

A.R.C. Industries, Inc. and Piledrivers, Bridge, Dock Builders and Divers, Local Union No. 2520, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 19-CA-11765

April 18, 1980

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND TRUESDALE

Upon a charge filed on September 14, 1979, by Piledrivers, Bridge, Dock Builders and Divers, Local Union No. 2520, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called the Union, and duly served on A.R.C. Industries, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 19, issued a complaint and notice of hearing on October 31, 1979, 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, 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.

On January 28, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based on Respondent's failure to file an answer as required by Sections 102.20 and 102.21 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended. Subsequently, on February 5, 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 did not file a response to the Notice To Show Cause and, accordingly, the allegations of the complaint 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:

The respondent shall, within 10 days from the service of the complaint, file an answer there-

to. 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 on October 31, 1979, specifically stated that unless an answer to the complaint was filed within 10 days from the service thereof "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, on November 26, 1979, a copy of the charge and of the complaint and notice of hearing were duly served on Respondent by an agent of Region 19 by leaving said documents at the home of Respondent's president. Finally, Respondent was notified by letter dated December 4, 1979, 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 December 14, 1979. 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 rules 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.¹

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

At all times material herein, Respondent, an Alaskan corporation, with its principal office and place of business in Anchorage, Alaska, has been engaged in the business of marine construction. During the past fiscal year, a representative period, Respondent, in the course and conduct of its business operations, sold and shipped goods or provided services from its facilities within the State of Alaska to customers outside the said State, or sold and shipped goods or provided services to customers within said State, which customers were them-

¹ *Eagle Truck and Trailer Rental Division of E.T. & T. Leasing, Inc.*, 211 NLRB 804 (1974).

selves engaged in interstate commerce by other than indirect means, of a total value in excess of \$50,000.

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

Piledrivers, Bridge, Dock Builders and Divers, Local Union No. 2520, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

The Unit

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

All piledriver, bridge and dock construction employees, and divers employed by the Respondent in the State of Alaska, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all crane operators and other employees represented by the International Union of Operating Engineers, Local 302, AFL-CIO.

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*

On or about May 17, 1979, Respondent signed a prehire agreement, permissible under Section 8(f) of the Act, whereby it agreed to be bound by the terms of a collective-bargaining agreement (herein called the AGC agreement) which has been, at all times material herein, in effect between the Union and the Association of General Contractors.

On or about May 17, 1979, and thereafter, Respondent hired employees, a majority of whom were members in good standing of the Union, through hiring procedures set forth in the AGC agreement and otherwise commenced application of the terms of that agreement to its employees in the above-described unit.

Since July 25, 1979, and continuing to date, Respondent has unilaterally and without notice to or discussion with the Union ceased to apply the terms of the AGC agreement to its employees in the above-described unit, failed or refused to make trust contributions covering fringe benefits for said employees for hours already worked thereunder, and, otherwise, by its actions, repudiated the agreement and its bargaining obligation to the Union with respect to said employees.

Accordingly, we find that, by the aforesaid conduct, Respondent has, since July 25, 1979,² and at all times thereafter, 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 the 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 unilaterally, and without notice to or discussion with the Union, ceasing to apply the terms of the AGC agreement to its employees in the above-described unit and by failing or refusing to make trust contributions covering fringe benefits for said employees for hours already worked. In order to dissipate the effect of these unfair labor practices, we shall order Respondent to make whole its employees by paying to the aforementioned trust fund contributions which should have been made pursuant to the terms of their written agreement, retroactive to July 25, 1979.³

² See Sec. 10(b) of the Act.

³ Because of 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

Continued

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

CONCLUSIONS OF LAW

1. A.R.C. Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Piledrivers, Bridge, Dock Builders and Divers Local Union No. 2520, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All piledrives, bridge and dock construction employees, and divers employed by the Respondent in the State of Alaska, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all crane operators and other employees represented by the International Union of Operating Engineers, Local 302, AFL-CIO, 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 unilaterally, and without notice to or discussion with the Union, ceasing to apply the terms of the AGC agreement to its employees in the above-described unit, failing or refusing to make trust contributions covering fringe benefits for said employees for hours already worked thereunder, and, by its actions, repudiating the agreement and its bargaining obligation to the Union with regard to said employees, 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 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 en-

question whether Respondent A.R.C. Industries, 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 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 costs, etc., but not collateral losses. *Merryweather Optical Company*, 240 NLRB No. 169 (1979).

gaged 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, A.R.C. Industries, Inc., Anchorage, Alaska, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Piledrivers, Bridge, Dock Builders and Divers, Local Union No. 2520, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by unilaterally, and without notice to or discussion with the aforesaid Union, ceasing to apply the terms of the AGC agreement to its employees in the above-described unit, by failing or refusing to make trust contributions covering fringe benefits for said employees for hours already worked thereunder, and by its actions, repudiating the agreement 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 trust fund covering fringe benefits in the manner set forth in the section of this Decision entitled "The Remedy."

(c) 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.

(d) Post at its facility in Anchorage, Alaska, copies of the attached notice marked "Appendix."⁴

⁴ 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" *Continued*

Copies of said notice, on forms provided by the Regional Director for Region 19, 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 19, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

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 Piledrivers, Bridge, Dock Builders and Divers, Local Union No. 2520, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by unilaterally and without notice to or discussion with that Union ceasing to apply the terms of the AGC agreement to its employees in the unit described below, by fail-

ing or refusing to make contributions covering fringe benefits for said employees for hours already worked thereunder, and by repudiating the agreement 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 piledrivers, bridge and dock construction employees, and divers employed by the Respondent in the State of Alaska, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all crane operators and other employees represented by the International Union of Operating Engineers, Local 302, AFL-CIO.

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

A.R.C. INDUSTRIES, INC.