

**Eaton Electric, Inc. and Raymor Electrical Company and Schneider Electric Company and Star Brite Electric Corp. and Blake Electrical Contracting, Inc. and Chapman Electrical Contracting Co. and Falcone Electric Corp. and Feola Electric, Inc. and George F. Kolsch, Inc. and J.K. Electric Corp. and Modica & Reilly Electric Corp. and T. Reilly Electrical Corp. and Mondl Electric Co., Inc. and Paul Mock, Inc. and Star Electric Corp. and W.P.C. Electric Corp. and M & W Electric Corp. and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO.** Cases 29-CA-21456-5, 29-CA-21456-14, 29-CA-21456-15, 29-CA-21456-17, 29-CA-21456-27, 29-CA-21456-32, 29-CA-21456-35, 29-CA-21456-36, 29-CA-21456-38, 29-CA-21456-43, 29-CA-21456-48, 29-CA-21456-49, 29-CA-21456-50, 29-CA-21456-57, 29-CA-21456-64, 29-CA-21456-71, and 29-CA-21456-74

February 10, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon charges filed by the Union on September 30, 1997, the Acting General Counsel of the National Labor Relations Board issued a consolidated complaint on March 19, 1998, against 39 named Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act.<sup>1</sup> Although properly served copies of the charge and consolidated complaint, five of the Respondents failed to file an answer. These Respondents are: (1) Chapman Electrical Contracting Co.; (2) Feola Electric, Inc.; (3) Mondl Electric Co., Inc.; (4) W.P.C. Electric Corp.; and (5) M & W Electric Corp. (the five Respondents).

On December 24, 1998, the General Counsel filed a Motion for Summary Judgment with the Board regarding the five Respondents that had failed to file an answer. On December 30, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. None of the five Respondents, except Mondl Electric, filed a response.<sup>2</sup> The allegations in the motion as to the remaining four (the four Respondents) are therefore undisputed.

<sup>1</sup> Subsequently, by orders dated December 10 and 23, 1998, the Regional Director deleted several of the Respondents from the complaint.

<sup>2</sup> The motion clearly requests summary judgment as to the five Respondents but inadvertently omits Mondl from the list of Respondents in its description of the relief being sought. Because the motion clearly requests summary judgment as to Mondl, this omission does not preclude entry of the requested default order. However, we note that a notarized response to the Notice to Show Cause was filed by Boris Mandelbaum stating:

Enclosed is statement affirming Mondl Electric Co., Inc. of 236 East 80th St., New York City has ceased industry activity, employee labor and Local Union participation. Since year 1988.

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 separate letters dated June 12, 1998, notified Respondents Feola Electric, Inc., W.P.C. Electric Corp., and M & W Electric Corp. that unless an answer was received by June 19, 1998, a Motion for Summary Judgment would be filed.<sup>3</sup> To date, none of the four Respondents has filed an answer.

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 four Respondents, who, other than Respondent Chapman Electrical Contracting Co., are New York corporations with their principal offices and places of business located in the New York City metropolitan area, including each of the five boroughs of the City of New York, and Nassau, Suffolk, and Westchester Counties in the State of New York, have been engaged in providing electrical contracting services to other business firms and governmental agencies in and around New York City and vicinity. At all material times, Chapman Electrical Contracting Co., a New Jersey corporation, with its principal office and place of business located at RD 1, P.O. Box 6, Paterson, New Jersey, has been engaged in providing electrical contracting services to other business firms and governmental entities in and around New York City and vicinity. During the 12-month period preceding issuance of the complaint, the four Re-

There were no other statements enclosed.

While this response does not appear to be an answer, it does appear to be a pro se explanation as to why an answer was not filed and can be construed to controvert the complaint allegation that Mondl incurred a bargaining obligation in 1993. In these circumstances and particularly as a hearing is required on allegations against other parties to the case which have filed answers, we shall deny the motion as to Mondl and remand that case to the Regional Director for inclusion in the hearing.

