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Steven Womack, Kenneth Womack and James Womack, d/b/a Womack Brothers and Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 525, affiliated with International Brotherhood of Teamsters, AFL-CIO.
Case 14-CA-25027

June 22, 2000

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Upon a charge filed by the Union on March 16, 1998, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 14 on April 30, 1998. On March 14, 2000, the General Counsel of the National Labor Relations Board issued an Order Vacating and Setting Aside Settlement Agreement, Complaint, and Notice of Hearing (the complaint) against Steven Womack, Kenneth Womack and James Womack, d/b/a Womack Brothers, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act.¹ Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 28, 2000, the General Counsel filed a Motion for Default Summary Judgment with the Board. On May 3, 2000, 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.

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

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide 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 notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that a copy of the

¹ The complaint alleges, and the Respondent, by its failure to file an answer, admits, that since about April 30, 1998, the Respondent has refused to comply with the informal settlement agreement by failing to post a notice to employees and failing to make employees whole for lost wages and benefits, and that by this conduct, the Respondent violated the terms of the informal settlement agreement. Accordingly, pursuant to Sec. 101.9(e)(2) of the Board's Rules and Regulations, the Regional Director vacated and set aside the settlement agreement, and instituted further proceedings, including the issuance of the instant complaint.

complaint was duly served by the Regional Director for Region 14 by certified mail on the Respondent on March 14, 2000, but was returned "unclaimed" to the Regional Office on April 3, 2000. On March 28, 2000, the General Counsel attempted to contact the Respondent and left a recorded voice message stating that the Board's Rules and Regulations require an answer to be filed within 14 days of service of the complaint, and that the Respondent's answer was due. The General Counsel further advised the Respondent's counsel that if an answer was not received by April 4, 2000, the Region would seek summary judgment regarding all allegations in the complaint. The General Counsel confirmed that telephone message with a letter dated March 28, 2000, which was sent by certified mail. On April 5, 2000, the March 28, 2000 letter was returned to the Regional Office marked "refused." On April 4, 2000, the General Counsel mailed the complaint by regular mail, along with the March 28, 2000, letter and a cover letter stating that if an answer to the complaint was not received by April 21, 2000, a Motion for Summary Judgment would be filed.²

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been owned jointly by Steven Womack, Kenneth Womack and James Womack, partners, doing business as Womack Brothers. At all material times, the Respondent, a partnership, with an office and place of business in Lenzburg, Illinois, has been engaged as a general contractor in the building and construction industry. During the 12-month period ending December 31, 1997, the Respondent, in conducting its business operations purchased and received goods valued in excess of \$50,000 at its Lenzburg, Illinois facility directly from points outside the State of Illinois. 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

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section (13) of the Act:

² Although copies of the complaint and the March 28, 1998 letter, which were sent to the Respondent by certified mail, were returned marked "unclaimed" and "refused," the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

Steven Womack Partner
 Kenneth Womack Partner
 James Womack Partner
 Robert Mueller Superintendent

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:

Those employees working in the jurisdiction of Local 525 and Local 50 driving trucks, as classified and described in the Wage Schedule in the collective-bargaining agreement described below, but specifically excluding all employees of Respondent for whom Respondent recognizes other craft unions, technical engineers, guards, office, clerical, and supervisory employees.

About November 1995, the Respondent, an employer engaged in the building and construction industry, entered into a collective-bargaining agreement effective for the period of May 1, 1995, through April 30, 1998, whereby it recognized the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had been established under the provisions of Section 9(a) of the Act.

For the period of November 1995 through April 30, 1998, based on Section 8(f) of the Act, the Union was the limited exclusive collective-bargaining representative of the unit.

Since about January 1, 1998, the Respondent failed to continue in effect all the terms and conditions of the 1995–1998 collective-bargaining agreement by failing and refusing to: use the Referral Office for procuring labor as provided in article 4 of the agreement; make contractually required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the agreement; and process a grievance as provided in article 20 of the agreement. The Respondent engaged in this conduct without the Union's consent.

The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

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 exclusive collective-bargaining representative of its employees within the meaning of 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (5) and 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 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)(1) and (5) by failing since about January 1, 1998, to continue in effect all the terms and conditions of the 1995–1998 collective-bargaining agreement described above by failing and refusing to use the Referral Office for procuring labor as provided in article 4 of the agreement by failing and refusing to make contractually required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the agreement; and process a grievance as provided in article 20 of the agreement, we shall order the Respondent to honor those provisions of the agreement for the term of the 1995–1998 collective-bargaining agreement and any automatic renewal or extension of it.

Further, having found that the Respondent violated Section 8(a)(1) and (5) by failing to use the Referral Office for procuring labor as provided in article 4 of the agreement, we shall order the Respondent, pursuant to *J. E. Brown Electric*, 315 NLRB 620 (1994), to offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and to make them whole for any losses suffered by reason of the Respondent's failure to hire them.³ Backpay is to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Reinstatement and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceeding. *J. E. Brown Electric*, supra.

