, against Associated Electrical Contractors, 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 4, 1992, the General Counsel filed a Motion for Summary Judgment. On December 8, 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**

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 by letter dated November 23, 1992, the Agency's field examiner notified the Respondent that, based on the Respondent's statement during a November 20, 1992 telephone conversation that it would not file an answer to the complaint, the Region would proceed to seek summary judgment.

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 corporation, has been engaged in business as an electrical contractor in the construction industry doing residential and commercial construction

in the city of Milwaukee, Wisconsin. During the year ending December 31, 1991, the Respondent provided services valued in excess of \$50,000 for Hunzinger Construction Co., a commercial and industrial construction contractor in the State of Wisconsin which, during the same period, performed services valued in excess of \$50,000 in States other than the State of Wisconsin.

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 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 employees performing inside electrical construction work in the Wisconsin counties of Milwaukee, Ozaukee, Washington or Waukesha.

On May 1, 1991, the Respondent, an employer engaged in the construction industry, granted recognition to Local Union 494, International Brotherhood of Electrical Workers, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act.

At all material times, the Respondent has been an employer-member of the Electrical Contractors Association, Milwaukee Chapter, N.E.C.A., Inc. (the Association), an organization composed of approximately 50 employers, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union.

At all material times, the Association has been authorized by Respondent to bargain collectively on its behalf with the Union concerning wages, hours, and other terms and conditions of employment of the unit.

About June 1, 1991, the Association and the Union reached complete agreement on a collective-bargaining contract covering the unit, and on June 1, 1991, executed the agreement effective by its terms from June 1, 1991, until May 31, 1994.

Since about June 25, 1992, and continuing to date, the Respondent has been refusing to adhere to the collective-bargaining agreement by abrogating the agreement and by failing to abide by its terms by, among other things, refusing to seek referrals from the Union, refusing to pay wages and benefits as required by the agreement, and by otherwise failing and refusing to abide by the terms of its collective-bargaining agreement.

## 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)(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. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since about June 25, 1992, to abide by the terms of its 1991-1994 collective-bargaining agreement with the Union by, inter alia, refusing to pay wages and benefits as required by the agreement, and refusing to seek referrals from the Union, we shall order the Respondent to adhere to the collective-bargaining agreement, to make whole the unit employees for its failure to pay contractual wages and benefits as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), including any additional amounts applicable to such payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to also make whole unit employees or would-be unit employees for their losses of earnings or other benefits suffered by reason of its failure to seek referrals from the Union as required by the contract, including backpay and interest as described above.

## ORDER

The National Labor Relations Board orders that the Respondent, Associated Electrical Contractors, Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to adhere to its 1991-1994 collective-bargaining agreement with the Union by abrogating the agreement and by failing to abide by its terms by, among other things, refusing to seek referrals from the Union, and refusing to pay wages and benefits as required by the agreement, and by otherwise failing and refusing to abide by the terms of its collective-bargaining agreement.

(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) On request, bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative in the unit described below:

All employees performing inside electrical construction work in the Wisconsin counties of Milwaukee, Ozaukee, Washington or Waukesha.

(b) Make unit employees whole for any loss of wages and benefits expenses suffered as a result of its failure to pay wages and benefits as required by the agreement, as set forth in the remedy section of this decision.

(c) Make unit employees and would-be unit employees whole for any loss of earnings and benefits suffered as a result of its failure to seek referrals from the Union as required by the agreement, as set forth in the remedy section of this decision.

(d) Post at its facility in Milwaukee, Wisconsin, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 30, 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>1</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 refuse to adhere to our collective-bargaining agreement with Local Union 494, International Brotherhood of Electrical Workers, AFL-CIO, by abrogating the agreement or by failing to abide by its terms by, among other things, refusing to seek referrals from the Union and refusing to pay wages and benefits as required by the agreement, nor will we otherwise fail and refuse to abide by the terms of the collective-bargaining agreement.

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, on request, bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative in the unit described below:

All employees performing inside electrical construction work in the Wisconsin counties of Milwaukee, Ozaukee, Washington or Waukesha.

WE WILL make unit employees whole for any loss of wages and benefits suffered as a result of our failure to pay wages and benefits as required by the agreement.

WE WILL make unit employees and would-be unit employees whole for any losses of earnings and benefits suffered as a result of our failure to seek referrals from the Union as required by the agreement.

ASSOCIATED ELECTRICAL CONTRACTORS