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**D & E Roofing, L.L.C. and United Union of Roofers, Waterproofers and Allied Workers, Local 135, AFL-CIO.** Case 28-CA-16879

April 17, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN  
AND WALSH

Upon a charge filed by the Union on November 22, 2000, the Acting General Counsel of the National Labor Relations Board issued a complaint on January 30, 2001, against D & E Roofing, L.L.C., 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 March 12, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On March 15, 2001, 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 February 22, 2001, notified the Respondent that unless an answer was received by March 2, 2001, 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 Acting 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 limited liability corporation, with an office and place of business in Phoenix, Arizona, has been engaged in business as a roofing contractor in the commercial construction industry. During the 12-month period ending November 22, 2000, the Respondent, in conducting its business operations, pur-

chased and received at the Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Arizona. 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, Tom Edwards held the position of manager and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act. At all material times, Fran Edwards held the position of bookkeeper and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

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 full and part-time roofing employees including foremen, journeymen I and journeymen II, apprentices and pre-apprentices employed by the Respondent at its place of business and jobsites located within the State of Arizona within the counties of Apache, Gila, Coconino, Maricopa, Mohave, Navajo, Pinal, Yavapai, and Yuma, and the Navajo Reservation in its entirety, excluding Cononcito, Alamo, and Ramah; but excluding all guards and supervisors as defined in the Act.

Since about July 13, 1999, and at all material times, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement effective from July 13, 1999, to May 31, 2001 (the Agreement).

The Agreement provides for the payment by the Respondent of contributions on behalf of the unit into the Arizona Roofers Health and Welfare Trust Fund, the National Roofing Industry Pension Fund, and the Arizona Roofers Apprenticeship Trust Fund (J.A.C.), and Apprenticeship Training Program (the Funds).

The Agreement also provides for the payment by the Respondent of wage assignments on behalf of the unit received from the unit as initiation fees, dues, and assessments to be provided to the Union.

Since September 2000, the Respondent has failed and refused to make monthly payments to the Funds as described above and the Respondent has failed and refused to provide the Union with the collected wage assignments described above.

The above subjects relate to the wages, hours, and other terms and conditions of employment in the unit, and are mandatory subjects for the purposes of collective bargain-

ing. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees 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 the Respondent has violated Section 8(a)(5) and (1) of the Act by failing since September 2000 to make contractually required contributions to the Arizona Roofers Health and Welfare Trust Fund, the National Roofing Industry Pension Fund, and the Arizona Roofers Apprenticeship Trust Fund (J.A.C.), and Apprenticeship Training Program, we shall order the Respondent to make whole its unit employees 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 unit employees 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. 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 prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>1</sup>

Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union wage assignments that were deducted from the pay of unit employees as provided for in the contract, we shall order the Respondent to remit such withheld wage assignments to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

#### ORDER

The National Labor Relations Board orders that the Respondent, D & E Roofing, L.L.C., Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

<sup>1</sup> To the extent that an employee has made personal contributions to a fund that were 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) Failing and refusing, since September 2000, to make contractually required contributions to the Arizona Roofers Health and Welfare Trust Fund, the National Roofing Industry Pension Fund, and the Arizona Roofers Apprenticeship Trust Fund (J.A.C.), and Apprenticeship Training Program, and failing and refusing to provide the Union with the collected wage assignments.

(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) Make all contractually required contributions to the Arizona Roofers Health and Welfare Trust Fund, the National Roofing Industry Pension Fund, and the Arizona Roofers Apprenticeship Trust Fund (J.A.C.), and Apprenticeship Training Program that have not been made since September 2000, and provide the Union with the collected wage assignments, as set forth in the remedy section of this decision.

(b) Make whole the unit employees for any loss of benefits or expenses ensuing from its failure to make the required contributions to the funds from September 2000, with interest, as set forth in the remedy section of this decision.

(c) 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 backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Phoenix, Arizona, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, 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 September 2000.

<sup>2</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."

(e) 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. April 17, 2001

_____ John C. Truesdale,	Chairman
_____ Wilma B. Liebman,	Member
_____ Dennis P. Walsh,	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 make contractually required contributions to the Arizona Roofers Health and Welfare Trust Fund, the National Roofing Industry Pension Fund, and the Arizona Roofers Apprenticeship Trust Fund (J.A.C.), and Apprenticeship Training Program, and WE WILL NOT fail and refuse to provide the Union with the collected wage assignments.

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 honor the terms of our July 13, 1999, to May 31, 2001 contract by providing the United Union of Roofers, Waterproofers and Allied Workers, Local 135, AFL-CIO, with collected wage assignments.

WE WILL honor the terms of our July 13, 1999, to May 31, 2001 contract by making all contractually required payments to the Arizona Roofers Health and Welfare Trust Fund, the National Roofing Industry Pension Fund, and the Arizona Roofers Apprenticeship Trust Fund (J.A.C.), and Apprenticeship Training Program.

WE WILL make our employees whole for any loss of benefits or expenses ensuing from our failure to make the contractually required payments to the above-named funds, with interest.

D & E ROOFING, L.L.C.