

Gallagher Elevator Company and International Union of Elevator Constructors. Case 3–CA–26200

July 13, 2007

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER,
AND KIRSANOW

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 and an amended charge filed by the Union on February 16 and April 25, 2007, respectively, the General Counsel issued the complaint on April 27, 2007, against Gallagher Elevator Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

Thereafter, on May 30, 2007, the General Counsel filed a Motion for Default Judgment with the Board. On June 5, 2007, 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 notes that the answer must be received by the Regional Office on or before May 11, 2007, or postmarked on or before May 10, 2007. Additionally, the Respondent was advised that an answer could also be filed electronically by using the E-Filing system on the Agency's website and that if no answer was filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the motion disclose that the Region, by certified letter dated May 16, 2007 notified the Respondent that unless an answer was received by May 23, 2007, a Motion for Default Judgment would be filed. Nevertheless, the Respondent did not file an answer to the complaint.

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 corporation, with an office and place of business at 135 South Division Street, Buffalo, New York, herein called the Respondent's Buffalo facility, has been engaged in the installation, repair, and maintenance of elevators and related equipment.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 to the Niagara Frontier Transportation Authority, M&T Bank and Erie County, which are entities located within the State of New York, and 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, Thomas Granville has held the position of the Respondent's president 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, herein called the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All Elevator Constructor Mechanics, Elevator Constructor Helpers and Elevator Constructor Apprentices employed by Respondent and engaged in the installation, repair, modernization, maintenance and servicing of all equipment referred to in Article IV, Paragraph 2 and Article IV(A) of the 2002–2007 collective-bargaining agreement between Elevator Constructors of America and the International Union.

At all material times, Elevator Constructors of America, herein called ECA, has been an organization composed of various employers engaged in the business of installing, repairing, modernizing, maintaining, and servicing elevator cars and elevator systems, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the International Union.

At all material times, Respondent has been an employer-member of ECA, and has authorized the ECA to represent it in negotiating and administering the collective-bargaining agreement with the International Union.

At all material times, the International Union and its constituent Local 14 have been the designated, exclusive collective-bargaining representative of the unit, and at all times have been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from July 9, 2002 to July 8, 2007.

At all material times, based on Section 9(a) of the Act, the International Union and its constituent Local 14 have been the exclusive collective-bargaining representative of the unit.

Since on or about August 16, 2006, the Respondent has failed and refused to adhere to the terms of Article XII (Vacations) of the collective-bargaining agreement effective from July 9, 2002 to July 8, 2007.

The Respondent engaged in the conduct described above without the International Union's or Local 14's consent.

The terms and conditions of employment, described above, are mandatory subjects of bargaining.

Since on or about December 6, 2006, the Respondent has failed and refused to process a grievance filed by the Local Union.

On or about December 28, 2006, the International Union, by letter, requested that the Respondent furnish the International Union with the following information:

1. Payroll records for the year 2006, beginning Jan. 1, 2006 thru Dec. 31, 2006 for all IUEC members employed by Gallagher Elevator Company.
2. The information used to calculate the vacation pay for all IUEC members working for Gallagher Elevator Company during the period Jan. 1, 2006 thru Dec. 31, 2006.
3. The number of hours worked by each IUEC member employed by Gallagher Elevator Company for the year 2006 beginning Jan. 1, 2006 thru Dec. 31, 2006.
4. Payroll records for vacation pay, paid to IUEC members on or before Jan. 15th and June 15th 2006.
5. The amount of vacation pay due each IUEC member on or before Jan. 15th, 2007 working for Gallagher Elevator Company.

The information requested by the International Union, as described above, is necessary for and relevant to the performance of the International Union and Local 14 of their duties as the exclusive collective-bargaining representative of the unit.

Since on or about December 28, 2006, the Respondent has failed and refused to furnish the International Union with the information requested by it.

CONCLUSIONS OF LAW

By failing and refusing to adhere to the terms of article XII (Vacations) of the collective-bargaining agreement effective from July 9, 2002 to July 8, 2007, 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 Section 8(d) of the Act, and has thereby engaged in an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act. By failing to process a grievance and by failing to provide requested information, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation 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.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom 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) of the Act by failing and refusing to adhere to the terms of article XII (Vacations) of the collective-bargaining agreement, we shall order the Respondent to adhere to the terms of its agreement with the Union, and to make the unit employees whole for any loss of earnings and benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has failed and refused, since December 6, 2006, to process a grievance filed by the Local Union, we shall order the Respondent to process the grievance. Finally, having found that the Respondent has failed to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested.

ORDER

The National Labor Relations Board orders that the Respondent, Gallagher Elevator Company, Buffalo, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union of Elevator Constructors, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All Elevator Constructor Mechanics, Elevator Constructor Helpers and Elevator Constructor Apprentices employed by Respondent and engaged in the installation, repair, modernization, maintenance and servicing of all equipment referred to in Article IV, Paragraph 2 and Article IV(A) of the 2002–2007 collective-bargaining agreement between Elevator Constructors of America and the International Union.

(b) Failing and refusing to adhere to the terms of article XII (Vacations) of the July 9, 2002 to July 8, 2007 collective-bargaining agreement.

(c) Failing and refusing to process a grievance filed by the Local Union since December 6, 2006.

(d) Failing and refusing to provide the Union with the information it requested on December 28, 2006, that is relevant and necessary to the performance of their duties as the exclusive bargaining representative of the employees in the unit.

(e) 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 the terms and conditions of article XII (Vacations) of its July 9, 2002 to July 8, 2007 collective-bargaining agreement with the Union.

(b) Process the grievance that was not processed since December 6, 2006.

(c) Furnish the Union with the information it requested on December 28, 2006, that is relevant and necessary to the performance of their duties as the exclusive bargaining representative of the employees in the unit.

(d) Make whole the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of its failure to adhere to the terms of article XII (Vacations) of the collective-bargaining agreement, with interest, as set forth in the remedy section of this Decision.

(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 Buffalo, New York, copies of the attached

notice marked “Appendix.”¹ Copies of the notice, on forms provided by the Regional Director for Region 3, 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 August 16, 2006.

(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.

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 fail and refuse to bargain collectively and in good faith with International Union of Elevator Constructors, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All Elevator Constructor Mechanics, Elevator Constructor Helpers and Elevator Constructor Apprentices

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.”

employed us and engaged in the installation, repair, modernization, maintenance and servicing of all equipment referred to in Article IV, Paragraph 2 and Article IV(A) of the 2002–2007 collective-bargaining agreement between Elevator Constructors of America and the International Union.

WE WILL NOT fail and refuse to adhere to the terms of article XII (Vacations) of the July 9, 2002 to July 8, 2007 collective-bargaining agreement.

WE WILL NOT fail and refuse to process grievances filed by Local Union 14 since December 6, 2006.

WE WILL NOT fail and refuse to furnish the Union with the information it requested on December 28, 2006, that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of our employees in the unit.

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 the terms and conditions of article XII (Vacations) of our July 9, 2002 to July 8, 2007 collective-bargaining agreement with the Union.

WE WILL process all grievances that have not been processed since December 6, 2006.

WE WILL furnish the Union with the information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the employees in the unit.

WE WILL make whole our unit employees for any loss of earnings and other benefits they may have suffered as a result of our failure to adhere to the terms of article XII (Vacations) of the collective-bargaining agreement, with interest.

GALLAGHER ELEVATOR COMPANY