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Criss Bros., Inc. and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Shopmen's Local Union No. 486, AFL-CIO. Case 5-CA-29480

November 19, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND WALSH

Upon a charge and amended charge filed by International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Shopmen's Local Union No. 486, AFL-CIO (the Union) on January 31 and March 9, 2001, the General Counsel of the National Labor Relations Board issued a complaint on May 31, 2001, against Criss Bros., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On September 20, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On September 25, 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.

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 August 7, 2001, notified the Respondent that unless an answer was received by August 21, 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 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 Maryland corporation with an office and place of business in Bladensburg, Maryland, has been engaged in the fabrication of iron, structural steel, and metal products. During the 12-

month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Bladensburg, Maryland facility goods valued in excess of \$50,000 directly from points outside the State of Maryland. 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 (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Company engaged in the fabrication of iron, steel, and metal products, or in maintenance work in or about the Company's plant or plants located at Bladensburg, Maryland, and vicinity. Excluding office or clerical employees, draftsmen, engineering employees, watchmen, employees engaged in erection, installation or construction work, and guards and supervisors as defined by the Act.

Since in or around 1948, and at all material times, 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 successive collective-bargaining agreements, the most recent of which was effective from April 1, 2000 to March 31, 2001 (the 2000 Agreement).

At all times since 1948, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Section 5 of the 2000 Agreement required that the Respondent deduct dues and fees from unit employees' earnings and mail to the Union a check made payable to the Union for the amount of dues and fees the Respondent has withheld.

After the March 31, 2001 expiration of the 2000 Agreement, and all material times thereafter, the Respondent has continued to deduct dues and fees from unit employees' earnings.

Since about July 1, 2000, the Respondent has failed and refused to remit union dues and fees to the Union.

On or about September 19, 2000, the Union filed a grievance alleging that, under section 14(j) of the 2000 Agreement, the Respondent failed to provide sick and accident benefits to employee Charles Holman.

Since about September 19, 2000, the Respondent has failed and refused to process and meet with the Union regarding the grievance described above.

Under section 13(g) of the 2000 Agreement, the Respondent is required to pay unit employees eligible to

receive vacation time the “vacation pay no later than the Friday prior to the starting of his/her vacation.”

On January 11, 2001, by letter of that date, the Respondent announced a change to section 13(g) of the 2000 Agreement, relating to the time that the Respondent would submit vacation payments to employees, by stating the following:

Vacation time is not paid in advance of vacation or in place of. On the Criss Bros. pay schedule you accrue hours per month, depending upon how many vacation days you are entitled to. With 30 days notice you may request what you have accrued and all vacation pay will be paid the week you are on vacation. [Emphasis added.]

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit, and is a mandatory subject for the purposes of collective bargaining.

The Respondent announced the change to section 13(g) of the 2000 Agreement described above without obtaining the Union’s agreement to the change.

On January 22, 2001, in preparations for negotiations toward a successor agreement, the Union requested, by letter of that date, that the Respondent furnish it with the cost of each fringe benefit, in cents per hour, and the cost of the average hourly wage rate for 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.

Since about January 22, 2001, the Respondent has failed and refused to furnish the Union with information relating to the cost, in cents per hour, of unit employees’ fringe benefits and wage rates as described above.

On or about February 15, 2001, the Union filed a grievance alleging that the Respondent refused to grant vacation time and pay to employee George Pettit.

Since about February 15, 2001, the Respondent has failed and refused to meet with the Union and to process the grievance described above.

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 repudiated provisions of the 2000 Agreement relating to section 19–Grievance Procedure, section 5–Check-off of Union Dues–Initiation and/or Reinstatement Fees, and section 13(g) of the Vacations provision, and has thereby engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act. The Respondent’s unfair labor practices affect 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)(5) and (1) of the Act by failing since July 1, 2000, to remit to the Union dues and fees deducted from unit employees’ earnings pursuant to section 5 of the 2000 Agreement, we shall order the Respondent to remit to the Union the dues and fees that the Respondent has withheld, including both during the term of the Agreement and since its expiration, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has unlawfully failed to meet with the Union and process grievances filed by the Union alleging that the Respondent failed to provide sick and accident benefits to employee Charles Holman and alleging that the Respondent refused to grant vacation time and pay to employee George Pettit, we shall order the Respondent to process these grievances and meet with the Union regarding them, pursuant to the terms of the parties’ expired collective-bargaining agreement.

