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Pirro Electrical Contracting, Inc. d/b/a Atlas Electrical Contracting,¹ and K&J Atlas, Inc. and International Brotherhood of Electrical Workers, Local Union 363. Cases 34-CA-8306 and 34-CA-8344

May 19, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND BRAME

Upon charges and an amended charge filed by the Union on April 1 and 23 and September 30, 1998, the General Counsel of the National Labor Relations Board issued an order consolidating cases, a consolidated complaint, and notice of hearing on September 30, 1998, against Pirro Electrical Contracting, Inc. d/b/a Atlas Electrical Contracting (Pirro) and K&J Atlas, Inc. (K&J), referred to as the Respondent, alleging that the Respondent has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. On October 20, 1998, the Respondent filed an answer to the consolidated complaint. On March 16, 1999, the Respondent withdrew its answer.

On March 29, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On March 31, 1999, 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 consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted.

By letter to the Region dated March 16, 1999, the Respondent withdrew its answer to the consolidated complaint, stating that it had filed for bankruptcy under Chapter 7, and it was withdrawing its answer in order to avoid any unnecessary inconvenience or expense to the Board and the parties. Such a withdrawal of an answer has the same effect as a failure to file an answer, i.e., the

allegations in the consolidated complaint must be considered to be true.²

Accordingly, based on the withdrawal of the Respondent's answer to the consolidated complaint, 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, Pirro, a New York corporation with an office and place of business in Suffern, New York, has been engaged as an electrical contractor in the building and construction industry. At all material times, K&J, a New Jersey corporation with an office and place of business in Mahwah, New Jersey, has been engaged as an electrical contractor in the building and construction industry. During the 12-month period ending August 31, 1998, Pirro, in conducting its operations, purchased and received at the Suffern facility goods valued in excess of \$50,000 directly from points located outside the State of New York. During the 12-month period ending August 31, 1998, K&J, in conducting its operations, purchased and received at the Mahwah facility goods valued in excess of \$50,000 directly from points located outside the State of New Jersey. We find that Pirro and K&J are, individually and collectively, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Brotherhood of Electrical Workers, Local Union 363, is a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Pirro and K&J have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises. Based on this, Pirro and K&J constitute a single integrated business enterprise and a single employer within the meaning of the Act

II. ALLEGED UNFAIR LABOR PRACTICES

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

All electricians, including journeyman and apprentices, employed by the Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About December 7, 1993, and February 24, 1995, the Respondent entered into Letters of Assent whereby it agreed to comply with, and be bound by, all of the terms

¹ The Respondent's name appears as amended in the General Counsel's Motion for Summary Judgment.

² See *Maislin Transport*, 274 NLRB 529 (1985).

and conditions contained in the collective-bargaining agreement between the Union and the Hudson Valley Chapter of the National Electrical Contractors' Association, effective January 1, 1990, through March 31, 1993, and September 1, 1994, through August 31, 1997, respectively, and agreed to be bound to such future agreements unless timely notice was given.

About December 7, 1993, and February 24, 1995, 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 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 September 1, 1997, to March 31, 2001. For the period from December 7, 1993,³ through March 31, 2001, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

On about March 18, 1998, the Respondent, by President Reina Pirro, interrogated job applicants by telephone about their union activities. Further, the Respondent, by Vice President Richard Pirro: about March 19, 1998, at the Suffern facility, threatened its employees with termination for engaging in union and other protected activities; about March 21, 1998, at one of the Respondent's jobsites, threatened its employees with termination for engaging in union and other protected activities; and about March 24, 1998, at one of the Respondent's jobsites, threatened its employees with more onerous working conditions for engaging in union and other protected activities.

Since March 19, 1998, the Respondent has failed to hire employees through the Union's hiring hall. About April 14, 1998, the Respondent reduced the hourly wage of its employee John Sager. About March 24, 1998, certain employees of the Respondent represented by the Union ceased work concertedly and engaged in a strike, caused by the unfair labor practices described above. About April 8 and 27, 1998, John Sager, an employee who engaged in the strike, made by letter an unconditional offer to return to his former position of employment, and since April 27, 1998, the Respondent has failed and refused to reinstate Sager to his former position of employment. The Respondent engaged in the conduct described above because its employees formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in such activities.

Since about March 19, 1998, the Respondent, unilaterally and without the consent of the Union, has failed to

continue in effect all the terms and conditions of the agreement described above by failing to adhere to the contractually required hourly wage provisions, failing to adhere to the contractually required exclusive hiring hall provisions, and failing to make the contractually required contributions to the National Employee Benefit Fund, the Welfare Fund, the Pension Fund, the Annuity Fund, and the Vacation and Paid Holiday Fund. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects of bargaining. The Respondent has engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act. In addition, by failing to hire employees through the Union's hiring hall, reducing the hourly wage of employee John Sager, and refusing to reinstate employee John Sager to his former position of employment, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act. Further, by its failure to honor the terms and conditions of its agreement with the Union as set forth above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act. The Respondent has thereby engaged in unfair labor practices affecting commerce within the meaning of 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)(1) and (3) of the Act by reducing the hourly wage of employee John Sager, and refusing to reinstate employee John Sager to his former position of employment, we shall order the Respondent to offer him full and immediate reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The

³ We correct the inadvertent error par. 21 of the consolidated complaint which refers to this date as December 7, 1990.

Respondent shall also be required to expunge from its files any and all references to the unlawful failure to reinstate, and to notify the discriminatee in writing that this has been done.