Contrary to her colleagues, Member Liebman would grant the General Counsel's Motion for Summary Judgment as to Respondent Mondl on the ground that it, like the other four Respondents discussed *infra*, has not established good cause for the failure to file a timely answer.

<sup>3</sup> Although it appears that no further reminder letter was sent to Respondent Chapman Electrical Contracting Co., this does not warrant denying the General Counsel's Motion for Summary Judgment. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

spondents, in conducting their business operations described above, performed services valued in excess of \$50,000 for various enterprises and governmental entities located in the State of New York, each of which enterprises, in turn, is directly engaged in interstate commerce and meets a Board standard for the assertion of jurisdiction, exclusive of indirect inflow or indirect outflow. We find that the four Respondents are employers 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 United Electrical Contractors Association a/k/a United Construction Contractors Association (UECA) has been an organization composed of employers engaged primarily as electrical contractors in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. At all material times, the four Respondents have been, and are now, employer-members of UECA and, by virtue of the certification described below, are obligated to recognize and bargain collectively with the Union on a multiemployer basis on behalf of their employees in the bargaining unit described below.

The following employees of the employer-members of UECA, including the four Respondents, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by the employer-members of UECA, but excluding all office clerical employees, guards and supervisors as defined in the Act.

On February 23, 1993, the Union was certified as the exclusive collective-bargaining representative of the unit of employees described above. At all material times since February 23, 1993, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the employees in the unit set forth above, including the employees of the four Respondents who are in that unit, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of those unit employees.

On October 29, 1993, the Board issued a Decision and Order<sup>4</sup> which found, *inter alia*, that UECA and its employer-members, including the four Respondents, had violated Section 8(a)(1) and (5) of the Act by failing and refusing to honor the Certification of Representative described above. The Board directed UECA to bargain

with the Union, on request, concerning the terms and conditions of employment of the unit employees. Subsequently, on September 2, 1994, the U.S. Court of Appeals for the Second Circuit issued a judgment enforcing the Board's Order.

Since around October 1994, UECA and the Union have met on numerous occasions for the purpose of engaging in negotiations with respect to wages, hours, and other terms and conditions of employment of the unit employees, including employees of the four Respondents, but, to date, the parties have failed to reach an agreement.

At all material times since around April 1996, the employer-members of UECA, including the four Respondents, have been required to make monetary contributions to the Building Trades Educational Fund, the Building Trades Welfare Fund, and the Building Trades Annuity Fund (Building Trades Funds) which were established by UECA for the purpose of continuing to provide substantially equivalent medical, annuity, and training benefits to the unit employees which they enjoyed pursuant to the terms of collective-bargaining agreements between UECA and Local 363, International Brotherhood of Teamsters, AFL-CIO, the predecessor collective-bargaining representative prior to the certification of the Union on February 23, 1993.

At all material times, the employer-members of UECA, including the four Respondents, have been required to continue to make monetary contributions to the Teamsters Local 363 Pension Fund (Local 363 Pension Fund) which has, with the consent of the Union, continued to provide pension benefits to the unit employees, subsequent to the Union's certification.

At all material times, the employer-members of UECA, including the four Respondents, have transmitted periodic remittance reports to the Building Trades Funds and the Local 363 Pension Fund which set forth, *inter alia*, the amounts of their contributions to these two funds based on the hours worked for each of their respective unit employees, and the names and classifications of those employees.

On about October 31 and December 26, 1997, and January 9 and 15, 1998, the Union, in writing, requested representatives of UECA to have the employer-members of UECA, including the four Respondents, each furnish copies of their remittance reports transmitted to the Building Trades Funds and to the Local 363 Pension Fund, relating to the unit employees. On various other dates (presently unknown) during the 6-month period prior to the filing and service of the instant charges, the Union orally made the same request of UECA representatives at the various negotiation meetings with UECA described above.

On various dates presently unknown during the 6-month period preceding the filing and service of the charges, at various negotiation meetings with UECA, the

<sup>4</sup> 312 NLRB 1118 (1993).

