William Minter Masonry Contractor Inc. *and* **International Union of Bricklayers and Allied Craftsmen, Local No. 1 of Tucson, Arizona** *and* **Southern Arizona Masonry Association and International Union of Bricklayers and Allied Craftsmen, Local No. 1, Tucson, Arizona, Health and Welfare Trust Fund and Tucson Bricklayers Pension Trust Fund.** Cases 28-CA-5764-1 and 28-CA-5764-2

September 15, 1980

DECISION AND ORDER

Upon charges filed on March 13, 1980, by International Union of Bricklayers and Allied Craftsmen, Local No. 1 of Tucson, Arizona, herein called the Union, and by Southern Arizona Masonry Association and International Union of Bricklayers and Allied Craftsmen, Local No. 1, Tucson, Arizona, Health and Welfare Trust Fund and Tucson Bricklayers Pension Trust Fund, herein called the Fund, and duly served on William Minter Masonry Contractor, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 28, issued a complaint and notice of hearing on April 24, 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.

With respect to the unfair labor practices, the complaint alleges in substance that since 1973 the Union has been recognized by Respondent as the exclusive collective-bargaining representative for all trade employees of Respondent over whom the Union has jurisdiction as defined by the Building and Construction Trades Department of the AFL-CIO. Further, the complaint alleges that, commencing on or about September 15, 1979, and at all times thereafter, Respondent has unilaterally discontinued payments to the fringe benefit trust funds, failed to pay administrative fees and file monthly reports, and discontinued remitting sums deducted from its employees' wages for union dues to the depository designated by the Union, all in derogation of the parties' current collective-bargaining agreement. Respondent has failed to file an answer to the complaint.

On June 23, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on July 7, 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.

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

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides:

> 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 allegation 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 specifically states that, unless an answer to the complaint is filed within 10 days of service thereof, all of the allegations in the complaint shall be deemed to be true and may be so found by the Board. As noted above, Respondent has failed to file an answer to the complaint, and has failed to file a response to the Notice To Show Cause.

Under the rule set forth above, no good cause having been shown for the failure to file a timely answer, 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

Respondent is, and has been at all material times herein, an Arizona corporation engaged in business as a general contractor in the building and construction industry. During the past 12 months, Respondent purchased and caused to transported in interstate commerce to its place of business in Arizona goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Arizona.

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

International Union of Bricklayers and Allied Craftsmen, Local No. 1 of Tucson, Arizona, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Bargaining Representative*

1. 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 trade employees of the Employer over whom the Union has jurisdiction as such jurisdiction is defined by the Building and Construction Trades Department of the AFL-CIO.

2. The recognition

Since 1973 Respondent and the Union have entered into a series of collective-bargaining agreements providing, *inter alia*, for the recognition of the Union as the exclusive representative of Respondent's employees in the unit described above. As a voluntarily recognized bargaining representative, the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *Respondent's Refusal To Bargain*

Respondent is signatory to a collective-bargaining agreement between the Union and the Southern Arizona Masonry Association, effective from July 1, 1979, to June 30, 1982. That agreement has the following pertinent provisions:

(a) Pursuant to article X, Respondent is required to make monthly payments, based on the hours worked by its unit employees, to the various trust funds established thereunder, including health and welfare, pension, apprenticeship training, and industry promotion, and to make payments for fees to administer the industry promotion program.

(b) Also pursuant to article X, Respondent is required to file monthly reports with the applicable trust funds covering the amount of moneys due to the funds.

(c) Pursuant to article XI, Respondent is required to make monthly remittances to the depository designated by the Union of sums deducted by Respondent from the wages of its unit employees pursuant to valid union dues-checkoff authorizations.

Commencing on or about September 15, 1979, and at all times thereafter, Respondent, without notice to the Union or without affording the Union an opportunity to bargain, has unilaterally discontinued payments to the fringe benefit trust funds, has failed to pay the administrative fees, has unilaterally discontinued filing the required monthly reports, and has unilaterally discontinued remitting sums deducted from its employees' wages for union dues to the depository designated by the Union, all in derogation of the current collective-bargaining agreement. Accordingly, we find that Respondent has, since September 15, 1979, and at all times thereafter, unlawfully repudiated provisions of its collective-bargaining agreement with the Union, thus 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 shall order Respondent to make whole the employees in the unit found appropriate herein by making all fringe benefit trust fund payments which should have been made pursuant to the terms of the July 1, 1979, to June 30, 1982, collective-bargaining agreement between Respondent and the Union.[1] Further, we

[1] 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 withheld fund payments. We leave to the compliance stage the question of whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at

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shall order Respondent to remit sums that it deducted or should have deducted from its employees' wages for union dues to the depository designated by the Union, with interest thereon, to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[2] We shall also order Respondent to file certain monthly reports pursuant to the collective-bargaining agreement, and to honor its contract with the Union.

