

**Allen Carr Electrical Contracting Co., Inc. and  
Local Union 501, International Brotherhood of  
Electrical Workers, AFL-CIO. Case 2-CA-  
17250**

December 23, 1980

**DECISION AND ORDER**

**BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND ZIMMERMAN**

Upon a charge filed on May 16, 1980, by Local Union 501, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union, and duly served on Allen Carr Electrical Contracting Co., Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint and notice of hearing on June 26, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent failed and refused to make periodic contributions on behalf of its employees, to the various fringe benefit funds maintained and participated in by the Union as provided for by terms of the current collective-bargaining agreement between Respondent and the Union; refused to furnish relevant and necessary payroll information to the Union; withdrew recognition of the Union; and refused to recognize and bargain with the Union.

On October 3, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on October 10, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has filed no response to the Notice To Show Cause and, accordingly, the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegations in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent on June 26, 1980, specifically stated that unless an answer to the complaint was filed within 10 days from the service thereof "all of the allegations contained in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, on July 17, 1980, in a letter sent by regular mail, and again on August 12, 1980, in a letter sent by both regular and certified mail and mailed to both of Respondent's known addresses, Respondent was advised that an answer to the complaint had not been received, and that summary judgment would be sought unless an answer to the complaint was filed by August 19, 1980. On or about September 8, 1980, the aforesaid return receipts mailed to both of Respondent's known addresses were returned to Region 2 by the Post Office and were stamped "unclaimed." As noted above, Respondent has not filed an answer to the complaint, nor did it respond to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF RESPONDENT**

Allen Carr Electrical Contracting Co., Inc., is, and has been at all times material herein, a New York corporation, with an office and place of business in White Plains, New York, herein called its facility, and places of business at various jobsites

throughout the State of New York. Respondent is engaged in business as an electrical contractor in the building and construction industry. During the 12 months preceding the issuance of the complaint, Respondent, in the course and conduct of its business operations, purchased and received at its facility and at its other places of business in the State of New York products, goods, and materials valued in excess of \$50,000 from other enterprises, including Garfield Wolar Electrical Corp., located within the State of New York, each of which other enterprises had received the said products, goods, and materials directly from points outside the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

Local Union 501, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. *The Unit*

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

All full-time and regular part-time electricians and electrician apprentices employed by Respondent, exclusive of all other employees, guards and supervisors as defined in Section 2(11) of the Act.

At all times material herein, a majority of the employees in the above-described unit have designated or selected the Union as their representative for the purposes of collective bargaining with Respondent.

### B. *The Request To Bargain and Respondent's Refusal*

The collective-bargaining agreement in effect between the Union and Respondent for the period from May 28, 1977, to May 30, 1980, provided, *inter alia*, that Respondent make periodic contributions on behalf of its employees in the above-described unit to various fringe benefit funds maintained or participated in by the Union. Since on or about November 16, 1979, Respondent has failed and refused to make such periodic contributions for said employees.

Since on or about April 25, 1980, Respondent has refused to allow a union auditor to examine Respondent's payroll records and has thereafter failed and refused to furnish the Union with payroll information regarding certain employees in the above-described unit.

Accordingly, we find that, by the aforesaid conduct, Respondent has withdrawn its recognition of the Union and has refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to make periodic contributions to various fringe benefit funds maintained or participated in by the Union including, *inter alia*, the Joint Apprenticeship and Training Fund, the National Electrical Benefit Fund, the National Electrical Industry Fund, the Vacation Holiday Fund, the Welfare Fund, the Pension Fund, and the Security Benefit Fund, and by refusing to allow a union auditor to examine its payroll records and thereafter refusing to furnish the Union with certain payroll information. In order to dissipate the effect of these unfair labor practices, we shall order Respondent to make whole its employees by paying the contributions to the aforementioned various fringe benefit funds which should have been made pursuant to the terms of their written agreement, retroactive to November 16, 1979,<sup>1</sup> and to allow a union auditor

<sup>1</sup> Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully

to examine its payroll records to gather information.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### CONCLUSIONS OF LAW

1. Allen Carr Electrical Contracting Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union 501, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time electricians and electrician apprentices employed by Respondent, exclusive of all other employees, guards, and supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing to make periodic contributions on behalf of its employees in the above-described unit to various fringe benefit funds maintained or participated in by the Union, refusing to allow a union auditor to examine its payroll records to gather certain information and thereafter refusing to furnish certain payroll information requested by the Union, and, by its actions, withdrawing recognition of the Union, Respondent has refused to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit. Respondent has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

withheld fund payments. We leave to the compliance stage the question whether Respondent Allen Carr Electrical Contracting Co., Inc., must pay any additional amounts into the benefit funds in order to satisfy our "make whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. *Merryweather Optical Company*, 240 NLRB 1213 (1979).

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Allen Carr Electrical Contracting Co., Inc., White Plains, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local Union 501, International Brotherhood of Electrical Workers, AFL-CIO, by failing and refusing to make periodic contributions on behalf of its employees in the above-described unit to various fringe benefit funds maintained or participated in by the Union, refusing to allow a union auditor to examine its payroll records to gather certain information and thereafter refusing to furnish certain payroll information requested by the Union, and, by its actions, withdrawing recognition of the Union and its bargaining obligation to the Union with respect to said employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Make whole its employees by making contributions into the various fringe benefit funds in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Allow a union auditor to examine its payroll records to gather information and to, thereafter, furnish certain payroll information requested by the Union.

(d) Preserve and, upon 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.

(e) Post at its facility in White Plains, New York, and at its places of business at various jobsites

throughout the State of New York copies of the attached notice marked "Appendix."<sup>2</sup> Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>2</sup> In the event that 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

WE WILL NOT refuse to bargain collectively with Local Union 501, International Brotherhood of Electrical Workers, AFL-CIO, by failing and refusing to make periodic contributions on behalf of its employees in the unit described below to various fringe benefit funds maintained or participated in by the Union, by

refusing to allow a union auditor to examine our payroll records to gather certain information and thereafter refusing to furnish certain payroll information requested by the Union, and by withdrawing recognition of the Union and our bargaining obligation to the Union with respect to said employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time electricians and electrician apprentices employed by Respondent, exclusive of all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

WE WILL make our employees whole by paying to the various fringe benefit funds the contributions which should have been made pursuant to the terms of our written agreement with the above-named Union.

WE WILL allow a union auditor to examine our payroll records to gather information and to, thereafter, furnish to the Union certain payroll information requested by the Union.

ALLEN CARR ELECTRICAL CONTRACTING CO., INC.