Guild Electrical Colorado LLC *and* International Brotherhood of Electrical Workers, Local Union No. 68. Case 27–CA–18011–1

March 19, 2003

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND ACOSTA

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on May 7 and May 23, 2002, respectively, the General Counsel issued a complaint on July 30, 2002, against Guild Electrical Colorado LLC, the Respondent, alleging that it violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On October 8, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On October 9, 2002, 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

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 states 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 the Region, by letter dated September 26, 2002, notified the Respondent that unless an answer was received by October 2, 2002, a Motion for Summary Judgment would be filed.[1]

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, a corporation with an office and place of business in Englewood, Colorado (the Englewood facility), has been engaged in the electrical construction business. The Respondent, in conducting its business operations, annually purchases and receives goods, materials, and services at its Englewood facility valued in excess of $50,000 directly from points and places outside the State of Colorado, and annually provides goods and services valued in excess of $50,000 directly to other enterprises located within the State of Colorado which are directly engaged in interstate commerce.

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, Anthony Simpson has held the position of 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.

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

> Unit A:
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> All journeymen and apprentice wiremen employed by Respondent performing work covered by the terms of the Denver Inside Electrical Construction Agreement between the National Electrical Contractors Association Rocky Mountain Chapter and the Union as set forth in the collective bargaining agreement between NECA and the Union effective by its terms for the period June 1, 1999 to May 31, 2002 with extensions of that agreement.

[1] By a certified letter dated August 16, 2002, the Regional Director for Region 27 informed the Respondent and its counsel, Michael T. Mitchell, of its obligation to file an answer to the complaint. However, by a letter dated August 19, 2002, Mitchell advised the Region that he was in receipt of the Regional Director's August 16, 2002 letter, and that he did not represent the Respondent in this matter. On August 28, 2002, by regular mail, the Region served the Respondent with another copy of the complaint. On September 26, 2002, the General Counsel served by hand delivery a copy of the complaint and a letter to attorney Gary L. Gottesfeld, advising him that if no answer was filed by October 2, 2002, a Motion for Summary Judgment would be filed with the Board. The General Counsel also served the Respondent, by regular mail, with copies of the complaint and the letter to Gottesfeld. None of the copies served by regular mail were returned. See *Lite Flight*, 285 NLRB 647, 650 (1987) (failure of Post Office to return regular mail indicates receipt).

Unit B:

All journeymen and apprentice wiremen employed by Respondent performing work covered by the terms of the Denver Residential Wiring Agreement between the National Electrical Contractors Association Rocky Mountain Chapter and the Union as set forth in the collective bargaining agreement between NECA and the Union effective by its terms for the period September 1, 1999 through August 31, 2001 with extensions of that agreement.

The National Electrical Contractors Association (NECA) has been an organization composed of employers engaged in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering a collective-bargaining agreement with the Union.

NECA and the Union entered into a collective-bargaining agreement, known as the Denver Inside Electrical Construction Agreement, which is effective by its terms from June 1, 1999, through May 31, 2002.

On about May 17, 1999, the Respondent, an employer engaged in the building and construction industry, by Letter of Assent A, assigned its collective-bargaining rights to NECA and adopted the subsequently approved Denver Inside Electrical Construction labor agreement with the Union, which at all material times bound the Respondent to the terms and conditions of employment set forth in the Denver Inside Electrical Construction Agreement.

The Letter of Assent A provides that the assignment of bargaining rights to NECA shall remain in effect unless notice of termination is given to both NECA and the Union 150 days prior to the expiration of the collective-bargaining agreement.

The Letter of Assent A provides that, unless the assignment of bargaining rights is terminated as described above, the Respondent agrees to be bound by all provisions of subsequent labor agreements covering terms and conditions of employment in Unit A.