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

CONCLUSIONS OF LAW

1. William Minter Masonry Contractor, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Bricklayers and Allied Craftsmen, Local No. 1 of Tucson, Arizona, is a labor organization within the meaning of Section 2(5) of the Act.

3. All trade employees of Respondent over whom the Union has jurisdiction as such jurisdiction is defined by the Building and Construction Trades Department of the AFL-CIO constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 1973 the above-named labor organization has been and now is the recognized and 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 abrogating certain provisions of the current collective-bargaining agreement since on or about September 15, 1979, and at all times thereafter, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid abrogation of the collective-bargaining agreement, 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 and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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, William Minter Masonry Contractor, Inc., Tucson, Arizona, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to make monthly payments, based on the hours worked by its unit employees, to various fringe benefit trust funds, including health and welfare, pension, apprenticeship training, and industry promotion, as well as payments for fees to administer the industry promotion program, pursuant to its collective-bargaining agreement with the Union.

(b) Failing and refusing to file monthly reports with the applicable trust funds covering the amount of money due under its collective-bargaining agreement with the Union.

(c) Failing and refusing to make monthly remittances to the depository designated by the Union for the receipt of union dues it deducted or should have deducted from its unit employees' wages pursuant to valid checkoff authorizations under its collective-bargaining agreement with the Union.

(d) 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) Honor the contract provisions providing for monthly payments to various fringe benefit trust funds, including health and welfare, pension, apprenticeship training, and industry promotion, and for payment for fees to administer the industry promotion, program, and, in the manner set forth in "The Remedy" section of this Decision and Order, remit to the Union or the Fund all payments that should have been made pursuant to the collective-bargaining agreement between the parties.

(b) Prepare and file the monthly reports covering the amount of money due to the trust funds as required in the collective-bargaining agreement between the parties.

(c) Honor the contract checkoff provisions and the valid dues-checkoff authorizations, and remit to the depository designated by the Union dues it deducted or should have deducted pursuant to the collective-bargaining agreement between the parties, with interest, to be computed in the manner set forth in "The Remedy" section of this Decision and Order.

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issue and, where there are no governing provisions, by evidence of any 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 cost, etc., but not collateral losses.

[2] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(d) Post at its place of business in Tucson, Arizona, copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 28, 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.

(e) Notify the Regional Director for Region 28, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[3] 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 unilaterally, and without affording the Union an opportunity to bargain, discontinue monthly payments, based on the hours worked by our unit employees, to various fringe benefit trust funds, including health and welfare, pension, apprenticeship training, and industry promotion, as well as payments for fees to administer the industry promotion program, pursuant to our collective-bargaining agreement with the Union.

WE WILL NOT unilaterally discontinue and refuse to file monthly reports with the applicable trust funds covering the amount of money due under our collective-bargaining agreement with the Union.

WE WILL NOT unilaterally discontinue and refuse to make monthly remittances to the depository designated by the Union for the receipt of union dues we deducted or should have deducted from our unit employees' wages pursuant to valid checkoff authorizations under our collective-bargaining agreement with the Union.

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 honor the contract provisions providing for monthly payments to various fringe benefit trust funds, including health and welfare, pension, apprenticeship training, and industry promotion, as well as payments for fees to administer the industry promotion program, and remit to the Union or the Fund all payments that should have been made pursuant to our collective-bargaining agreement with the Union.

WE WILL prepare and file the monthly reports covering the amount of money due to the trust funds, as required in our collective-bargaining agreement with the Union.

WE WILL honor the contract checkoff provisions and the valid dues-checkoff authorizations, and remit to the depository designated by the Union dues we deducted or should have deducted pursuant to our collective-bargaining agreement with the Union, with interest.

WILLIAM MINTER MASONRY CONTRACTOR, INC.