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Sciarretti Asphalt Paving Company and Thomas B. Williams. Case 6-CA-33749

April 21, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH
AND MEISBURG

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 on October 31, 2003, the General Counsel issued the complaint on January 28, 2004, against Sciarretti Asphalt Paving Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On March 15, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On March 19, 2004, 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 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 filed by February 11, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 20, 2004, notified the Respondent that unless an answer was received by the close of business on the third business day following receipt of the letter, 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 Pennsylvania corporation with its corporate offices and principal place

of business in Braddock, Pennsylvania, has been engaged in the performance of paving services within the construction industry.

During the 12-month period ending September 30, 2003, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 for businesses within the Commonwealth of Pennsylvania that are themselves 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 International Union of Operating Engineers, Local 66, 66A, B, C, D, O & R, 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, the following individuals held the positions set forth opposite their respective 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 2(13) of the Act:

Susan Sciarretti - President
Chris Sciarretti - Superintendent

On or about October 27, 2003, the Respondent terminated the employment of its employee Thomas B. Williams, and since said date has failed and refused to employ him. The Respondent engaged in this conduct because Williams formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in the Union in violation of Section 8(a)(3) 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.

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)(3) and (1) by terminating and refusing to employ Thomas B. Williams, we shall order the Respondent to offer Williams full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We also shall order the

Respondent to make Williams 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*, 273 NLRB 1173 (1987). The Respondent also shall be required to remove from its files any reference to the termination and the refusal to employ Williams, and to notify him in writing that this has been done and that the unlawful conduct will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Sciarretti Asphalt Paving Company, Braddock, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating, refusing to employ, or otherwise discriminating against employees because they join or assist International Union of Operating Engineers, Local 66, 66A, B, C, D, O & R, AFL-CIO, or any other labor organization, and engage in protected concerted activities, or to discourage employees from engaging in such activities.

(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) Within 14 days from the date of this Order, offer Thomas B. Williams full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Thomas B. Williams whole for any loss of earnings and other benefits suffered as a result of the unlawful termination and refusal to employ 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 termination of Thomas B. Williams and refusal to employ him, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful conduct will not be used against him in any way.

(d) 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.

(e) Within 14 days after service by the Region, post at its facility in Braddock, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 6, 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 and former employees employed by the Respondent at any time since October 27, 2003.

(f) 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. April 21, 2004

Robert J. Battista, Chairman

Dennis P. Walsh, Member

Ronald Meisburg, 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

¹ 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."

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 any 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 terminate, refuse to employ, or otherwise discriminate against our employees because they join or assist the International Union of Operating Engineers, Local 66, 66A, B, C, D, O & R, AFL-CIO, or any other labor organization, and engage in protected concerted activities, or to discourage employees from engaging in such activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer Thomas B. Williams full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Thomas B. Williams whole for any loss of earnings and other benefits suffered as a result of the unlawful termination and refusal to employ him, with interest.

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

SCIARRETTI ASPHALT PAVING COMPANY