

Alrod Enterprises, Inc. and International Union Security, Police and Fire Professionals of America.
Case 4-CA-34334

September 29, 2006

DECISION AND ORDER

BY MEMBERS SCHAUMBER, KIRSANOW, AND WALSH

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 December 8 and December 15, 2005, respectively, the General Counsel issued the complaint on March 20, 2006 against Alrod Enterprises, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On June 9, 2006, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 12, 2006, 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 a 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 April 3, 2006, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated May 26, 2006, notified the Respondent that unless an answer was received by June 2, 2006, 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 Virginia corporation with a facility in Philadelphia, Pennsylvania, has been engaged in providing uniformed security support and services to business and to federal and state government organizations.

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 outside the Commonwealths of Pennsylvania and Virginia.

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 Security, Police and Fire Professionals of America (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, Albert W. Thweatt held the position of Chief Executive Officer 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 (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time security officers employed by the Respondent at its various United States Government locations in Philadelphia, Pennsylvania and surrounding counties, but excluding all other employees, office clericals, lieutenants, captains and other supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from November 1, 2002 through October 31, 2004, and was thereafter extended by mutual agreement of the parties until October 31, 2005.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about October 7, 2005, the Respondent, by memorandum from Albert W. Thweatt for distribution to all Alrod contract sites, notified the unit that it was refusing to honor leave requests, including those for vacation and personal time to be taken during the period October 7 through December 31, 2005.

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without having afforded the Union an opportunity to bargain with the

Respondent concerning these changes in the employees' terms and conditions of employment.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-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 violated Section 8(a)(5) by unilaterally changing the unit employees' terms and conditions of employment by failing and refusing to honor leave requests, including those for vacation and personal time to be taken during the period from October 7 through December 31, 2005, we shall order the Respondent to make whole unit employees for any loss of earnings and other benefits they have suffered as a result of the Respondent's unlawful conduct, 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).

ORDER

The National Labor Relations Board orders that the Respondent, Alrod Enterprises, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing the terms and conditions of employment of the employees in the unit set forth below by refusing to honor leave requests, including those for vacation and personal time, without giving prior notice to International Union Security, Police and Fire Professionals of America as the exclusive bargaining representative of the employees, and without affording the Union an opportunity to bargain concerning these changes. The appropriate unit is:

All full-time and part-time security officers employed by the Respondent at its various United States Government locations in Philadelphia, Pennsylvania and surrounding counties, but excluding all other employees, office clericals, lieutenants, captains and other supervisors as defined in the Act.

(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) Rescind the unlawful unilateral refusal to honor employees' leave requests, including those for vacation and personal time to be taken during the period from October 7 through December 31, 2005.

(b) Before implementing any changes in wages, hours, or other terms and conditions of unit employees, notify, and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit set forth above.

(c) Make whole the unit employees for any loss of wages and other benefits they may have suffered as a result of its unilateral refusal to honor employees' leave requests, including those for vacation and personal time to be taken during the period from October 7 through December 31, 2005, with interest, as set forth in the remedy section of this decision.

(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 Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, 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 em-

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."

ployed by the Respondent at any time since October 7, 2005.

(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.

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 unilaterally change the terms and conditions of employment of the employees in the unit set forth below by refusing to honor leave requests, including those for vacation and personal time, without giving prior notice to International Union Security, Police and Fire Professionals of America as the exclusive bargain-

ing representative of the employees, and affording the Union an opportunity to bargain concerning these changes. The appropriate unit is:

All full-time and part-time security officers employed by us at our various United States Government locations in Philadelphia, Pennsylvania and surrounding counties, but excluding all other employees, office clericals, lieutenants, captains and other supervisors as defined in the Act.

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 rescind the unlawful unilateral refusal to honor employees' leave requests, including those for vacation and personal time to be taken during the period from October 7 through December 31, 2005.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of unit employees, notify, and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit set forth above.

WE WILL make whole the unit employees for any loss of wages and other benefits they may have suffered as a result of our unilateral refusal to honor employees' leave requests, including those for vacation and personal time to be taken during the period from October 7 through December 31, 2005, with interest.

ALROD ENTERPRISES, INC.