Further, having found that the Respondent unlawfully announced a change in the contractual provision relating to the time that the Respondent must make vacation payments, we shall order the Respondent to rescind the change announced on January 11, 2001, restore and comply with the provisions set forth in section 13(g) of the 2000 Agreement, and make employees whole for any losses attributable to its 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*.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by refusing to provide the Union with the information it requested on January 22, 2001, we shall order the Respondent to furnish the information to the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Criss Bros., Inc., Bladensburg, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to remit to the International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, Shopmen’s Local Union No. 486, AFL–CIO, the union dues and fees that have been deducted from bargaining unit employees’ earnings since July 1, 2000. The unit is:

All production and maintenance employees of the Company engaged in the fabrication of iron, steel, and

metal products, or in maintenance work in or about the Company's plant or plants located at Bladensburg, Maryland, and vicinity. Excluding office or clerical employees, draftsmen, engineering employees, watchmen, employees engaged in erection, installation or construction work, and guards and supervisors as defined by the Act.

(b) Failing and refusing to meet with the Union and process grievances filed by the Union.

(c) Announcing changes in contractual provisions without obtaining the Union's consent to the change.

(d) Failing and refusing to furnish the Union with the information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(e) 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) Remit to the Union the union dues and fees that have been deducted from employees' earnings since July 1, 2000, with interest, as set forth in the remedy section of this decision.

(b) Meet with the Union, process the grievances filed by the Union on September 19, 2000 and February 15, 2001 alleging, respectively, that the Respondent failed to provide sick and accident benefits to employee Charles Holman and refused to grant vacation time and pay to employee George Pettit, and comply with the terms of section 19 of the parties' 2000-2001 agreement.

(c) Rescind the change announced on January 11, 2001 in the contractual provision relating to the time that the Respondent must make vacation payments, comply with the terms of section 13(g) of the parties' 2000-2001 Agreement, and make employees whole for any losses attributable to its unlawful conduct, in the manner set forth in the remedy section of this decision.

(d) Furnish the Union with the information it requested on January 22, 2001 concerning the cost of each fringe benefit, in cents per hour, and the cost of the average hourly wage rate for unit employees.

(e) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit set forth above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic

form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Bladensburg, Maryland, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 5, 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 July 1, 2000.

(h) 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., November 19, 2001

Peter J. Hurtgen,	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 remit to the International Association of Bridge, Structural, Ornamental, and

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 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."

Reinforcing Iron Workers, Shopmen's Local Union No. 486, AFL-CIO, the union dues and fees that we have deducted from bargaining unit employees' earnings since July 1, 2000. The unit is:

All production and maintenance employees of the Company engaged in the fabrication of iron, steel, and metal products, or in maintenance work in or about our plant or plants located at Bladensburg, Maryland, and vicinity. Excluding office or clerical employees, draftsmen, engineering employees, watchmen, employees engaged in erection, installation or construction work, and guards and supervisors as defined by the Act.

WE WILL NOT fail and refuse to meet with the Union and process grievances filed by the Union.

WE WILL NOT announce changes in contractual provisions without obtaining the Union's consent.

WE WILL NOT fail and refuse to furnish the Union with information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

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 remit to the Union the union dues and fees that we have deducted from employees' earnings since July 1, 2000, with interest.

WE WILL meet with the Union, process the grievances filed by the Union on September 19, 2000 and February 15, 2001 alleging, respectively, that we failed to provide sick and accident benefits to employee Charles Holman and that we refused to grant vacation time and pay to employee George Pettit, and WE WILL comply with section 19 of our 2000-2001 agreement with the Union.

WE WILL rescind the change announced on January 11, 2001 in the contractual provision relating to the time that we must make vacation payments, WE WILL comply with the terms of section 13(g) of our 2000-2001 agreement with the Union, and WE WILL make employees whole for any losses attributable to our unlawful conduct, with interest.

WE WILL, furnish the Union with the information it requested on January 22, 2001 concerning the cost of each fringe benefit, in cents per hour, and the cost of the average hourly wage rate for unit employees.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees in the appropriate unit set forth above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

CRISS BROS., INC.