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Southern New England Erectors Corp. and International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local 7, AFL-CIO. Case 1-CA-46418

September 30, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER
AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that Southern New England Erectors Corp. (the Respondent) has failed to file an answer to the complaint. Upon a charge and a first amended charge filed on October 4 and November 30, 2010, and a second amended charge filed on April 21, 2011, by International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local 7, AFL-CIO (the Union), the Acting General Counsel issued a complaint and notice of hearing on April 29, 2011, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On June 20, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. On June 22, 2011, 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 complaint affirmatively stated that unless an answer was received by May 13, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. On May 24, 2011, counsel for the Acting General Counsel, by email, sent to the Respondent another copy of the complaint advising that an answer should be filed by noon on Friday, May 27, 2011. On June 3, 2011, the regional attorney for Region 1, by certified mail, electronic mail, and regular mail, informed the Respondent that no answer to the complaint had been received and that if no answer was received by June 8, 2011, a motion for summary judgment would be filed. On June 10,

2011, the regional attorney for Region 1, by certified mail, electronic mail, and regular mail, again informed the Respondent that unless an answer was received by June 17, 2011, a motion for default judgment would be filed. The Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and we grant the Acting 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 Massachusetts corporation with a principal office and place of business located in Whitinsville, Massachusetts, has been engaged as a steel-erection contractor in the construction industry doing commercial and industrial construction.

In the calendar year ending December 31, 2010, the Respondent, in conducting its operations described above, provided construction services valued in excess of \$50,000 for Bridgewater State College and other employers in Massachusetts that are directly engaged in interstate commerce.

In the calendar year ending December 31, 2010, the Respondent, in conducting its business operations described above, purchased and received at its Whitinsville location goods valued in excess of \$5000 directly from points located outside the Commonwealth of Massachusetts.

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 the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, Roy M. Goodwin Jr. held the position of the Respondent's general manager, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

2. At all material times, the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. (the BTEA) has been an organization composed of various employers, one purpose of which is to represent its employer-members in negotiating and administering agreements with various labor organizations, including the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local 7, AFL-CIO.

3. At all material times, the Labor Relations Division of the Associated General Contractors of Massachusetts,

Inc. (the AGC) has been an organization composed of various employers, one purpose of which is to represent its employer-members in negotiating and administering agreements with various labor organizations, including the Union.

4. On about September 16, 2004, the BTEA, the AGC, and the Union entered into a collective-bargaining agreement, effective from September 16, 2004, to September 15, 2010.

5. About August 20, 2008, the Respondent entered into an "Acceptance of Agreements and Declarations of Trust," whereby it agreed to be bound by five collective-bargaining agreements, including the agreement between the Union, the BTEA, and the AGC (the BTEA/AGC agreement), effective from September 16, 2004, to September 15, 2010, and agreed to be bound to such future agreements unless timely notice was given.

6. About September 16, 2010, the Union, the BTEA, and the AGC agreed to a successor collective-bargaining agreement to the BTEA/AGC agreement, effective from September 16, 2010, to September 15, 2015 (the 2010–2015 BTEA/AGC agreement).

7. At no time prior to September 16, 2010, did the Respondent provide timely notice of its intent not to be bound to future agreements.

8. At all material times since August 20, 2008, the following employees of the Respondent, the unit, have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees who perform the work set forth in Article I entitled "Craft Jurisdiction" of the agreement between the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 7 and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc.

9. Since on or about August 20, 2008, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and, since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a recognition agreement dated August 20, 2008.¹

¹ The complaint also alleges that at all material times since August 20, 2008, based on Sec. 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. However, we find it unnecessary to reach the question of whether the Union's representative status is governed by Sec. 8(f) or Sec. 9(a) of the Act. It is undisputed that the Respondent expressly agreed to be bound by future BTEA/AGC agreements unless it gave timely notice to the contrary, and it is undisputed that no such notice was given. Accordingly, the Respondent is bound by 2010–2015 BTEA/AGC agreement, and it was

10. About September 16, 2010, the Respondent withdrew recognition from the Union as the exclusive collective-bargaining representative of the unit.

