Amalgamated Credit Union *and* Local 393, Office and Professional Employees International Union (OPEIU), AFL–CIO. Case 7–CA–51457

June 3, 2009

ORDER DENYING MOTION FOR DEFAULT JUDGMENT AND REMANDING

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union, the General Counsel issued a complaint on October 17, 2008[1], against Amalgamated Credit Union, the Respondent, alleging that it violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms of its disability policies for unit employees. Copies of the charges and the complaint were properly served on the Respondent. The answer to the complaint was due October 31.

The Regional Office did not receive an answer by October 31. Counsel for the General Counsel, by letter dated November 6, notified the Respondent that unless an answer was filed by November 13, a motion for default judgment would be filed. The Respondent failed to file an answer.

On December 23, the General Counsel filed a Motion for Default Judgment with the Board. On December 31, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 23, 2009, the Respondent filed a response, with exhibits attached, to the Notice to Show Cause. On January 29, 2009, the Charging Party (the Union) filed a Concurrence with the General Counsel's Motion for Default Judgment and Reply to Respondent's Response, and on January 30, 2009, the General Counsel filed a response to the Respondent's Response.

[1] All dates are in 2008 unless otherwise stated.

Ruling on Motion for Default Judgment[2]

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. The complaint in the instant case also affirmatively stated that unless an answer was filed by October 31, 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 November 6, notified the Respondent that unless an answer was filed by November 13, a motion for default judgment would be filed. No answer or request for an extension of time to file an answer was received by that date.

In its response to the Board's Notice to Show Cause, however, the Respondent avers that it did not file an answer because it reasonably believed that the matter had been settled. The Respondent explains that it filed a position statement with the Region on October 9, which statement admitted the alleged unilateral changes and offered to remedy the alleged violations. The Respondent asserts that it then notified counsel for the General Counsel on October 27 that it accepted the proposed settlement agreement subject to two suggested changes. The Respondent indicates that the Region replied that it could not accept the two suggested changes without the approval of the Union, and told the Respondent that someone would get back to it. The Respondent also avers that, in response to the Region's November 6 reminder letter, it faxed a letter to the Regional Director on November 7 specifically requesting that the Region notify it by November 12, the day before the extended deadline for filing an answer, if the charges had not been settled. The Respondent asserts that no one from the Region contacted it between November 7 and 12, and,

[2] 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*, 564 F.3d 840, 2009 WL 1162556 (7th Cir. 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), rehearing denied, No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469, 2009 WL 1162574 (D.C. Cir. 2009), petition for rehearing filed Nos. 08-1162, 08-1214 (May 27, 2009).

therefore, it concluded that the matter was settled and that no answer need be filed.

In her response to the Respondent's Response, counsel for the General Counsel asserts that the Respondent's representations regarding settlement discussions are inaccurate. She contends that it would be unreasonable for the Respondent's labor consultant, Thomas Basil, "a seasoned labor relations representative," to conclude that there was a settlement when no settlement agreement had been executed. Counsel for the General Counsel further asserts that during the period from November 6 through the week of January 5, 2009, she engaged in telephone conversations with Basil in which she informed him that she was still awaiting a response from the Charging Party regarding the Respondent's settlement proposal. She also states that at no time during these discussions did she tell Basil that the matter had been settled or that the Respondent need not file an answer.

Analysis

Though the parties dispute aspects of the conversations that occurred between the Region and Respondent, it is clear that the Respondent admitted to the alleged unilateral conduct, engaged in settlement discussions with the Region, and accepted a proposed settlement agreement, albeit with two suggested changes that had not yet been approved by the Region prior to the extended due date for the filing of an answer. Also undisputed is the fact that the Respondent had replied to the Region's November 6 reminder letter with a faxed letter from its labor consultant, Thomas Basil, stating that it believed the parties had reached a settlement agreement. Importantly, the letter further stated that "[i]f this is not correct we will certainly file an answer. Please contact me by November 12, 2008 [an answer was due by November 13]." Finally, the Region does not dispute that it never responded to the Respondent's letter.

Given the sequence of events and specific facts of this case, particularly the absence of any response to Basil's letter of November 7, we find that the Respondent has demonstrated good cause for its failure to file an answer.[3] Accordingly, we deny the General Counsel's Motion for Default Judgment.[4]

ORDER

IT IS ORDERED that the General Counsel's Motion for Default Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 7 for further appropriate action.

Dated, Washington, D.C. June 3, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] Cf. *Hempstead Lincoln Mercury Motors Corp.*, 349 NLRB 552 (2007) (Board denied motion for default judgment because it found that the Region's supervisory attorney "effectively extended the filing deadline" by telling the respondent's attorney "it was not a problem" when the attorney acknowledged he had not filed by the deadline but told her that he would send the answer by overnight mail and by fax that day).

[4] Member Schaumber additionally observes that the Board generally disfavors default judgments. See *Hempstead Lincoln Mercury*, 349 NLRB at 553 fn. 6.