

Bradley Interiors, Inc. and Trustees of the Central Valley Plastering Industry Trust Funds. Case 32-CA-13056

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Charging Party on March 15, 1993, the General Counsel of the National Labor Relations Board issued a complaint against Bradley Interiors, 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 failed to file an answer.

On May 21, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On May 26, 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.

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. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated May 7, 1993, notified the Respondent that if an answer were not received by close of business May 14, 1993, the allegations of the complaint would be deemed admitted to be true and 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 California corporation with an office and place of business in Porterville, California, has been engaged as a painting and decorating contractor on a nonretail basis. During the 12 months preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 to customers or business enterprises who themselves meet

one of the Board's jurisdictional standards, other than indirect inflow or indirect outflow standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that Carpenters 46 Northern California Counties Conference Board and each of its affiliated District Councils and Local Unions (collectively the Union) is each now, and has each been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all times material, since at least November 10, 1981, the Respondent has been signatory to an individual collective-bargaining agreement (the agreement), pursuant to the provisions of Section 8(f) of the Act, which agreement incorporates by reference and binds the Respondent to the terms of the labor agreement between the Union and the Northern California Drywall Contractors Association (the master agreement). On or about June 15, 1992, the agreement was renewed through June 15, 1993.

At all times material, the following employees of the Respondent (the unit) have constituted 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 employees employed by Respondent performing work described in and covered by Article 1 of the Master Agreement; excluding all other employees, guards, and supervisors as defined in the Act.

At all times material, the Union, by virtue of Sections 8(f) and 9(a) of the Act, has been, and is, the exclusive joint bargaining representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Pursuant to the provisions of the master agreement, as amended and extended, the Respondent is obligated to make certain monthly health and welfare and pension trust fund contributions (the trust fund contributions) to the Central Valley Plastering Industry Trust Funds for the term of the agreement. Since September 15, 1992, the Respondent has failed and/or refused, and continues to fail and/or refuse, to make the trust fund contributions for any of its unit employees. The Respondent has engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's unit employees with respect to such acts and conduct and the effects of such acts and conduct and without the agreement of the Union.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and the Respondent has thereby 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)(5) and (1) by failing to make contractually required payments for health and welfare and pension trust fund contributions, 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), enfd. 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), enfd. 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, Bradley Interiors, Inc., Porterville, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to make the trust fund contributions for any of its unit employees without prior notice to Carpenters 46 Northern California Counties Conference Board and each of its affiliated District Councils and Local Unions, and without affording the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's unit employees with respect to such acts and conduct and the effects of such acts and conduct, and without the agreement of the Union. The unit consists of the following employees:

All full-time and regular part-time employees employed by Respondent performing work described in and covered by Article 1 of the Master Agree-

ment; excluding all other 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) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required trust fund contributions, in the manner prescribed in the remedy section of this decision.

(b) 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.

(c) Post at its facility in Porterville, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 32, 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.

Dated, Washington, D.C. June 28, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to make the trust fund contributions for any of our unit employees without prior notice to Carpenters 46 Northern California

Counties Conference Board and each of its affiliated District Councils and Local Unions, and without affording the Union an opportunity to negotiate and bargain as the exclusive representative of our unit employees with respect to such acts and conduct and the effects of such acts and conduct, and without the agreement of the Union. The unit consists of the following employees:

All full-time and regular part-time employees employed by us performing work described in and covered by Article 1 of the Master Agreement; excluding all other 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 make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required payments to the fringe benefit funds.

BRADLEY INTERIORS, INC.