

M. Barrows Construction Company and Massachusetts Laborers' Benefit Funds. Case 1-CA-30539

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

Upon a charge and amended charge filed by Massachusetts Laborers' Benefit Funds (the Funds), the General Counsel of the National Labor Relations Board issued a complaint against M. Barrows Construction Company (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, amended charge, and complaint, the Respondent failed to file an answer.

On September 9, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On September 10, 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 the Region, by letter dated July 30, 1993, notified the Respondent that unless an answer was received by August 6, 1993, 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 corporation with an office and place of business in Falmouth, Massachusetts, has been engaged in the construction industry performing land clearing and related road construction services. Annually, the Respondent provides services valued in excess of \$50,000 for various employers, including Tilcon, Inc., each of which enterprises are directly engaged in interstate commerce. Annually, the Respondent purchases and receives goods valued in excess of \$50,000 directly from points outside the Commonwealth of

Massachusetts. 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 Laborers' Local Union 385, Laborers' International Union of North America, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about May 3, 1989, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the limited exclusive collective-bargaining representative of the employees in the unit set forth below, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act, by entering into a collective-bargaining agreement with the Union effective from May 3, 1989, to May 31, 1991. From on or about May 3, 1989, until May 31, 1991, based on Section 9(a) of the Act, the Union had been the limited exclusive collective-bargaining representative of the unit employees.

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

All laborers employed by the Respondent on any jobs performed for Tilcon, Inc., as described in the collective-bargaining agreement in effect as of May 3, 1989 to May 31, 1991.

Since about mid-November 1992 and late November 1992, the Funds, as the authorized agent for the Union, orally, has requested the Respondent to allow the Union to perform an audit of the Respondent's records to determine if the Respondent had complied with provisions in the 1989-1991 agreement requiring the Respondent to make contributions to various employee benefit funds.

Since on or about January 21, 1993, the Funds, as the authorized agent for the Union, by letter, has requested the Respondent to allow it to perform an audit of the Respondent's records to determine if the Respondent had complied with the provisions in the 1989-1991 agreement requiring the Respondent to make contributions to various employee benefit funds.

This information is necessary for, and relevant to, the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit employees. The Respondent has failed and refused to allow the Funds to perform an audit as requested.

CONCLUSION OF LAW

By its failure to allow the Union or the Funds to perform an audit as requested, the Respondent has 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.

ORDER

The National Labor Relations Board orders that the Respondent, M. Barrows Construction Company, Falmouth, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to allow the Massachusetts Laborers' Benefit Funds, as the agent for Laborers' Local Union 385, Laborers' International Union of North America, AFL-CIO from performing an audit of its records to determine if the Respondent had complied with provisions in the 1989-1991 agreement requiring the Respondent to make contributions to various employee benefit funds.

(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, allow the Massachusetts Laborers' Benefit Funds to perform an audit of its records to determine if the Respondent had complied with provisions in the 1989-1991 agreement requiring the Respondent to make contributions to various employee benefit funds.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, 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 Falmouth, Massachusetts, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted

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."

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. September 30, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) 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 Massachusetts Laborers' Benefit Funds, as the agent for Laborers' Local Union 385, Laborers' International Union of North America, AFL-CIO to perform an audit of our records to determine if we have complied with provisions in the 1989-1991 agreement requiring us to make contributions to various employee benefit funds.

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 the Massachusetts Laborers' Benefit Funds, upon request, to perform an audit of our records to determine if we have complied with provisions in the 1989-1991 agreement requiring us to make contributions to various employee benefit funds.

M. BARROWS CONSTRUCTION COMPANY