

**J. F. Barrett & Sons, Inc. and Donald J. Sebes, Jr.**  
Case 34-CA-6517

June 24, 1994

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS DEVANEY  
AND BROWNING

Upon a charge filed by Donald J. Sebes Jr., an individual, on March 8, 1994, the General Counsel of the National Labor Relations Board issued a complaint on April 19, 1994, against J. F. Barrett & Sons, Inc., 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 May 20, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On May 24, 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 May 4, 1994, notified the Respondent that unless an answer were received by May 11, 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, a Connecticut corporation with an office and place of business in Milford, Connecticut, has been engaged as a contractor performing excavation work in the building and construction industry. During the 12-month period ending March 31, 1994, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 to the

State of Connecticut, which is 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 International Brotherhood of Teamsters, Local 443, AFL-CIO, 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 drivers employed by the Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About May 1, 1990, the Respondent, an employer engaged in the building and construction industry, entered into a collective-bargaining agreement effective for the period May 1, 1990, to March 31, 1993, whereby it recognized the Union as the exclusive collective-bargaining representative of the unit. Since about May 1, 1990, pursuant to this agreement, the Union has been recognized as the exclusive collective-bargaining representative of the unit by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period April 1, 1993, to March 31, 1994. For the period from May 1, 1990, through March 31, 1994, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.<sup>1</sup>

Since September 9, 1993, the Respondent has unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the agreement effective from April 1, 1993, to March 31, 1994, by failing to make health and welfare fund contributions on behalf of all employees in the unit. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject 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.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has been failing and refusing to bargain col-

<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.

lectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and has thereby 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. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the health and welfare fund since September 9, 1993, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 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).

#### ORDER

The National Labor Relations Board orders that the Respondent, J. F. Barrett & Sons, Inc., Milford, Connecticut, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively with International Brotherhood of Teamsters, Local 443, AFL-CIO as the limited exclusive collective-bargaining representative of the following employees by unilaterally and without the consent of the Union failing to make contractually required health and welfare fund contributions on behalf of all unit employees:

All drivers employed by the Respondent; but excluding all other employees, and all guards, professional employees 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) Honor the terms of the collective-bargaining agreement which is effective for the period April 1,

1993, to March 31, 1994, by making the required health and welfare fund payments, and make whole its unit employees for its failure to do so by making all delinquent payments to the fund retroactive to September 9, 1993, and by reimbursing the employees for their expenses ensuing from its failure to make required payments, with interest, 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 Milford, Connecticut, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, 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. June 24, 1994

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William B. Gould IV, Chairman

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Dennis M. Devaney, Member

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Margaret A. Browning, 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.

<sup>2</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."

WE WILL NOT fail or refuse to bargain collectively with International Brotherhood of Teamsters, Local 443, AFL-CIO as the limited exclusive collective-bargaining representative of the following employees by unilaterally and without the consent of the Union failing to make contractually required health and welfare fund contributions on behalf of all unit employees:

All drivers employed by us, but excluding all other employees, and all guards, professional employees 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 honor the terms of the collective-bargaining agreement which is effective for the period April 1, 1993, to March 31, 1994, by making the required health and welfare fund payments, and WE WILL make whole our unit employees for our failure to do so by making all delinquent payments to the fund retroactive to September 9, 1993, and by reimbursing our unit employees for their expenses ensuing from our failure to make required payments, with interest.

J. F. BARRETT & SONS, INC.