

**Gary Lee Nelson, Jr. and Donna Nelson, d/b/a Custom Trim and United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City and Vicinity, AFL-CIO.**  
Case 17-CA-17347

August 30, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND  
BROWNING

Upon a charge filed by United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City and Vicinity, AFL-CIO, on April 21, 1994, the General Counsel of the National Labor Relations Board issued a complaint on May 27, 1994, against Gary Lee Nelson, Jr. and Donna Nelson, d/b/a Custom Trim (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 August 1, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On August 3, 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 July 5, 1994, notified the Respondent that unless an answer were received immediately, 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 partnership with an office and place of business in Hendersonville, Tennessee, and

jobs in Kansas City, Missouri, has been a construction contractor in the building and construction industry. During the 12-month period ending October 31, 1993, the Respondent has purchased and received at its facility in Tennessee, goods valued in excess of \$50,000 directly from points outside the State of Tennessee. 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

At all times material, 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 employees employed by Respondent, including all journeymen and apprentice carpenters, lathers, millwrights and pile drivers, who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (to include work previously performed by Lathers) in the geographical area which extends to and includes the counties: Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas, excluding all office clerical employees, guards and supervisors as defined in the Act and all other employees.

About October 27, 1993, the Respondent entered into a contract stipulation, effective October 5, 1993, whereby it agreed to be bound by the terms and conditions of employment in the collective-bargaining agreement (the agreement), between the Union and the Builders Association of Missouri, which agreement is effective from May 1, 1993 until March 31, 1996, and agreed to be bound to such future agreements unless timely notice was given.

The Respondent, an employer engaged in the building and construction industry, 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 even been established under the provisions of Section 9(a) of the Act. For the period from October 5, 1993 to March 31, 1996, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.<sup>1</sup>

<sup>1</sup>In the absence of any need to determine in this proceeding whether the parties' relationship is governed by Sec. 9 or by Sec. 8(f), Member Browning would not reach that issue.

Since on or about October 21, 1993, the Respondent has failed to continue in effect all the terms and conditions of the agreement described above, by failing to make payments to the health and welfare fund, pension fund, and industry advancement and educational fund for its unit employees.

The Respondent engaged in the conduct described above without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the limited exclusive collective-bargaining representative of its employees, and has thereby 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.

#### 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 since October 21, 1993, to make contractually required payments to various benefit funds, we shall order the Respondent to make whole its unit employees by making all payments that have not been made since October 21, 1993, 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, 1216 (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.* 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).<sup>2</sup>

<sup>2</sup>Industry promotion and education funds are generally permissive subjects of bargaining for which no remedy would normally be warranted in this proceeding. See *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981), and cases cited there. However, as the record here fails to indicate the purposes of the industry advancement and educational fund, we shall leave this issue to compliance. See *Advanced Mechanical Corp.*, 313 NLRB 629 (1994); and *Harabedian Paving Co.*, 313 NLRB 1079 (1994). See also *Southwestern Steel & Supply*, 276 NLRB 1569, 1573-1574 fn. 9-10 (1985).

#### ORDER

The National Labor Relations Board orders that the Respondent, Gary Lee Nelson, Jr. and Donna Nelson, d/b/a Custom Trim, Hendersonville, Tennessee, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain with the United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City and Vicinity, AFL-CIO, as the limited exclusive bargaining representative of the employees in the following unit by failing to make contractually required contributions to fringe benefit funds on behalf of unit employees:

All employees employed by Respondent, including all journeymen and apprentice carpenters, lathers, millwrights and pile drivers, who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, (to include work previously performed by Lathers) in the geographical area which extends to and includes the counties: Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas, excluding all office clerical employees, guards and supervisors as defined in the Act and all other employees.

(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 all required contributions to the various fringe benefit funds on behalf of the unit employees, and make the unit employees whole for any loss of benefits or expenses resulting from its unlawful failure to do so since October 21, 1993, as set forth 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, 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 Hendersonville, Tennessee, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Acting

<sup>3</sup>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."

Regional Director for Region 17, 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.

#### 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 bargain with the United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City and Vicinity, AFL-CIO, as the limited exclusive bargaining representative of the employees in the following unit by failing to make contractually required contributions to the fringe benefit funds on behalf of unit employees:

All employees employed by us, including all journeymen and apprentice carpenters, lathers, millwrights and pile drivers, who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, (to include work previously performed by Lathers) in the geographical area which extends to and includes the counties: Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas, excluding all office clerical employees, guards and supervisors as defined in the Act and all other employees.

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 all required contributions to fringe benefit funds on behalf of the unit employees, and WE WILL make them whole for any loss of benefits or expenses resulting from our unlawful failure to do so since October 21, 1993.

GARY LEE NELSON, JR. AND DONNA  
NELSON, D/B/A CUSTOM TRIM