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**Willis Roof Consulting, Inc. and United Union of Roofers, Waterproofers and Allied Workers, Local 162, AFL-CIO.** Case 28-CA-20852

January 31, 2007

**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 complaint. Upon a charge filed by the Union on June 8, 2006, the General Counsel issued the complaint on October 23, 2006 against Willis Roof Consulting, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On November 22, 2006, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on November 27, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On November 29, 2006, the Union filed a joinder in motion for default judgment. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**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 is filed by November 6, 2006 or postmarked on or before November 4, 2006, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 7, 2006, notified the Respondent that unless an answer was received by November 14, 2006, 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 Nevada corporation, with an office and place of business in Las Vegas, Nevada (the Respondent's facility), has been engaged as a roofing contractor in the building and construction industry doing residential and commercial roofing in the Las Vegas, Nevada metropolitan area.

During the 12-month period ending June 8, 2006, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 for KB Home, an enterprise within the State of Nevada, directly engaged in interstate commerce.

During the 12-month period ending June 8, 2006, the Respondent, purchased and received at the Respondent's facility goods valued in excess of \$5000 directly from points outside the State of Nevada.

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 United Union of Roofers, Waterproofers and Allied Workers, Local 162, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times Joseph Willis held the position of secretary/treasurer 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.

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

All journeymen and apprentice or trainee roofers, tile and dry-in crew members and crew leaders, tile forklift operators, cleanup workers and loaders employed by the Respondent in the Las Vegas, Nevada metropolitan area; excluding superintendents, quality assurance inspectors, guards, and supervisors as defined in the Act.

On about October 4, 1999, the Respondent, an employer engaged in the building and construction industry, entered into a collective-bargaining agreement effective for the period October 4, 1999, to September 30, 2003, whereby it recognized the Union as the exclusive collective-bargaining representative of the unit.

Since on or about October 4, 1999, pursuant to the agreement described above, the Union has been recognized as the exclusive collective-bargaining representative of the unit by the Respondent 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 successive collective-bargaining agreements, the most recent of which is effective for the period of November 1, 2005, through December 31, 2006.

For the period from November 1, 2005, through December 31, 2006, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.<sup>1</sup>

On about December 29, 2005, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement.

Since on or about December 29, 2005, the Respondent has failed to continue in effect all the terms and conditions of the agreement described above by, among other things, failing to make health and welfare and pension benefit contributions on behalf of employees in the unit.

The Respondent engaged in the conduct above without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

On about January 31, 2006, the Respondent withdrew its recognition of the Union as the limited exclusive collective-bargaining representative of the unit.

#### CONCLUSIONS OF LAW

By withdrawing recognition from the Union on or about January 31, 2006, and by failing to continue in effect all the terms and conditions of the November 1, 2005, through December 31, 2006 collective-bargaining agreement with the Union by, among other things, failing to make health and welfare and pension benefit contributions on behalf of unit employees, the Respondent has failed and refused to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>1</sup> The complaint alleges that the Respondent is a building and construction industry employer and that it granted recognition to the Union without regard to whether the Union had established a majority status. Accordingly, we find that the relationship was entered into pursuant to Sec. 8(f) of the Act 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. Cloture, Ltd.*, 313 NLRB 1012 (1994).

#### 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 to continue in effect all the terms and conditions of the November 1, 2005, through December 31, 2006 collective-bargaining agreement, including by failing to make health and welfare and pension benefit contributions on behalf of unit employees, we shall order the Respondent to continue in effect all the terms and conditions of the agreement, and to make all the required benefits contributions that have not been made since December 29, 2005, including any additional amounts due the benefit funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).<sup>2</sup> We shall also order the Respondent to reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 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).

Furthermore, having found that the Respondent unlawfully withdrew recognition from the Union on about January 31, 2006, we shall order the Respondent to recognize the Union as the limited exclusive collective-bargaining representative of the unit employees.

#### ORDER

The National Labor Relations Board orders that the Respondent, Willis Roof Consulting, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the United Union of Roofers, Waterproofers and Allied Workers, Local 162, AFL-CIO as the limited exclusive collective-bargaining representative of the following unit during the term of the November 1, 2005 through December 31, 2006 agreement with the Union:

All journeymen and apprentice or trainee roofers, tile and dry-in crew members and crew leaders, tile forklift operators, cleanup workers and loaders employed by

<sup>2</sup> To the extent that an employee has made personal contributions to a benefit or other fund that have been 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.

the Respondent in the Las Vegas, Nevada metropolitan area; excluding superintendents, quality assurance inspectors, guards, and supervisors as defined in the Act.

(b) Failing to continue in effect all the terms and conditions of the November 1, 2005 through December 31, 2006 collective-bargaining agreement with the Union by, among other things, failing to make the health and welfare and pension benefit contributions on behalf of the employees, as required by the collective-bargaining agreement.

(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 limited exclusive collective-bargaining representative of the employees in the unit, described above, and comply with the terms and conditions of the November 1, 2005 through December 31, 2006 collective-bargaining agreement with the Union and any automatic renewal or extension thereof.

(b) Make all the required health and welfare and pension benefit contributions on behalf of the employees in the unit that have not been made since December 29, 2005, with interest, in the manner set forth in the remedy section of this decision.

(c) Make whole the unit employees for any expenses ensuing from the Respondent's failure to make the required contributions, with interest, in the manner set forth in the remedy section of this decision.

(d) Make whole the unit employees for any loss of earnings or other benefits ensuing from the Respondent's failure to comply with the collective-bargaining agreement in any other respects, with interest.

(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 Las Vegas, Nevada, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on

<sup>3</sup> 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."

forms provided by the Regional Director for Region 28, 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 to all current employees and former employees employed by the Respondent at any time since December 29, 2005.

(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. January 31, 2007

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Peter C. Schaumber, 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

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 United Union of Roofers, Waterproofers and Allied Workers, Local

162, AFL–CIO as the limited exclusive collective-bargaining representative of the unit during the term of the November 1, 2005 through December 31, 2006 collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the November 1, 2005, through December 31, 2006 collective-bargaining agreement with the Union by, among other things, failing to make the health and welfare and pension benefit contributions on behalf of the employees in the following unit, as required by the collective-bargaining agreement. The unit is:

All journeymen and apprentice or trainee roofers, tile and dry-in crew members and crew leaders, tile forklift operators, cleanup workers and loaders employed by us in the Las Vegas, Nevada metropolitan area; excluding superintendents, quality assurance inspectors, guards, and supervisors as defined in the Act.

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

WE WILL recognize and bargain with the Union as the limited exclusive representative of the employees in the unit and comply with the terms and conditions of the agreement in effect from November 1, 2005, through December 31, 2006, and any automatic renewal or extension thereof.

WE WILL make whole the unit employees for any expenses ensuing from our failure to make the health and welfare and pension benefit contributions on behalf of the employees in the unit that have not been made since December 29, 2005, with interest.

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 November 1, 2005 through December 31, 2006 agreement in any other respects, with interest.

WILLIS ROOF CONSULTING, INC.