Union orally requested that representatives of UECA have each of its employer-members, including the four Respondents, furnish the names, addresses, telephone numbers, and job classifications of their unit employees.

The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. At all material times, the four Respondents have failed and refused to furnish the Union the information requested by it.

#### CONCLUSION OF LAW

By the acts and conduct described above, the four Respondents have been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of their employees, 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 four Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the four Respondents to provide the requested information to the Union.

#### ORDER

The National Labor Relations Board orders that the Respondents, Chapman Electrical Contracting Co., Feola Electric, Inc., W.P.C. Electric Corp., and M & W Electric Corp., New York and vicinity, their officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO by failing and refusing to provide the Union with information requested by it on about October 31 and December 26, 1997, and January 9 and 15, 1998, and at other various unknown dates, which is necessary for, and relevant to, its performance of its function as the exclusive representative of the employees in the following appropriate unit:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by the employer-members of UECA, but excluding all 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.

(a) Furnish the Union with the names, addresses, telephone numbers, and job classifications of all unit em-

ployees they have employed since October 1997, and with copies of all remittance reports they have transmitted to the Building Trades Funds and the Local 363 Pension Funds since October 1997.

(b) Within 14 days after service by the Region, post at their facilities located at various places in New York, New York, New Jersey, and their environs copies of the attached notices marked "Appendix I-IV."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the various Respondents' authorized representatives, shall be posted by the Respondents 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 Respondents to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, any of the Respondents have gone out of business or closed the facilities involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since March 30, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 29-CA-21456-50 (*Mondl Electric*) is remanded to the Regional Director.

#### APPENDIX I

#### 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 Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO by failing and refusing to provide the Union with information requested by it on about October 31 and December 26, 1997, and January 9 and 15, 1998, and at other various unknown dates, which is necessary for, and relevant to, its performance of its function as the exclusive representative of the employees in the following appropriate unit:

<sup>5</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."

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by the employer-members of UECA, but excluding all 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 furnish the Union with the names, addresses, telephone numbers, and job classifications of all unit employees we have employed since October 1997, and with copies of all remittance reports we have transmitted to the Building Trades Funds and the Local 363 Pension Funds since October 1997.

CHAPMAN ELECTRICAL  
CONTRACTING CO.

#### APPENDIX II

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 Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO by failing and refusing to provide the Union with information requested by it on about October 31 and December 26, 1997, and January 9 and 15, 1998, and at other various unknown dates, which is necessary for, and relevant to, its performance of its function as the exclusive representative of the employees in the following appropriate unit:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by the employer-members of UECA, but excluding all 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 furnish the Union with the names, addresses, telephone numbers, and job classifications of all unit employees we have employed since October 1997, and with copies of all remittance reports we have transmitted to the Building Trades Funds and the Local 363 Pension Funds since October 1997.

FEOLA ELECTRIC, INC.

#### APPENDIX III

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 Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO by failing and refusing to provide the Union with information requested by it on about October 31 and December 26, 1997, and January 9 and 15, 1998, and at other various unknown dates, which is necessary for, and relevant to, its performance of its function as the exclusive representative of the employees in the following appropriate unit:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by the employer-members of UECA, but excluding all 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 furnish the Union with the names, addresses, telephone numbers, and job classifications of all unit employees we have employed since October 1997, and with copies of all remittance reports we have transmitted to the Building Trades Funds and the Local 363 Pension Funds since October 1997.

M & W ELECTRIC CORP.

#### APPENDIX IV

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 Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO by failing and refusing to provide the Union with information requested by it on about October 31 and December 26, 1997, and January 9 and 15, 1998, and at other various unknown dates, which is necessary for, and relevant to, its performance of its function as the exclusive representative of the employees in the following appropriate unit:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by the employer-members of UECA, but excluding all 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 furnish the Union with the names, addresses, telephone numbers, and job classifications of all unit employees we have employed since October 1997, and with copies of all remittance reports we have transmitted to the Building Trades Funds and the Local 363 Pension Funds since October 1997.

W.P.C. ELECTRIC CORP.