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Collana Brothers Construction Co. and International Union of Operating Engineers, Local No. 17. Case 3-CA-18800

April 27, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

Upon a charge filed by the Union on August 29, 1994, the General Counsel of the National Labor Relations Board issued a complaint on October 31, 1994, against Collana Brothers Construction Co., 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 3, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On April 5, 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 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 March 13, 1995, notified the Respondent that unless an answer was received by March 20, 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, with an office and place of business in Clarence Center, New York, has been engaged as a contractor in the building and construction industry. During the 12-

month period ending July 1994, the Respondent provided services valued in excess of \$50,000 for the New York State Department of Transportation, an enterprise 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

At all material times, the Labor Relations Division, Western New York Region, Associated General Contractors of America, New York State Chapter, Inc. (the AGC), has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members and other employers in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union.

About November 12, 1992, the AGC and the Union entered into a collective-bargaining agreement (the AGC Agreement) which is effective from July 1, 1993, to June 30, 1996.

About March 4, 1994, the Respondent entered into a written agreement which bound the Respondent to the terms and conditions of employment of the AGC Agreement.

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 described in Article III (Union Recognition and Security) of the collective-bargaining agreement between the AGC and the Union effective July 1, 1993 to June 30, 1996.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and at all material times has been recognized as the representative by the Respondent. This recognition has been embodied in successive prehire collective-bargaining agreements, the most recent of which is effective from July 1, 1993, to June 30, 1996.

By virtue of Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative for the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

By virtue of its authorization to be bound by the AGC's collective-bargaining agreement, the Respondent has been bound to the most recent prehire collective-bargaining agreement described above.

About July 22 and early August 1994, the Union requested, pursuant to article IV (grievance procedure and arbitration) of the AGC Agreement, that the Re-

spondent bargain collectively about the following subject: article XXVI (subcontracting), of the AGC Agreement.

Since about July 22, 1994, the Respondent has failed and refused to bargain collectively about the subject set forth above. This subject relates to wages, hours, and other terms and conditions of employment in the unit and is a mandatory subject for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith 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, we shall order the Respondent, on request, to bargain collectively with the Union about article XXVI (subcontracting), pursuant to article IV (grievance procedure and arbitration) of the AGC Agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Collana Brothers Construction Co., Clarence Center, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with International Union of Operating Engineers, Local No. 17, as the limited exclusive collective-bargaining representative of the unit employees about article XXVI (subcontracting), pursuant to article IV (grievance procedure and arbitration) of the AGC Agreement.

(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 with the Union about article XXVI (subcontracting), pursuant to article IV (grievance procedure and arbitration) of the AGC Agreement.

(b) Post at its facility in Clarence Center, New York, copies of the attached notice marked "Appendix."¹

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

Copies of the notice, on forms provided by the Regional Director for Region 3, 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.

(c) 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. April 27, 1995

James M. Stephens, Member

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 with International Union of Operating Engineers, Local No. 17, as the limited exclusive collective-bargaining representative of the unit employees about article XXVI (subcontracting), pursuant to article IV (grievance procedure and arbitration) of the AGC Agreement.

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 with the Union about article XXVI (subcontracting), pursuant to article IV (grievance procedure and arbitration) of the AGC Agreement.

COLLANA BROTHERS CONSTRUCTION
CO.