In addition, having found that the Respondent violated Section 8(a)(1) and (5) by failing to make contractually required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the 1995–1998 collective-bargaining agreement, we shall order the Respondent to make whole its unit employees, and those employees who would have been referred, by making all delinquent fringe benefit fund contributions owed since January 1, 1998, during the term of the 1995–1998 collective-bargaining agreement and any automatic renewal or extension of it, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees, and those employees who would have been referred, for any expenses ensuing from its failure to make contractually

³ Member Hurtgen would make whole, but would not reinstate, employees who should have been referred to the Respondent. See his dissent in *M. J. Wood & Associates*, 325 NLRB 1065, 1068 fn. 9 (1998).

required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the 1995–1998 collective-bargaining agreement, during the term of the 1995–1998 collective-bargaining agreement and any automatic renewal or extension of it 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).⁴

Further, having found that the Respondent violated Section 8(a)(1) and (5) by failing to process a grievance as provided in article 20 of the 1995–1998 collective-bargaining agreement, we shall order the Respondent to process grievances filed during the term of that agreement and any automatic renewal or extension of it, as required in article 20 of the agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Steven Womack, Kenneth Womack and James Womack, d/b/a Womack Brothers, Lenzburg, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally failing to continue in effect all the terms and conditions of its 1995–1998 collective-bargaining agreement with the Union during the term of the contract and any automatic renewal or extension of it by failing and refusing: to use the Referral Office for procuring labor as provided in article 4 of the agreement; to make contractually required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the agreement; and to process a grievance as provided in article 20 of the agreement.

(b) 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) Honor and abide by the terms of the 1995–1998 collective-bargaining agreement described above during the term of the contract and any automatic renewal or extension of it by honoring the contractual requirements by using the Referral Office for procuring labor as provided in article 4 of the agreement; by making contractually required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the agreement; and by processing grievances as provided in article 20 of the agreement.

(b) Offer full and immediate reinstatement to those applicants who would have been referred to the Respondent for employment by the Union as provided in article 4 of the 1995–1998 agreement were it not for the Respondent’s unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by reason of the Respondent’s failure to hire them, with interest, in the manner set forth in the remedy section of this decision.

(c) Make whole its unit employees, and those employees who would have been referred, with interest, for any losses ensuing from its failure, since January 1, 1998, during the term of the contract and any automatic renewal or extension of it to make the contractually required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the 1995–1998 agreement, by making all delinquent fund contributions and reimbursing all such employees for any expenses ensuing from the Respondent’s failure to make the required contributions, as set forth in the remedy section of this decision.

(d) Process grievances filed during the term of the 1995–1998 agreement and any automatic renewal or extension of it, as provided in article 20 of that agreement.

(e) Preserve and, within 14 days of a 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 back-pay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Lenzburg, Illinois, copies of the attached notice marked “Appendix.”⁵ Copies of the notice, on forms provided by the Regional Director for Region 14, 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 January 1, 1998.

(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 at

⁴ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer’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.

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 22, 2000

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

J. Robert Brame III, 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT unilaterally fail to continue in effect all the terms and conditions of our 1995–1998 collective-bargaining agreement with the Union during the term of the contract and any automatic renewal or extension of it by failing and refusing to: use the Referral Office for procuring labor as provided in article 4 of the agreement; make contractually required pension and health and wel-

fare benefit fund contributions as provided in articles 11 and 12 of the agreement; and process grievances as provided in article 20 of the agreement.

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 honor and abide by the terms of our 1995–1998 collective-bargaining agreement during the term of the contract and any automatic renewal or extension of it by honoring the contractual requirements by using the Referral Office for procuring labor as required in article 4 of the agreement; making contractually required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the agreement; and by processing grievances as provided in article 20 of the agreement.

WE WILL offer full and immediate reinstatement to those applicants who would have been referred to us for employment by the Union as provided in article 4 of the 1995–1998 agreement were it not for our unlawful conduct, and WE WILL make them whole for any loss of earnings and other benefits suffered by reason of our failure to hire them, with interest.

WE WILL make whole our unit employees, and those employees who would have been referred, with interest, for any losses ensuing from our failure, since January 1, 1998, during the term of the contract and any automatic renewal or extension of it, to make the contractually required pension and health and welfare benefit fund contributions as provided in articles 11 and 12 of the 1995–1998 agreement, by making all delinquent fund contributions and reimbursing all such employees for any expenses ensuing from our failure to make the required contributions.

WE WILL process grievances filed during the term of the 1995–1998 agreement and any automatic renewal or extension of it, as provided in article 20 of that agreement.

STEVEN WOMACK, KENNETH WOMACK AND
 JAMES WOMACK, D/B/A WOMACK BROTHERS