Associated Interior Contractors, Inc. and Advanced Interior Contractors, Inc. *and* New England Regional Council of Carpenters, AFL-CIO. Cases 34–CA–9885 and 34–CA–9976

May 15, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel in this case seeks summary judgment on the ground that the Respondents have failed to file an answer to the complaint. Upon charges filed by the Union on October 22, 2001, amended January 2, 2002, and another charge filed on January 2, 2002, the Regional Director issued a consolidated complaint on February 28, 2002, against Associated Interior Contractors, Inc. and Advanced Interior Contractors, Inc., the Respondent. The complaint alleges that the Respondents have violated Section 8(a)(5) and (1) of the Act.[6]

The consolidated complaint required the Respondents to file an answer by March 14, 2002, which they did not do. On March 15, 2002, the Respondents, through counsel, requested a postponement of the June 24 hearing date. On March 22, 2002, counsel for the General Counsel informed Respondents' counsel by letter that an answer was overdue, and extended the deadline to March 29, 2002. On March 29, 2002, Respondent's counsel filed an answer to the original unfair labor practice charge, but not to the consolidated complaint.

On April 4, 2002, the General Counsel filed a Motion for Summary Judgment (dated April 1, 2002) with the Board alleging that the Respondents failed to file an answer that was both proper and timely. After receiving the Motion for Summary Judgment, on April 3, the Respondents attempted to file with the Regional Office a motion for extension of time, nunc pro tunc, and an answer to the consolidated complaint.

On April 9, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On April 23, the Respondents filed an opposition to the General Counsel's Motion for Summary Judgment, to which the General Counsel filed a reply, followed by a memorandum in further support of its opposition filed by the Respondents.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[6] That consolidated complaint also specified that a hearing on the unfair labor practice allegations would commence on June 24, 2002.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides 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 complaint will be considered admitted. Further, the Region, by letter dated March 22, 2002, notified the Respondents that unless an answer was received by March 29, 2002, a Motion for Summary Judgment would be filed.

Rule 102.20 specifies that the answer must "specifically admit, deny, or explain each of the facts alleged in the *complaint*." (Emphasis added.) The "answer" the Respondents filed on March 29, merely denies the unfair labor practice charge and restates the Respondents' precomplaint position. Thus, it does not constitute a proper answer to the complaint under Rule 102.20. *All American Fire Protection*, 336 NLRB 767, 768 (2001); *Service Chemical Supply Corp.*, 325 NLRB 647, 648 (1998); *Mail Handlers Local 329 (Postal Service)*, 319 NLRB 847 (1995).

Nor do we find that the Respondents have demonstrated good cause for failing to file a timely answer. First, we reject the Respondents' argument that their March 29 submission should be deemed an adequate "answer" based on the claim by Respondents' counsel that, because he did not receive a copy of the consolidated complaint, the unfair labor practice charge was the only document to which a timely answer could be filed. This argument does not account for the fact that the Respondents themselves received the consolidated complaint (Motion for Summary Judgment Exh. H) or excuse the inadequacy of the "answer" based on the delinquency of their counsel. See, e.g., *Sherwood Coal Co.*, 252 NLRB 497 (1980). This assertion also does not explain how Respondents' counsel could have requested a postponement of the June 24 hearing date without seeing the only document containing that date, the consolidated complaint.

Second, although the Board has previously afforded some latitude to pro se litigants who offer precomplaint statements of position in lieu of formal answers to complaints, the Board has stated that it "will only rarely encounter circumstances" where such statements of position are procedurally adequate. *Central States Xpress, Inc.*, 324 NLRB 442, 444 (1997). We have also allowed late amendments to procedurally defective answers for pro se litigants who later retain counsel. *Century Parking, Inc.*, 327 NLRB 21, 22 (1998). Here, conversely, the Respondents have at all relevant times been repre-

sented by legal counsel, whose arguments we have found unpersuasive.[7]

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 Respondents, Connecticut corporations, with an office and place of business in Vernon, Connecticut, have been engaged as contractors in the construction industry doing commercial construction. On or about January 28, 2000, Respondent Advanced was established by Respondent Associated as a subordinate instrument to and a disguised continuation of Respondent Associated.

At all material times Respondent Associated and Respondent Advanced 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 to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise. Accordingly, at all material times Respondents have been alter egos and a single employer within the meaning of the Act.

During the 12-month period ending January 31, 2002, the Respondents, in conducting their business operations, have purchased and received at the Vernon facility goods valued in excess of $50,000 directly from points located outside the State of Connecticut.

We find that the 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 following employees of the Respondents (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All full-time and regular part-time carpenters, tapers, apprentices, and laborers employed at the Vernon, Connecticut facility; but excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

On or about August 6, 1999, the Union was certified as the exclusive collective-bargaining representative of the unit. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about September 30, 1999, Respondent Associated entered into the "New England Regional Council of Carpenters Agreement," whereby it agreed to accept and abide by the collective-bargaining agreements between various contractor associations and the United Brotherhood of Carpenters and Joiners of America in Connecticut, Rhode Island, and Massachusetts.

Since on or about July 2, 2001, the Respondents have failed to continue in full force and effect all the terms of the agreement entered into on September 30, 1999, by failing to apply its terms to unit employees employed by Respondent Advanced. The terms and conditions of that agreement relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining. The Respondents engaged in this conduct without the Union's consent and without giving prior notice and opportunity to the Union to bargain with Respondents with respect to these matters.

On August 3, 2001, the Union requested that Respondent Associated furnish the Union with certain information regarding its relationship with Respondent Advanced, which information is relevant for and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since on or about August 3, 2001, Respondent Associated has failed and refused to furnish the Union with this information.

