

F.C. Construction Corporation and Massachusetts Laborers' Benefit Funds. Case 1-CA-27879

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Massachusetts Laborers' Benefit Funds (the Funds) on December 13, 1990, the General Counsel of the National Labor Relations Board issued a complaint on January 25, 1991, against F.C. Construction Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. After properly being served copies of the charge and complaint, the Respondent filed an answer on February 8, 1991, and an amended answer on July 1, 1992. However, on April 30, 1993, the Respondent filed a withdrawal of answer and amended answer to complaint, in which the Respondent stated that it understood that a Motion for Summary Judgment would be filed and that the Respondent would not oppose such a motion.

On October 7, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 8, 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

Inasmuch as the Respondent has withdrawn its answer and amended answer to the complaint, all allegations of the complaint are admitted to be true. Accordingly, 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 Fall River, Massachusetts (the Fall River facility), has been engaged at various jobsites as a contractor in the construction industry. During the calendar year ending December 31, 1990, the Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 for enterprises within the Commonwealth of Massachusetts which are themselves directly engaged in interstate commerce. During this same period of time, the Respondent, in the course and conduct of its business operations, purchased and received at its Fall River Facility products, goods, and materials 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 the Massachusetts Laborers' District Council of the 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

At all times material, Associated General Contractors of Massachusetts, Inc. and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. (the Associations) have been organizations composed of various employers engaged in the construction industry, and which exist for the purpose, inter alia, of representing their employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. On or about June 1, 1988, the Associations and the Union entered into a collective-bargaining agreement (the 1988-1991 agreement), which by its terms is effective for the period June 1, 1988, through May 31, 1991. On or about May 4, 1983, the Respondent entered into an "Acceptance of Agreement and Declaration of Trust" which bound the Respondent to the terms and conditions of employment of the collective-bargaining agreement then in effect and all successor agreements, including the 1988-1991 agreement.

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 laborers employed by members of the Associations and the employers who have authorized said Associations to bargain on their behalf, including Respondent, but excluding guards and supervisors as defined in the Act.

By virtue of the 1988-1991 agreement, at all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is, the limited exclusive 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.¹

Since on or about July 1, 1990, the Respondent has failed and refused to pay the fringe benefits amounts which have become due as of, and since, July 1, 1990,

¹ The complaint's commerce data and unit description indicate that the Respondent is a construction-industry employer subject to the provisions of Sec. 8(f) of the Act. Accordingly, in the absence of an allegation that the bargaining relationship is actually based on Sec. 9(a) majority support, we find that the relationship was entered into pursuant to Sec. 8(f), and that the Union is therefore the limited Sec. 9(a) representative of the unit employees for the period covered by the contract. See *Electri-Tech, Inc.*, 306 NLRB 707 (1992).

under articles XI, XII, XIII, XIV, and XV of the 1988–1991 agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees, and the Respondent thereby has been engaging 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)(1) and (5) by failing to make contractually required fringe payments, 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), enf. 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), enf. 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, F.C. Construction Corporation, Fall River, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to pay fringe benefits amounts which have become due as of, and since, July 1, 1990, under articles XI, XII, XIII, XIV, and XV of the 1988–1991 collective-bargaining agreement, effective for the period June 1, 1988, through May 31, 1991, between Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL–CIO and the Associated General Contractors of Massachusetts, Inc. and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc.

(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 contractually required fringe benefit payments. The unit consists of the following employees:

All laborers employed by members of the Associations and the employers who have authorized said Associations to bargain on their behalf, including Respondent, but excluding guards and supervisors as defined in the Act.

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

(c) Post at its facility in Fall River, Massachusetts, copies of the attached notice marked "Appendix."² 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.

(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. October 28, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If 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 fail and refuse to pay fringe benefit amounts which have become due as of, and since, July 1, 1990, under articles XI, XII, XIII, XIV, and XV of the 1988-1991 collective-bargaining agreement, effective for the period June 1, 1988, through May 31, 1991, between Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL-CIO and the Associated General Contractors of Massachusetts, Inc. and the Building Trades

Employers' Association of Boston and Eastern Massachusetts, Inc.

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 unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required fringe benefit payments. The unit consists of the following employees:

All laborers employed by members of the Associations and the employers who have authorized said Associations to bargain on their behalf, including F.C. Construction Corporation, but excluding guards and supervisors as defined in the Act.

F.C. CONSTRUCTION CORPORATION