11. Since about September 16, 2010, the Respondent has refused to adhere to the 2010–2015 agreement described above in paragraph 6.

12. Since about September 16, 2010, the Respondent has refused to adhere to the recognition agreement described above in paragraph 9.

CONCLUSIONS OF LAW

By withdrawing recognition of the Union as the exclusive collective-bargaining representative of the unit, and failing and refusing to adhere to the recognition agreement and the terms and conditions of the 2010–2015 agreement, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist from those practices and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union as the exclusive collective-bargaining representative of the unit and, from about September 16, 2010, by refusing to adhere to and continue in effect all the terms and conditions of the 2010–2015 agreement and the August 20, 2008 recognition agreement, we shall order the Respondent to recognize the Union as the exclusive collective-bargaining representative of the employees in the unit and to apply all the terms and conditions of the 2010–2015 agreement to its unit employees. 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 refusal to adhere to and continue in effect all of the terms and conditions of the 2010–2015 agreement, in the manner set forth in *Ogle Protection Service*, 183

not privileged to withdraw recognition from the Union on September 16, 2010. See *HCL, Inc.*, 343 NLRB 981, 982 (2004); *Cowboy Scaffolding*, 326 NLRB 1050, 1051 (1998). Cf. *James Luterbach Construction Co.*, 315 NLRB 976 (1994) (an 8(f) employer that "affirmatively agrees to be bound by the results of group bargaining" will be held to its obligations).

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), plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

In addition, we shall order the Respondent to make all contractually-required contributions to fringe benefit funds that it failed to make, if any, including any additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn.7 (1979). Further, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make any required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra, and *Kentucky River Medical Center*, supra.²

ORDER

The National Labor Relations Board orders that the Respondent, Southern New England Erectors Corp., Whitinsville, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local 7, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees who perform the work set forth in Article I entitled "Craft Jurisdiction" of the agreement between the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 7 and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc.

(b) Failing to apply the terms of the August 20, 2008 recognition agreement and the collective-bargaining agreement agreed to by the Union, the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc.,

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

effective from September 16, 2010, to September 15, 2015.

(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 policies of the Act.

(a) Recognize the Union as the exclusive collective-bargaining representative of its unit employees.

(b) Apply to its unit employees the terms and conditions of the collective-bargaining agreement in effect from September 16, 2010 to September 15, 2015, and any automatic extensions thereof.

(c) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's refusal to adhere to the terms and conditions of the 2010-2015 agreement, and reimburse them for any expenses ensuing from its failure to make contractually-required payments to fringe benefit funds, if any, with interest, as set forth in the remedy section of this decision.

(d) Make all contractually-required contributions to fringe benefit funds that it has failed to make since about September 16, 2010, if any, as set forth in the remedy section of this decision.

(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 Whitinsville, Massachusetts, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 1, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such

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."

means.⁴ 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 to all current employees and former employees employed by the Respondent at any time since September 16, 2010.

(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.

Dated, Washington, D.C. September 30, 2011

Mark Gaston Pearce, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) 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

⁴ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local 7, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees who perform the work set forth in Article I entitled "Craft Jurisdiction" of the agreement between the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 7 and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc.

WE WILL NOT fail to apply the August 20, 2008 recognition agreement or the collective-bargaining agreement agreed to by the Union, the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., effective from September 16, 2010, to September 15, 2015.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

WE WILL recognize the Union as the exclusive collective-bargaining representative of our unit employees.

WE WILL apply to our unit employees the terms and conditions of the September 16, 2010, to September 15, 2015 agreement and any automatic extensions thereof.

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 to adhere to the terms and conditions of the collective-bargaining agreements, and reimburse them for any expenses ensuing from our failure to make contractually-required payments to fringe benefit funds, if any, with interest.

WE WILL make all contractually-required contributions to fringe benefit funds that we failed to make since about September 16, 2010.

SOUTHERN NEW ENGLAND STEEL ERECTORS
CORP.