

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

M. Maropakis Carpentry, Inc. and Local 580, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 29-CA-18471

March 15, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge filed by the Union on August 16, 1994, the General Counsel of the National Labor Relations Board issued a complaint on October 18, 1994, against M. Maropakis Carpentry, 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 February 13, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On February 16, 1995, 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 December 8, 1994, notified the Respondent that unless an answer were received by December 16, 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

At all material times, the Respondent, a New York corporation with an office and place of business at 533 63rd Street, Brooklyn, New York, has been a contractor in the building and construction industry engaged in providing carpentry and related services. During the 12 months preceding issuance of the complaint, the Respondent provided services valued in excess of \$50,000 to enterprises located within the State of New York, including the New York State Department of Parks, 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

From about April 1994 to about May 1994, the Respondent performed swimming pool renovation work for the New York State Department of Parks at Marcy Avenue, Brooklyn, New York (the Respondent's Marcy Avenue pool renovation jobsite).

The following employees employed by the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All welders employed by Respondent performing welding and related work at Respondent's Marcy Avenue pool renovation jobsite, excluding guards and supervisors as defined in the Act.

About April 14, 1994, the Respondent, in a telephone conversation, requested that the Union refer welders for assignment at the Respondent's Marcy Avenue pool renovation jobsite. During this same telephone conversation, the Union verbally requested the Respondent to sign a document (the jobsite agreement), whereby the Respondent would agree to apply the terms and conditions contained in a collective-bargaining agreement between the Union and Allied Building Metal Industries, Inc. (the Association), effective from July 1, 1993, to June 30, 1996 (the Association contract), to the Respondent's employees in the unit described above performing welding work, and, in consideration therefor, the Union agreed to refer to the Respondent unit employees to work at the Respondent's Marcy Avenue pool renovation jobsite.

About April 14, 1994, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit employees to be incorporated in a collective-bargaining agreement between

the Respondent and the Union and verbally agreed to execute the jobsite agreement described above.

By virtue of the conduct described above, 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 employees without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

By virtue of the conduct described above, the Union, pursuant to Section 9(a) of the Act, has been, and is, the limited exclusive representative of the unit employees for the purposes of collective bargaining with respect to pay, wages, hours of employment, and other terms and conditions of employment.

About April 14 and 18, 1994, verbally, and about April 26 and July 22, 1994, in writing, and at all times material since then, the Union has requested that the Respondent execute the written jobsite agreement described above which the Respondent had verbally agreed to do as discussed above.

Since about April 14, 1994, the Respondent has failed and refused to execute the jobsite agreement described above.

CONCLUSION OF LAW

By failing and refusing to execute the collective-bargaining agreement with the representative of its employees, 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.

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 failed and refused since April 14, 1994, to execute the jobsite agreement, we shall order the Respondent to execute the jobsite agreement as agreed by the parties, give retroactive effect to that agreement, and make the unit employees whole for any losses attributable to the Respondent's failure to execute and implement the agreement. Backpay shall be computed in accordance with *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, M. Maropakis Carpentry, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute the jobsite agreement with Local 580, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO as agreed on April 14, 1994.

(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) Execute and implement the jobsite agreement with the Union as it agreed to do on April 14, 1994, give retroactive effect to the agreement, and make the employees in the unit described below whole for any losses incurred as a result of the Respondent's failure to execute and implement the agreement, as set forth in the remedy section of this decision:

All welders employed by Respondent performing welding and related work at Respondent's Marcy Avenue pool renovation jobsite, 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 Brooklyn, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, 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.

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."

(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. March 15, 1995

William B. Gould IV, Chairman

Charles I. Cohen, Member

John C. Truesdale, 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.

WE WILL NOT fail and refuse to execute the jobsite agreement with Local 580, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO as agreed on April 14, 1994.

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 execute and implement the jobsite agreement with Local 580 as we agreed to do on April 14, 1994, give retroactive effect to the agreement, and make the employees in the unit described below whole for any losses incurred as a result of our failure to execute and implement the agreement:

All welders employed by us performing welding and related work at our Marcy Avenue pool renovation jobsite, excluding guards and supervisors as defined in the Act.

M. MAROPAKIS CARPENTRY, INC.