M&B Services, Inc. *and* Service Employees International Union, Local 100. Case 15–CA–18808

May 29, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

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 October 1 and 20, 2008, respectively, the General Counsel issued the complaint on January 28, 2009, against M&B Services, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On April 1, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 7, 2009, 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.

Ruling on Motion for Default Judgment[1]

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 the answer must be received by the Regional Office on or before February 11, 2009. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 23, 2009, notified the Respondent that unless an answer was received by March 2, 2009, 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 corporation with a place of business in New Orleans, Louisiana, has been engaged in the business of providing temporary employees to companies engaged in the business of collecting and disposing of municipal waste. Annually, the Respondent, in conducting its operations described above, provides services valued in excess of $50,000 to both Richard's Disposal, Inc., and Metro Disposal, Inc., enterprises within the State of Louisiana.

At all material times, Richard's Disposal, Inc., a corporation with an office and place of business in New Orleans, Louisiana, has been engaged in the business of collecting and disposing of solid waste. In conducting its operations described above, Richard's Disposal, Inc., purchases and receives at its New Orleans, Louisiana facility goods valued in excess of $50,000 directly from points outside the State of Louisiana.

At all material times, Metro Disposal, Inc., a Louisiana corporation with an office and place of business in Harvey, Louisiana, has been engaged in the business of collecting, disposing and/or recycling commercial, residential and industrial solid waste and recyclable waste. In conducting its operations described above, Metro Disposal, Inc., purchases and receives at its Harvey, Louisiana facility goods valued in excess of $50,000 directly from points outside the State of Louisiana.

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 Service Employees International Union, Local 100, 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, Milton Berry Sr., 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, the unit, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All full-time and part-time hoppers employed by Respondent who work as hoppers on trucks

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *New Process Steel v. NLRB*, ___ F.3d ___, 2009 WL 1162556 (7th Cir. May 1, 2009); *petition for cert. filed,* ___ U.S.L.W. ___ (U.S. May 27, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), *reh'g denied,* No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, ___ F.3d ___, 2009 WL 1162574 (D.C. Cir. May 1, 2009), *petition for reh'g filed,* Nos. 08-1162, 08-1214 (May 27, 2009).

operated by either Richard's Disposal, Inc., or Metro Disposal, Inc., in the collection of garbage and trash in the greater New Orleans area; Excluding: All other employees, guards, and supervisors as defined by the Act.

On May 18, 2007, the Union was certified as the exclusive collective-bargaining representative of the unit. Recognition has been embodied in the current collective-bargaining agreement, which is effective for the period September 1, 2007 through August 31, 2010. At all times since May 18, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 1, 2008, the Respondent failed to pay unit employees a wage increase as specified at Appendix A of the current collective-bargaining agreement.

The subject set forth in the paragraph above relates to wages, hours and other terms and conditions of employment 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 affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

About September 25, 2008, the Union requested that the Respondent bargain collectively about the Respondent's failure to implement a scheduled wage increase.

Since about September 25, 2008, the Respondent has failed and refused to bargain collectively about its failure to implement a scheduled wage increase.

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

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act and has thereby engaged in unfair labor practices affecting 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)(5) and (1) by, since about September 1, 2008, failing to pay the unit employees a wage increase as specified at Appendix A of the Respondent's 2007–2010 collective-bargaining agreement with the Union, we shall order the Respondent to comply with the 2007–2010 collective-bargaining agreement, and to make the unit employees whole for any losses suffered as a result of the Respondent's unlawful conduct by implementing the contractual wage increase and by paying them the wage increase retroactive to September 1, 2008, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest computed in the manner prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).[2] In addition, having found that the Respondent has failed and refused to bargain with the Union about its failure to implement a scheduled wage increase, we shall order the Respondent to bargain in good faith with the Union on request.

ORDER

The National Labor Relations Board orders that the Respondent, M&B Services, Inc., New Orleans, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Service Employees International Union, Local 100, as the exclusive collective-bargaining representative of the employees in the following unit about the Respondent's failure to implement a scheduled wage increase:

Included: All full-time and part-time hoppers employed by Respondent who work as hoppers on trucks operated by either Richard's Disposal, Inc., or Metro Disposal, Inc., in the collection of garbage and trash in the greater New Orleans area; Excluding: All other employees, guards, and supervisors as defined by the Act.

(b) Failing to and refusing to adhere to the terms of the parties' 2007–2010 collective-bargaining agreement by failing to pay unit employees a wage increase as specified in Appendix A of that agreement.

(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) On request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining

[2] In the complaint, the General Counsel seeks compound interest computed on a quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham,* 352 NLRB 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

representative of the unit employees concerning its failure to implement a scheduled wage increase.

(b) Implement the September 1, 2008 wage increase for unit employees as set forth at Appendix A of the 2007–2010 collective-bargaining agreement.

(c) Make whole the unit employees by paying them retroactively the contractually-required wage increase that has not been paid to them since September 1, 2008, 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 New Orleans, Louisiana, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 15, 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 September 1, 2008.

(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. May 29, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, 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 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 the Union, Service Employees International Union, Local 100, as the exclusive collective-bargaining representative of the employees in the following unit about our failure to implement a scheduled wage increase:

Included: All full-time and part-time hoppers employed by us who work as hoppers on trucks operated by either Richard's Disposal, Inc., or Metro Disposal, Inc., in the collection of garbage and trash in the greater New Orleans area; Excluding: All other employees, guards, and supervisors as defined by the Act.

WE WILL NOT fail and refuse to adhere to the terms of our 2007–2010 collective-bargaining agreement by failing to pay unit employees a wage increase as specified in Appendix A of that agreement.

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, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees concerning our failure to implement a scheduled wage increase.

[3] 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."

WE WILL implement the September 1, 2008 wage increase for unit employees as set forth at Appendix A of the 2007–2010 collective-bargaining agreement.

WE WILL make whole the unit employees by paying them retroactively the contractually-required wage increase that has not been paid to them since September 1, 2008, with interest.

M&B SERVICES, INC.