Further, having found that the Respondent violated Section 8(a)(5), (3), and (1) by failing to hire employees through the Union's hiring hall, we shall order the Respondent, pursuant to *J. E. Brown Electric*, 315 NLRB 620 (1994), to offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and to make them whole for any losses suffered by reason of the Respondent's failure to hire them. Backpay is to be computed in accordance with *F. W. Woolworth Co.*, supra, with interest as prescribed in *New Horizons for the Retarded* supra. Reinstatement and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceedings. *J. E. Brown*, supra.

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since March 19, 1998, to continue in full force and effect the terms and conditions of the 1997–2001 agreement described above by failing to adhere to the contractually required hourly wage provisions and failing to make the contractually required contributions to the National Employee Benefit Fund, the Welfare Fund, the Pension Fund, the Annuity Fund, and the Vacation and Paid Holiday Fund, we shall order the Respondent to comply with the terms and conditions of the agreement and to make whole its unit employees, and those employees who would have been referred, for any loss of earnings suffered by them as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *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*, supra.

Further, we shall order the Respondent to make whole its unit employees, and those employees who would have been referred, 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 its unit employees, and those employees who would have been referred, 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*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Pirro Electrical Contracting, Inc. d/b/a Atlas Electrical Contracting, and K&J Atlas, Inc., Suffern,

New York, and Mahwah, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating job applicants about their union activities.

(b) Threatening its employees with termination for engaging in union and other protected activities.

(c) Threatening its employees with more onerous working conditions for engaging in union and other protected activities.

(d) Failing to reinstate employee John Sager to his former position on his unconditional offer to return to work.

(e) Discriminatorily reducing the hourly wage of employee John Sager.

(f) Failing to continue in effect all the terms and conditions of its 1997–2001 agreement with the Union, particularly the contractually required hourly wage provisions, the exclusive hiring hall provisions, and the contractually required contributions to the National Employee Benefit Fund, the Welfare Fund, the Pension Fund, the Annuity Fund, and the Vacation and Paid Holiday Fund.

(g) 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) Within 14 days from the date of this Order, offer John Sager full and immediate reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make John Sager whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to reinstate and unlawfully reducing his hourly wage, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful failure to reinstate John Sager, and within 3 days thereafter, notify him in writing that this has been done and that the failure to reinstate will not be used against him in any way.

(d) Offer full and immediate reinstatement to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by reason of the Respondent's failure to hire them, with interest, in the manner set forth in the remedy section of this decision.

(e) Comply with the terms of its 1997–2001 agreement with the Union by honoring contractually required hourly wage provisions, contractually required exclusive hiring hall provisions, and making all contractually required payments or contributions.

(f) Make whole its unit employees, and those employees who would have been referred, with interest, for any loss of earnings, benefits or expenses ensuing from its failure, since March 19, 1998, to provide the contractually required wages and benefits, by making all delinquent fund contributions and reimbursing all such employees for any expenses ensuing from the Respondent's failure to make the required contributions, as set forth in the remedy section of this decision.

(g) Within 14 days of the date of this Order, offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and to make them whole for any losses suffered by reason of the Respondent's failure to hire them, with interest.

(h) Preserve and, within 14 days of a 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 back-pay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facilities in Suffren, New York, and Mahwah, New Jersey, copies of the attached notice marked Appendix.⁴ 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 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 19, 1999.

(j) 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.

Dated, Washington, D.C. May 19, 1999

John C. Truesdale, Chairman

Sarah M. Fox, Member

J. Robert Brame III, 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 interrogate job applicants about their union activities.

WE WILL NOT threaten our employees with termination for engaging in union and other protected activities.

WE WILL NOT threaten our employees with more onerous working conditions for engaging in union and other protected activities.

WE WILL NOT fail to reinstate employee John Sager on his unconditional offer to return to work.

WE WILL NOT discriminatorily reduce the hourly wage of employee John Sager.

WE WILL NOT fail to continue in effect all the terms and conditions of our 1997-2001 agreement with the Union, particularly the contractually required hourly wage provisions, the exclusive hiring hall provisions, and the contractually required contributions to the National Employee Benefit Fund, the Welfare Fund, the Pension Fund, the Annuity Fund, and the Vacation and Paid Holiday Fund.

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, within 14 days from the date of this Order, offer John Sager full and immediate reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make John Sager whole for any loss of earnings and other benefits suffered as a result of our unlawful failure to reinstate him and our unlawful reduction of his hourly wage, with interest.

⁴ If this Order is enforced by a judgment of the 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, within 14 days from the date of this Order, remove from our files any reference to our unlawful failure to reinstate John Sager, and within 3 days thereafter, notify him in writing that this has been done and that our failure to reinstate him will not be used against him in any way.

WE WILL offer full and immediate reinstatement to those applicants who would have been referred to us for employment by the Union were it not for our unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by reason of our failure to hire them, with interest.

WE WILL comply with the terms of our 1997–2001 agreement with the Union by honoring contractually required hourly wage provisions, the contractually required

exclusive hiring hall provisions, and making all contractually required payments or contributions.

WE WILL make whole our unit employees, and those employees who would have been referred, for any loss of earnings, benefits or expenses ensuing from our failure, since March 19, 1998, to provide the contractually required wage and benefits, with interest.

WE WILL, within 14 days of the date of this Order, offer immediate and full employment to those applicants who would have been referred to us for employment by the Union were it not for our unlawful conduct, and to make them whole for any losses suffered by reason of our failure to hire them, with interest.

PIRRO ELECTRICAL CONTRACTING, INC. D/B/A ATLAS
ELECTRICAL CONTRACTING, AND K&J ATLAS, INC.