

Golden Plumbing & Heating Co. Inc. and Local 217, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry. Case 1-CA-29181

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by Local United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry (the Union), the General Counsel of National Labor Relations Board issued a complaint on April 24 1992, against Golden Plumbing & Heating Co., Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. About May 13, 1992, Respondent filed an answer to the complaint. About February 3, 1993, the Respondent filed an amended answer to the complaint, in which it admitted the factual allegations in the complaint, but denied that it committed any unfair labor practices, and further asserted an affirmative defense.

On July 30, 1993, the General Counsel filed a motion transfer proceeding to the Board and for Summary Judgment, with exhibits attached. On August 6, 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 did not file a response to the Board's Notice to Show Cause.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that a respondent shall file an answer within 14 days from the service of the complaint. Section 102.20 further provides:

The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

In the instant case, the Respondent filed an amended answer in which it admitted each and every factual allegation in complaint. The Respondent accordingly admitted the complaint allegations that:

Since about September 11, 1991, Respondent has failed to continue in effect all the terms and conditions of the [parties'] 1991 [collective-bargaining] agreement by failing and refusing to pay the fringe benefit [funds] (pension, health and welfare, annuity, and apprenticeship training and building fund) and file the corresponding fringe benefit reports as required by Section V of that

agreement. . . . Respondent engaged in the conduct described above . . . without the Union's consent.

Although the Respondent thus admitted that it engaged in the conduct at issue in the complaint, it denied the complaint allegations that by such conduct it 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. Rather, the Respondent asserted the following affirmative defense in its amended answer:

Respondent asserts that judgments have been rendered in other jurisdiction[s] for monies alleged by the complaint to be due and owing, and petitioner is therefore precluded from bringing this action with respect to those issues disposed of by prior judgments.

We find meritless the Respondent's affirmative defense that the instant proceeding is precluded because judgments have been rendered in other jurisdictions for monies alleged by the instant complaint to be owing. The General Counsel is not seeking an order to require the Respondent to make a double payment into the fringe benefit funds for any amounts for which the Respondent has been ordered to make payment by a judgment in another forum.¹ The Order in this case shall thus not require duplicative payment for any amounts owing by the Respondent to the fringe benefit funds. Because the Respondent has admitted all the factual allegations in the complaint, and as the Respondent has raised no valid defense, we find all the allegations of the complaint to be true and 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 Maine corporation with an office and place of business in Portland, Maine, is engaged as a plumbing and heating contractor. During the 12-month period ending March 11, 1992, the Respondent, in the conduct of its business operations, purchased and received at its Maine facility goods valued in excess of \$50,000 directly from points outside the State of Maine. Based on the foregoing, 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 also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ Indeed, the General Counsel notes in his Motion for Summary Judgment that for the pension fund the instant complaint seeks to recover payments for time periods not covered by the other judgment.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

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 full-time and regular part-time plumbers and pipefitters employed by Respondent in the territorial jurisdiction of Locals 217, 321, and 783, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry, but excluding all other employees, guards, and supervisors as defined in the Act.

About August 1989, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the bargaining unit employees by entering into a collective-bargaining agreement with the Union for the period July 13, 1988, through July 12, 1990. About July 15, 1991, the Respondent and the Union entered into a collective-bargaining agreement for the period from July 13, 1991, until July 12, 1992, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act.

The Respondent admits that for the period of July 13, 1991, until July 12, 1992, by virtue of Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the Respondent's employees in the above-described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

B. *The Violations*

Since about September 11, 1991, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement effective from July 13, 1991, to July 12, 1992, by failing and refusing to pay the Union's fringe benefit funds—the pension, health and welfare, annuity, and apprenticeship training and building funds—as required by that agreement and by failing to file the corresponding fringe benefit reports as required by section V of the agreement. The Respondent engaged in the above-described conduct without the Union's consent, and these terms and conditions of employment are mandatory subjects for the purpose of collective bargaining. We find that by these acts, the Respondent has violated Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By the conduct described above in the section entitled "The Violations," 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.

THE 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 remit to the Union's pension fund, health and welfare fund, annuity fund, and apprenticeship training and building fund, the contributions required under the collective-bargaining agreement effective from July 13, 1991, to July 12, 1992, that the Respondent failed to make,² and to file the corresponding fringe benefit reports as required by section V of that collective-bargaining agreement. The Respondent shall also reimburse its employees for any expenses ensuing from its failure to make contributions to the funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Golden Plumbing & Heating Co., Inc., Portland, Maine, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the parties' collective-bargaining agreement by failing and refusing to make payments to the Union's pension fund, health and welfare fund, annuity fund, and apprenticeship training and building fund, as required by the parties' collective-bargaining agreement, and failing to file the corresponding fringe benefit reports as required by section V of the parties' 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 Any additional amounts owed employee benefit funds shall be determined in accordance with the procedure set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

The Respondent shall not be required to pay the funds any amounts which it has already paid pursuant to judgments rendered in other jurisdictions for time periods covered by the instant complaint.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the Union's pension fund, health and welfare fund, annuity fund, and apprenticeship training and building fund, for any payments required by the collective-bargaining agreement effective from July 13, 1991, to July 12, 1992, that the Respondent failed to make, in the manner set forth in the remedy section of this decision.

(b) Make whole unit employees for any losses resulting from the Respondent's failure to make fringe benefit fund contributions, in the manner set forth in the remedy section of this decision.

(c) File the appropriate fringe benefit reports as required by section V of the collective-bargaining agreement.

(d) 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 amount of backpay due under the terms of this Order.

(e) Post at its facility in Portland, Maine, copies of the attached notice marked "Appendix."³ 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 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.

³ 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."

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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 to continue in effect all the terms and conditions of our collective-bargaining agreement by failing and refusing to make payments to the Union's pension fund, health and welfare fund, annuity fund, and apprenticeship training and building fund, as required by that agreement and WE WILL NOT fail to file the corresponding fringe benefit reports as required by section V 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 make whole the Union's pension fund, health and welfare fund, annuity fund, and apprenticeship and building fund for the contractually required payment we failed to make.

WE WILL make whole unit employees for any losses resulting from our failure to make contractually required fringe benefit contributions.

WE WILL file the appropriate fringe benefit reports as required by section V of our collective-bargaining agreement.

GOLDEN PLUMBING & HEATING CO., INC.