Conclusion

By failing to continue in full force and effect the terms of the collective-bargaining agreement, by failing to apply its terms to unit employees employed by Respondent Advanced, and by failing and refusing to provide the Union with requested information that is relevant for and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, the Respondents have 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.[8]

[7] Because the Respondents have not filed an answer under Rule 102.20, there is also no answer to amend under Rule 102.23 (Amendment). Nor will the Respondents' untimely answer attached to its "Opposition to the General Counsel's Motion for Summary Judgment" filed in response to the Notice to Show Cause be accepted. *Wheeler Mfg. Co.*, 296 NLRB 6 (1989).

[8] We find that, by their failure to file a proper answer, the Respondents have admitted that the Union requested information regarding the relationship between the Respondents, and that this information was necessary for and relevant to the Union's performance of its duties as exclusive bargaining representative. Contrary to our dissenting col-

REMEDY

Having found that the 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, having found that the Respondents have violated Sections 8(a)(5) and (1) by failing since July 2, 2001, to continue in full force and effect the terms of the collective-bargaining agreement by failing to apply its terms to unit employees employed by Respondent Advanced, and by failing and refusing to provide the Union with requested information that is relevant for and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, we shall order the Respondents to continue in full force and effect the terms of the collective-bargaining agreement and apply its terms to unit employees employed by Respondent Advanced, and to provide the Union with the information it requested. We shall also order the Respondents to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondents' failure to apply the terms of the contract to unit employees employed by Respondent Advanced. In addition, we shall order the Respondents to make whole the unit employees by making any contractually-required fringe benefit fund contributions that have not been made on behalf of employees since July 2, 2001, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1312, 1316 (1979).[9] Further, we shall require the Respondents to reimburse the unit employees for any expenses ensuing from its failure to make the required contributions since July 2, 2001, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall 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).[10]

ORDER

The National Labor Relations Board orders that the Respondents, Associated Interior Contractors, Inc. and Advanced Interior Contractors, Inc., Vernon, Connecticut, their officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing to continue in full force and effect the terms of the collective-bargaining agreement entered into on September 30, 1999, by failing to apply its terms to unit employees employed by Respondent Advanced Interior Contractors, Inc.

(b) Failing and refusing to provide the Union with information that is relevant and necessary to the performance of its duties as the exclusive representative of the employees in the unit below:

> All full-time and regular part-time carpenters, tapers, apprentices, and laborers employed at the Vernon, Connecticut facility; but excluding office clerical employees, and guards, professional employees and supervisors as defined in the Act.

(c) 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 purposes of the Act.

(a) Give full force and effect to the terms of the collective-bargaining agreement entered into on September 30, 1999.

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league, we do not find that this information request was rendered moot by the fact that the Respondents, by failing to answer, have admitted that they are alter egos and a single employer. In our view, the requested information regarding the relationship between the two companies remains relevant to the Union for purposes of representing the bargaining-unit employees.

Contrary to his colleagues, Chairman Battista would not find an 8(a)(5) information violation. In his view, there is serious question as to whether pars. 13 to 15 of the consolidated complaint are sufficiently specific to support the finding of a violation. The complaint states only that the Respondents refused to provide "certain" information regarding the relationship of the Respondents, without further explanation. However, Chairman Battista concludes that he need not resolve this issue because he finds that, in any event, the allegation is moot. That is, the Respondents have admitted, by their nonanswer, their alter ego and single-employer status. The requested information was relevant to the resolution of that issue, and the admission resolves that issue.

[9] To the extent that an employee has made personal contributions to a benefit or other fund that has been accepted by the fund in lieu of the Respondents' delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the fund.

[10] In the complaint, the General Counsel seeks an order requiring the Respondents "to reimburse any discriminatee entitled to a monetary award in this case for any extra federal and/or state income taxes that would or may result from the lump sum payment of the award." This aspect of the General Counsel's proposed Order would involve a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1985), enfd. 762 F.2d 990 (2d Cir. 1985). In light of this, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB 811 fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order here. *Esztergalyos Enterprises*, 337 NLRB No. 74 fn. 3 (2002) (not reported in Board volumes).

(b) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its refusal to comply with the collective-bargaining agreement since July 2, 2001, with interest, as set forth in the remedy section of this decision.

(c) Make all contractually-required benefit fund contributions, if any, that have not been made on behalf of unit employees since July 2, 2001, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, in the manner set forth in the remedy section of this decision.

(d) Provide the Union with the information that it requested on August 3, 2001.

(e) 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.

(f) Within 14 days after service by the Region, post at the Respondents' facility in Vernon, Connecticut, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondents' authorized representative, 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, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 2, 2001.

(g) 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 Respondents have taken to comply.

[6] 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."

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to continue in full force and effect all the terms of the collective-bargaining agreement entered into on September 30, 1999, by failing to apply its terms to unit employees of Advanced Interior Contractors, Inc.

WE WILL NOT fail to provide the New England Regional Council of Carpenters, AFL–CIO with information that is relevant and necessary to the performance of its duties as the exclusive representative of the employees in the following unit:

> All full-time and regular part-time carpenters, tapers, apprentices, and laborers employed at the Vernon, Connecticut facility; but excluding office clerical employees, and guards, professional employees 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 your rights under Section 7 of the Act.

WE WILL give full force and effect to the collective-bargaining agreement entered into on September 30, 1999.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our refusal to comply with the collective-bargaining agreement since July 2, 2001, with interest.

WE WILL make all contractually-required benefit fund contributions, if any, that have not been made on behalf of unit employees since July 2, 2001, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL provide the Union with the information that it requested on August 3, 2001.

ASSOCIATED INTERIOR CONTRACTORS, INC.
AND ADVANCED INTERIOR CONTRACTORS, INC.