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Cromwell Plastering & Drywall, Inc. and Local 67, Operative Plasterers' and Cement Masons' International Association in The Detroit Area, AFL-CIO. Case 7-CA-36517

February 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed by the Union on October 27, 1994, the General Counsel of the National Labor Relations Board issued a complaint on December 9, 1994, against Cromwell Plastering & Drywall, 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 January 30, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On February 1, 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 30, 1994, notified the Respondent that unless an answer were received by January 13, 1995, 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 corporation, at its facility in Clio, Michigan, has been engaged in the business of plastering and application of wall surface materials for commercial customers. During the 12 months preceding the issuance of the complaint, the Respondent purchased and received at its Clio, Michigan facility goods and materials valued in excess of \$50,000 directly from points outside the State of Michigan. 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 apprentice plasterers employed by the Respondent at its Clio facility; but excluding office clerical employees, guards and supervisors as defined in the Act.

On June 1, 1991, the Respondent entered into an agreement whereby it agreed to be bound by all the terms and conditions including the payment of all fringe benefits as set forth in a collective-bargaining agreement between the Union and the Detroit Association of Wall and Ceiling Contractors (Association) effective June 1, 1991, and agreed to be bound to such future agreements unless timely notice was given.

About June 1, 1991, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the Respondent's 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. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period June 1, 1994, to May 31, 1995.

The collective-bargaining agreement between the Union and the Association provides that each employer bound thereby shall make regular monthly contributions and reports to the Union's fringe benefit funds for work performed by its employees covered by the agreement, for purposes of certain insurance, vacation, pension and other benefits for the employees; shall pay certain amounts as liquidated damages for untimely contributions; shall permit the trustees of the fringe

benefit funds or their authorized agents to perform an audit of such books and records necessary to verify the accuracy of the employer's fringe benefit contributions; and shall deduct union membership dues from employees' wages and remit them to the Union.

Since about April 1994, the Respondent has unilaterally and without notice to the Union, failed to make contributions on behalf of the unit employees to the fringe benefit funds and has failed to remit membership dues to the Union as provided for in the collective-bargaining agreement described above.

By letters dated July 26 and September 12, 1994, agents of the Union's fringe benefit funds requested to perform an audit of the Respondent's payroll and other records to determine the Respondent's extent of compliance with the fringe benefit contribution provisions of the collective-bargaining agreement.

Since about July 26, 1994, the Respondent has failed and refused to respond to the request for an audit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), 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 Respondent has violated Section 8(a)(5) and (1) by failing, since about April 1994, to make contractually required fringe benefit fund contributions, we shall order the Respondent to make whole its unit employees by paying all such delinquent contributions and any liquidated damages thereon, including any additional amounts applicable to such delinquent payments as determined in accordance with *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 pre-

scribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since April 1994, to remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such dues to the Union, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to allow agents of the Union's fringe benefit funds to conduct an audit of the Respondent's payroll and other records to determine the extent of its compliance with the fringe benefit contribution provisions of the collective-bargaining agreement, we shall order the Respondent to allow the agents of the Union's fringe benefit funds to conduct such an audit.

ORDER

The National Labor Relations Board orders that the Respondent, Cromwell Plastering & Drywall, Inc., Clio, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Local 67, Operative Plasterers' and Cement Masons' International Association in the Detroit Area, AFL-CIO, as the limited exclusive bargaining representative of the employees in the unit described below, by failing and refusing to make contributions on behalf of unit employees to fringe benefit funds; failing and refusing to remit to the Union dues deducted from the unit employees' wages as required by the collective-bargaining agreement; and failing and refusing to allow the agents of the Union's fringe benefit funds to conduct an audit of our payroll and other records to determine the extent of compliance with the fringe benefit contribution provisions of the collective-bargaining agreement:

All journeymen and apprentice plasterers employed by us at our Clio facility; but excluding office clerical 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.

¹To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(a) Comply with the terms of its collective-bargaining agreement with the Union by paying all contractually required fringe benefit fund contributions and liquidated damages thereon that have not been paid since April 1994, and make the unit employees whole for any expenses resulting from its failure to do so since April 1994, with interest, as set forth in the remedy section of this decision.

(b) Remit to the Union all dues deducted from the employees' wages that have not been remitted since April 1994, with interest, as set forth in the remedy section of this decision.

(c) Allow the agents of the Union's fringe benefit funds to conduct an audit of the Respondent's payroll and other records to determine the Respondent's extent of compliance with the fringe benefit contribution provisions of the collective-bargaining agreement.

(d) 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.

(e) Post at its facility in Clio, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, 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.

(f) 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. February 28, 1995

William B. Gould IV, Chairman

James M. Stephens, Member

Margaret A. Browning, 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 bargain collectively and in good faith with the Local 67, Operative Plasterers' and Cement Masons' International Association in the Detroit Area, AFL-CIO, as the limited exclusive representative of the employees in the unit described below, by failing and refusing to make contributions on behalf of unit employees to fringe benefit funds; failing and refusing to remit to the Union dues deducted from the unit employees' wages as required by the collective-bargaining agreement; and failing and refusing to allow the agents of the Union's fringe benefit funds to conduct an audit of our payroll and other records to determine the extent of compliance with the fringe benefit contribution provisions of the collective-bargaining agreement:

All journeymen and apprentice plasterers employed by us at our Clio facility; but excluding office clerical 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 comply with the terms of our collective-bargaining agreement with the Union by paying all contractually required fringe benefit fund contributions and liquidated damages thereon that have not been paid since April 1994, and WE WILL make the unit employees whole for any expenses resulting from our failure to do so since April 1994, with interest.

WE WILL remit to the Union all dues deducted from the employees' wages that have not been remitted since April 1994, with interest.

WE WILL allow the agents of the Union's fringe benefit funds to conduct an audit of our payroll and other records to determine the extent of our compliance with the fringe benefit contribution provisions of the collective-bargaining agreement.

CROMWELL PLASTERING & DRYWALL,
INC.