By the actions described above, the Respondent granted recognition to the Union as the exclusive representative of Unit A for the period June 1, 1999, through at least May 31, 2002 and, unless the assignment of bargaining rights was timely terminated, for the term of subsequent labor agreements, without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

By a February 13, 2002 letter, the Respondent untimely gave notice to NECA and to the Union of its intent to withdraw from the Denver Inside Electrical Construction Agreement.

For the period of June 1, 1999 to May 31, 2002 and for the period of subsequent approved labor agreements, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of Unit A.[2]

NECA and the Union entered into a collective-bargaining agreement, known as the Denver Residential Wiring Agreement, which is effective by its terms from September 1, 1999, through August 31, 2001.

On about April 27, 2001, the Respondent, by letter of Assent A, assigned its collective-bargaining rights to NECA and adopted the Denver Residential Wiring Agreement with the Union, which at all material times bound the Respondent to the terms and conditions of employment set forth in that agreement.

The Letter of Assent A provides that the assignment of bargaining rights to NECA shall remain in effect unless notice of termination is given to both NECA and the Union 150 days prior to the expiration of the collective bargaining agreement.

The Letter of Assent A provides that unless the assignment of bargaining rights is terminated as described above, the Respondent agrees to be bound by all provisions of subsequent labor agreements.

By the actions described above, the Respondent granted recognition to the Union as the limited exclusive bargaining representative of Unit B for the period of April 17, 2001 through at least August 31, 2001 and, unless the assignment of bargaining rights was timely terminated, for the term of the subsequent labor agreements, without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

By letter of February 5, 2002, the Respondent untimely gave notice to NECA and to the Union of its intent to withdraw from the Denver Residential Wiring Agreement.

For the period of April 17, 2001 to August 31, 2001 and for the period of subsequent approved labor agreements, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of Unit B.[3]

On about March 26, 2002, the Union requested that the Respondent provide it with names, addresses, and tele-

[2] 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. Cloture, Ltd.*, 313 NLRB 1012 (1994).

[3] See fn. 2, supra.

phone numbers of each person employed directly, through temporary employment agencies or subcontractors in residential construction work and to furnish all information that established the hourly wage rate, or overtime pay, retirement benefits, health plan, holiday and vacation plans of these individuals.

On about May 30, 2002, the Union requested that the Respondent provide it with names, addresses, and telephone numbers of each person employed directly, through temporary employment agencies or subcontractors in inside electrical construction work and to furnish all information that established the hourly wage rate, or overtime pay, retirement benefits, health plan, holiday and vacation plans of these individuals.

The information set forth above is relevant and necessary to the Union's performance of its duties as the limited exclusive collective-bargaining agent of employees in Units A and B.

The Respondent has failed to provide the Union with the information described above.

Since February 13, 2002, the Respondent has repudiated the existence of and has failed to apply its collective bargaining agreement with the Union, concerning wages, hours, and other terms and conditions of employment of employees employed in Unit A.

Since about February 5, 2002, the Respondent has repudiated the existence of and has failed to apply its collective bargaining agreement with the Union, concerning wages, hours, and other terms and conditions of employment of employees employed in Unit B.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the limited exclusive bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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)(5) and (1) by repudiating the existence of and failing to apply the terms and conditions of the Denver Inside Electrical Construction Agreement on behalf of the employees in Unit A, and the Denver Residential Wiring Agreement on behalf of the employees in Unit B, we shall order the Respondent, on request, to honor the terms and conditions of the approved labor agreements between NECA and the Union and any automatic renewal or extension of them. 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 abide by the approved labor agreements, and any automatic renewal or extension of them, covering the employees in Units A and B since February 13 and February 5, 2002, respectively. In addition, we shall order the Respondent to make whole the unit employees by making all contractually required fringe benefit fund contributions, if any, that have not been made on behalf of employees in Units A & B since February 13 and 5, 2002, respectively, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).[4] Further, the Respondent shall reimburse the unit employees for any expenses ensuing from its failure to make the required contributions since the same dates, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall 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 1171 (1987).

