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**Just Electric, Inc. and International Brotherhood of Electrical Workers Local 20.** Case 16–CA–21989

January 24, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND WALSH

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 filed by the Union on June 18, 2002, and amended on August 19, 2002,<sup>1</sup> the General Counsel issued the complaint on August 30, against Just Electric, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On October 7, the General Counsel filed a Motion for Summary Judgment with the Board. On October 10, 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 17, notified the Respondent that unless an answer were received by September 23, a Motion for Summary 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 Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> All dates herein refer to 2002 unless otherwise noted.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation, has been engaged in the business of electrical construction.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Dallas, Texas facility goods and materials valued in excess of \$50,000 from other enterprises, including Consolidated Electrical Distributors, located within the State of Texas, which received these goods and materials directly from points outside the State of Texas.

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, Pat Dillehay has held the position of president and has been a supervisor within the meaning of Section 2(11) of the Act and an agent within the meaning of Section 2(13) of the Act.

On about April 10, Pat Dillehay, at the Respondent's place of business located in Keller, Texas, told an applicant that he did not know if he could employ him because he was a union electrician.

On about April 5, Wade Noble applied for employment with the Respondent. On about April 10, the Respondent refused to hire Wade Noble because he joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by refusing to hire Wade Noble, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees and applicants for employment, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) of the Act. *FES*, 331 NLRB 9, 12–14 (2000), supplemental decision 333 NLRB No. 8 (2001), *enfd.* 301 F.3d 83 (3d Cir. 2002). See also *Budget Heating & Cooling, Inc.*, 332 NLRB No. 132 (2000). These unfair labor practices 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 and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by refusing to hire Wade Noble because of his union activity, we shall order the Respondent to offer him immediate reinstatement to the position which he applied or, if that job no longer exists, to a substantially equivalent position, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall 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). The Respondent shall also be required to remove from its files any and all references to the unlawful refusal to hire, and to notify Noble in writing that this has been done.

## ORDER

The National Labor Relations Board orders that the Respondent, Just Electric, Inc., Dallas and Keller, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling job applicants that it might not be able to hire them because they are members of the Union.

(b) Refusing to hire applicants for employment because of their union activity.

(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) Within 14 days from the date of this Order, offer Wade Noble reinstatement to the position to which he applied or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he would have enjoyed absent the discrimination against him.

(b) Make Wade Noble whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire Wade Noble, and within 3 days thereafter notify him in writing that this has been done and that the unlawful refusal to hire him will not be used against him in any way.

(d) Within 14 days after service by the Region, post at its facilities in Dallas and Keller, Texas, copies of the

attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 16, 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 facilities 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 April 10, 2002.

(e) 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 24, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

<sup>2</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."

Chose 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 tell job applicants that we might not be able to hire them because they are members of the Union.

WE WILL NOT refuse to hire applicants for employment because of their union activity.

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, within 14 days from the date of the Board's Order, offer Wade Noble reinstatement to the position to

which he applied or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he would have enjoyed absent the discrimination against him.

WE WILL make Wade Noble whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful refusal to hire Wade Noble, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful refusal to hire him will not be used against him in any way.

JUST ELECTRIC, INC.