

Washington Sprinkler, Inc. and Road Sprinkler Fitters Local Union 669, UA, AFL-CIO. Cases 5-CA-31925 and 5-CA-32016

March 31, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges filed by the Union in Case 5-CA-31925 on May 6, 2004, and in Case 5-CA-32016 on July 19, 2004, the General Counsel issued the consolidated complaint on October 29, 2004, against Washington Sprinkler, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On December 20, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On December 22, 2004, 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 Default 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 (complaint) affirmatively stated that unless an answer was filed by November 12, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 23, 2004, notified the Respondent that unless an answer was received by December 3, 2004, a motion for default 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 default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Washington, D.C. corporation, with an office and place of business in the District of Columbia, has been engaged in the business of the installation and maintenance of fire protection systems.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in

conducting its business operations described above, performed services valued in excess of \$50,000 in States other than the District of Columbia, and performed services valued in excess of \$50,000 within the District of Columbia.

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 Road Sprinkler Fitters Local Union 669, UA, AFL-CIO 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 constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act:

All Journeymen Sprinkler Fitters and Apprentices in the employ of the Employer, who are engaged in all work as set forth in Article 18 of the collective-bargaining agreement.

At all material times, the National Fire Sprinkler Association, Inc. (the Association) has been an organization composed of various employers engaged in the sprinkler installation industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union.

On or about September 10, 2003, the Respondent entered into an agreement with the Union whereby it agreed to abide by the collective-bargaining agreement between the Union and the Association effective April 1, 2000.

The Respondent, an employer engaged in the building and construction industry, as described above, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in the collective-bargaining agreement, which is effective for the period April 1, 2000, to March 31, 2005.¹

Since on or about February 27, 2004, the Union, by Business Manager Bradley M. Karbowsky, has requested that the Respondent furnish the Union with the following information

(a) A list of all jobs, including job name, specific job location, and whether the job is active, completed, or under contract; and

¹ The complaint alleges that the Respondent is a construction industry employer and that it granted recognition to the Union without regard to whether the Union had established majority status. Accordingly, we find that the relationship was entered into pursuant to Sec. 8(f) and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See, e.g., *A.S.B. Closure, Ltd.*, 313 NLRB 1012 (1994).

(b) A list of all employees employed by the Respondent on the jobs listed above, including the employee's name, address, job classification, hours worked, rate of pay, amount of benefits paid, and travel expenses or subsistence received.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit.

Since on or about February 27, 2004, the Respondent, by Owner Kedrick Evans, has failed and refused to furnish the Union with the information requested by it as set forth above.

Since on or about January 19, 2004, the Respondent has refused to adhere in any manner to the collective-bargaining agreement by, among other things, utilizing nonunion employees to perform work in the District of Columbia that is within the jurisdiction of the collective-bargaining agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.²

² The complaint also alleges that the Respondent violated Sec. 8(a)(5) and (1) of the Act "by failing to make fund payments as required by the collective-bargaining agreement." However, neither the complaint nor the motion identifies those funds. The Board has held that certain types of benefit funds are permissive subjects of bargaining for which no remedy would be warranted. See, e.g., *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981) (industry advancement fund). There is no indication here as to the nature of the funds involved. In these circumstances, we decline to find that the Respondent violated the Act by refusing to make contributions to these unspecified funds. Accordingly, the General Counsel's motion is denied with respect to this allegation, and the matter is remanded to the Regional Director for further appropriate action. Nothing herein will require a hearing if, in the event of an appropriate amendment to the complaint, the Respondent again fails to answer, thereby making admissions that would permit the Board to find the alleged violation. In such circumstances, the General Counsel may renew the motion for default judgment with respect to the amended complaint allegations. See *J & D Masonry, Inc.*, 343 NLRB No. 73 (2004); *Cray Construction Group LLC*, 341 NLRB 944 (2004).

Contrary to her colleagues, Member Liebman would grant the General Counsel's motion in all respects. See my dissent on this issue in *J & D Masonry*, supra at slip op. 1 fn. 2. Further, the absence of an allegation that the funds at issue are mandatory subjects of bargaining is not a basis for denying the General Counsel's motion on this allegation. Pension, health and welfare, and training funds, typically found in construction industry collective-bargaining agreements, are mandatory subjects of bargaining. See, e.g., *Crest Litho*, 308 NLRB 108, 109 (1992). Because the Respondent has not contested the allegations of the complaint, Member Liebman would grant the General Counsel's

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) by failing and refusing to adhere in any manner to the collective-bargaining agreement by, among other things, utilizing nonunion employees to perform work in the District of Columbia that is within the jurisdiction of the collective-bargaining agreement, we shall order the Respondent to comply with the terms and conditions of that agreement. We shall also order the Respondent to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to adhere to the collective-bargaining agreement, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to provide relevant and necessary information requested by the Union on February 27, 2004, we shall order the Respondent to provide the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Washington Sprinkler, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Road Sprinkler Fitters Local Union 669, UA, AFL-CIO as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All Journeymen Sprinkler Fitters and Apprentices in the employ of the Employer, who are engaged in all work as set forth in Article 18 of the collective-bargaining agreement.

(b) Failing to adhere to the terms and conditions of the 2000-2005 collective-bargaining agreement by, among other things, utilizing nonunion employees to perform work in the District of Columbia that is within the jurisdiction of the collective-bargaining agreement.

(c) Failing and refusing to furnish the Union with information that is relevant and necessary to the perform-

motion in all respects, and would order the Respondent to make all the fund payments due under the agreement unless it shows in the compliance proceeding that any of the contributions are to benefit funds considered to be permissive subjects of bargaining for which no remedy would be warranted.

ance of its duties as the exclusive bargaining representative of the unit.

(d) 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) Recognize and, on request, bargain in good faith with the Union as the limited exclusive representative of the unit employees.

(b) Comply with the terms and conditions of employment of the unit employees contained in the 2000–2005 collective-bargaining agreement.

(c) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its failure, since on or about January 19, 2004, to adhere to the provisions of the collective-bargaining agreement, with interest, as set forth in the remedy section of this Decision.

(d) Furnish the Union with the information it requested on February 27, 2004.

(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 its facility in Washington, D.C., copies of the attached notice marked “Appendix.”³ 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

³ 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.”

to all current employees and former employees employed by the Respondent at any time since January 19, 2004.

(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 Respondent has taken to comply.

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 refuse to recognize and bargain with Road Sprinkler Fitters Local Union 669, UA, AFL–CIO as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All Journeymen Sprinkler Fitters and Apprentices in our employ, who are engaged in all work as set forth in Article 18 of the collective-bargaining agreement.

WE WILL NOT fail to adhere to the terms and conditions of the 2000–2005 collective-bargaining agreement by, among other things, utilizing nonunion employees to perform work in the District of Columbia that is within the jurisdiction of the collective-bargaining agreement.

WE WILL NOT fail and refuse to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit.

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 recognize and, on request, bargain in good faith with the Union as the limited exclusive representative of the unit employees.

WE WILL comply with the terms and conditions of employment of the unit employees contained in the 2000–2005 collective-bargaining agreement.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our failure, since on or about January 19,

2004, to adhere to the provisions of the collective-bargaining agreement, with interest.

WE WILL furnish the Union with the information it requested on February 27, 2004.

WASHINGTON SPRINKLER, INC.