Finally, having found that the Respondent has failed and refused to furnish the Union information that is relevant and necessary to its role as the limited exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on March 26 and May 30, 2002.

ORDER

The National Labor Relations Board orders that the Respondent, Guild Electrical Colorado LLC, Englewood, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating the existence of and failing to apply its collective bargaining agreements with International Brotherhood of Electrical Workers, Local Union No. 68, as the limited exclusive collective-bargaining representative of the employees in the bargaining units set forth below, during the term of the agreements and any automatic renewal or extension of them.

[4] 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 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.

Unit A:

All journeymen and apprentice wiremen employed by Respondent performing work covered by the terms of the Denver Inside Electrical Construction Agreement between the National Electrical Contractors Association Rocky Mountain Chapter and the Union as set forth in the collective bargaining agreement between NECA and the Union effective by its terms for the period June 1, 1999 to May 31, 2002 with extensions of that agreement.

Unit B:

All journeymen and apprentice wiremen employed by Respondent performing work covered by the terms of the Denver Residential Wiring Agreement between the National Electrical Contractors Association Rocky Mountain Chapter and the Union as set forth in the collective bargaining agreement between NECA and the Union effective by its terms for the period September 1, 1999 through August 31, 2001 with extensions of that agreement.

(b) Failing and refusing to provide the Union with information necessary to the Union's performance of its duties as the limited exclusive collective bargaining representative of employees in Units A and B.

(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) Comply with the terms and conditions of its collective bargaining agreements with the Union covering the employees in Units A and B, during their term and any automatic renewal or extension of them.

(b) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its failure to comply with the agreements, during their term or any automatic renewal or extension of them, since February 13 and February 5, 2002, respectively, with interest as prescribed in the remedy section of this decision.

(c) Make all contractually required fringe benefit fund contributions, if any, that have not been made on behalf of employees in Units A and B since February 13 and 5, 2002, respectively, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, in the manner set forth in the remedy section of this decision.

(d) Furnish the Union with the information that it requested on March 26 and May 30, 2002.

(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 Englewood, Colorado, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 27,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 February 5, 2002.

(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., March 19, 2003

Peter C. Schaumber , Member

Dennis P. Walsh, Member

R. Alexander Acosta, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[5] 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."

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 repudiate the existence of and fail to apply our collective-bargaining agreements with International Brotherhood of Electrical Workers, Local Union No. 68, as the limited exclusive collective-bargaining representative of the employees in the bargaining units set forth below, during the term of the agreements and any automatic renewal or extension of them.

Unit A:

All journeymen and apprentice wiremen employed by us performing work covered by the terms of the Denver Inside Electrical Construction Agreement between the National Electrical Contractors Association Rocky Mountain Chapter and the Union as set forth in the collective bargaining agreement between NECA and the Union effective by its terms for the period June 1, 1999 to May 31, 2002 with extensions of that agreement.

Unit B:

All journeymen and apprentice wiremen employed by us performing work covered by the terms of the Denver Residential Wiring Agreement between the National Electrical Contractors Association Rocky Mountain Chapter and the Union as set forth in the collective bargaining agreement between NECA and the Union effective by its terms for the period September 1, 1999 through August 31, 2001 with extensions of that agreement.

WE WILL NOT fail and refuse to furnish the Union with information that is necessary for, and relevant to, the Union's performance of its function as the limited exclusive collective-bargaining representative of the employees in Units A and B.

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 comply with the terms and conditions of our collective bargaining agreements with the Union covering the employees in Units A and B, during their term and any automatic renewal or extension of them.

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 comply with the agreements, during their term or any automatic renewal or extension of them, since February 13 and February 5, 2002, respectively, with interest.

WE WILL make all contractually required fringe benefit fund contributions, if any, that have not been made on behalf of employees in Units A and B since February 13 and 5, 2002, respectively, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL furnish the Union with information that it requested on March 26 and May 30, 2002.

GUILD ELECTRICAL COLORADO LLC