

Superior Plumbing Co., Inc. and Plumbers Local Union No. 68, AFL-CIO, a/w United Association of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO.
Case 16-CA-16456

May 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by the Union on December 23, 1993, the General Counsel of the National Labor Relations Board issued a complaint on March 18, 1994, against Superior Plumbing Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 21, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On April 26, 1994, 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. 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 April 5, 1994, notified the Respondent that unless an answer was received by April 12, 1994, 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 is a corporation with an office in Houston, Texas, where it is engaged in the plumbing service and repair business. During the 12-month period ending March 18, 1994, in conducting its business operations, it has provided services valued in excess of \$50,000 for Hines Interest at Texas Commerce Tow-

ers, Transwestern Property Company, and Houston Independent School District, enterprises within the State of Texas, and the Forum at Memorial Woods and Premisys Real Estate, Inc., enterprises outside the State of Texas, which are directly engaged in interstate commerce. 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 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen and apprentices employed by the Respondent within the territorial jurisdiction of the Union on any and all work recognized as plumbing work by the Building and Construction Trades Department, AFL-CIO, but excluding all other employees, guards, and supervisors as defined in the Act.

About September 29, 1992, the Respondent entered into an agreement whereby it agreed to be bound by and expressly assumed the terms and conditions of the collective-bargaining agreement between the Union and Mechanical Contractors Association of Houston, Inc., effective October 1, 1991, to September 30, 1994, and further agreeing to be bound by such future agreements unless timely notice was given. The Respondent, an employer engaged in the building and construction industry, as described above, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. For the period from September 29, 1992, to September 30, 1994, based on Section 9(a) of the Act, the Union is the limited exclusive bargaining representative of the unit.

Since about September 29, 1992, the Respondent has failed and refused to pay contractually mandated contributions to the following funds, based on the hours worked by its regular and temporary employees performing the work described above:

- (a) Houston Area Plumbing Joint Apprenticeship Fund;
- (b) Plumbers Welfare Plan;
- (c) U.A. Plumbers Local Union No. 68 Pension Fund; and
- (d) Vacation Savings Fund/Working Assessment.

Since about September 29, 1992, the Respondent has failed and refused to pay contractually mandated wage rates and overtime to its regular and temporary em-

employees performing the work described above. Contrary to article I of the collective-bargaining agreement, about the dates set opposite their respective names, the Respondent has employed the following-named employees to perform bargaining unit work without requesting the Union to furnish the Respondent an employee to perform such work:

Kevin Nunez	November 1992
Alvie King	June or July 1993

About August 19 and 25, 1993, in person, and on September 7, 1993, by letter, the Union requested that the Respondent adhere to article I, the exclusive hiring hall provisions, of the collective-bargaining agreement. The Respondent has, since about August 25, 1993, refused the Union's request to adhere to article I, the exclusive hiring hall provisions, of the collective-bargaining agreement. Since about September 29, 1992, November 1992, and August 26, 1993, the Respondent, by the conduct set forth above, has refused to adhere to and repudiated the collective-bargaining agreement. These terms and conditions set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the acts and 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 has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d) 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 and refusing to adhere to the collective-bargaining agreement by failing and refusing to pay contractually mandated contributions to fringe benefit funds, to pay contractually mandated wages and overtime, and to adhere to article I of the collective-bargaining agreement concerning the exclusive hiring hall, we shall order the Respondent to bargain, on request, with the Union and to adhere to the collective-bargaining agreement; to make whole its unit employees for its failure to pay contractual wages, overtime, 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), enfd. 444 F.2d 502 (6th Cir. 1971), including making all delinquent fund contributions, and paying any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and any expenses to unit employees ensuing from its failure to make the required contributions, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); and also to make whole unit employees or would-be unit employees for their loss of earnings or other benefits suffered by reason of its failure to adhere to the exclusive hiring hall provisions of the contract, including backpay and interest as described above.

ORDER

The National Labor Relations Board orders that the Respondent, Superior Plumbing Co., Inc., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to adhere to and repudiating the collective-bargaining agreement between Plumbers Local Union No. 68, AFL-CIO, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, and the Mechanical Contractors Association of Houston, Inc., effective October 1, 1991, to September 30, 1994, by failing to make contractually required contributions to the Houston Area Plumbing Joint Apprenticeship Fund, the Plumbers Welfare Plan, the U.A. Plumbers Local Union No. 68 Pension Fund, and the Vacation Savings Fund/Working Assessment, by failing and refusing to pay contractually mandated wage rates and overtime, and by failing to adhere to the exclusive hiring hall provisions of article I of the collective-bargaining agreement. The unit includes the following employees:

All journeymen and apprentices employed by the Respondent within the territorial jurisdiction of the Union on any and all work recognized as plumbing work by the Building and Construction Trades Department, AFL-CIO, but 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) On request, bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees.

(b) Adhere to the collective-bargaining agreement and make whole its unit employees, including making

all delinquent fund contributions, as set forth in the remedy section of this decision.

(c) 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.

(d) Post at its facility in Houston, Texas, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 16, 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.

Dated, Washington, D.C. May 31, 1994

James M. Stephens,	Member
Dennis M. Devaney,	Member
Charles I. Cohen,	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.

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."

WE WILL NOT refuse to adhere to or repudiate the collective-bargaining agreement between Plumbers Local Union No. 68, AFL-CIO, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO and the Mechanical Contractors Association of Houston, Inc., effective October 1, 1991, to September 30, 1994, by failing to make contractually required contributions to the Houston Area Plumbing Joint Apprenticeship Fund, the Plumbers Welfare Plan, the U.A. Plumbers Local Union No. 68 Pension Fund, and the Vacation Savings Fund/Working Assessment, by failing and refusing to pay contractually mandated wage rates and overtime, or by failing to adhere to the exclusive hiring hall provisions of article I of the collective-bargaining agreement. The unit includes the following employees:

All journeymen and apprentices employed by us within the territorial jurisdiction of the Union on any and all work recognized as plumbing work by the Building and Construction Trades Department, AFL-CIO, but 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, on request, bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative of our unit employees.

WE WILL adhere to the collective-bargaining agreement, including those provisions relating to fringe benefit funds, wages and overtime, and the exclusive hiring hall.

WE WILL make whole our unit employees for any loss of wages and benefits as a result of our failure to pay wages and benefits as required by the agreement, including making all delinquent fund contributions.

WE WILL make whole our unit employees and would-be unit employees for any loss of earnings and benefits suffered as a result of our failure to adhere to the terms of the collective-bargaining agreement relating to the exclusive hiring hall.

SUPERIOR PLUMBING CO., INC.