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John Succi Contracting, Inc. d/b/a John Succi General Contractors a/k/a Succi, John General Contractors and Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland. Case 4-CA-36427

June 30, 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 31, 2008, and April 13, 2009, respectively, the General Counsel issued the complaint on April 15, 2009, against John Succi Contracting, Inc. d/b/a John Succi General Contractors a/k/a Succi, John General Contractors, the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the Act.¹ The Respondent failed to file an answer.

On May 14, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on May 18, 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.

¹ The General Counsel's brief in support of the motion for default judgment indicates that the complaint was served on the Respondent by certified and regular first-class mail at the address listed in the unfair labor practice charge. In addition, the General Counsel's brief indicates that the copy of the complaint sent by certified mail was returned to the Regional Office as "unclaimed" by the Respondent, and the complaint sent by regular mail has not been returned. The General Counsel attached to his brief an affidavit signed by the Respondent and offered it as an admission of the Respondent's address, which is the same as the address listed in the unfair labor practice charge. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited therein. In any event, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt. *Id.*

Ruling on Motion for Default Judgment²

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 received by April 29, 2009, 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 General Counsel's motion disclose that the Region, by letter dated April 29, 2009, notified the Respondent that unless an answer was received by May 6, 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 or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and 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 an office in Yardley, Pennsylvania, has been engaged as a general contractor in the construction industry. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, performed services valued in excess of \$10,000 outside the Commonwealth of Pennsylvania, and performed services valued in excess of \$49,500 for Atomic International Inc. (Atomic), an enterprise within the Commonwealth of Pennsylvania.

At all material times, Atomic, a Pennsylvania corporation with a facility in Gilbertsville, Pennsylvania, has been engaged in the manufacture of ledite block. During the 12-month period preceding issuance of the complaint, Atomic, in conducting its business operations described

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 *Snell Island SNF LLC v. NLRB*, ___ F.3d ___, 2009 WL 1676116 (2d Cir. June 17, 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (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 (D.C. Cir. 2009), petition for rehearing filed Nos. 08-1162, 08-1214 (May 27, 2009).

above, purchased and received at its Gilbertsville, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent and Atomic are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland, 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, John Succi, the Respondent's owner, held the position of president of the Respondent 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 Respondent, by John Succi, engaged in the following conduct at a jobsite in Buckingham, Pennsylvania (the Buckingham jobsite):

1. About October 22, 2008, in the garage:

(a) Interrogated an employee concerning the employee's union sympathies and activities.

(b) Told the employee that the employee could no longer work for the Respondent because the employee supported the Union and that the employee must go to the union hall and wait for work because the employee signed with the Union.

2. About October 22, 2008, in the Great Room:

(a) Interrogated employees concerning their union sympathies.

(b) Told the employees that they could no longer work for the Respondent because they supported the Union and that they must go to the union hall and wait for work because they signed with the Union.

(c) Threatened employees with job loss because they supported the Union.

(d) Threatened to kill a union representative and bury him.

3. About October 22, 2008, by telephone, threatened to discharge employees who supported the Union.

4. About October 28, 2008:

(a) Informed an employee that the Respondent laid off the employee because the employee supported and assisted the Union.

(b) Threatened to have killed employees who supported the Union.

5. About October 24, 2008, the Respondent laid off its employees, Matthew Whittaker, Kenneth Whittaker, and Joseph Perry. The Respondent engaged in this conduct

because the named employees supported and assisted the Union, and to discourage employees from supporting the Union.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 1–4, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By the conduct described above in paragraph 5, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. 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 laying off employees Matthew Whittaker, Kenneth Whittaker, and Joseph Perry, we shall order the Respondent to offer these employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. 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*, 283 NLRB 1173 (1987).³ The Respondent shall also be required to remove from its files all references to the unlawful layoffs of Matthew Whittaker, Kenneth Whittaker, and Joseph Perry, and to notify these employees in writing that this has been done and that the unlawful layoffs will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, John Succi Contracting, Inc. d/b/a John

³ 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, 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

Succi General Contractors a/k/a Succi, John General Contractors, Yardley, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union sympathies and activities.

(b) Telling employees that they could no longer work for the Respondent because they supported Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland, the Union, or that employees must go to the union hall and wait for work because they signed with the Union.

(c) Threatening employees with job loss because they supported the Union.

(d) Threatening to kill and bury union representatives.

(e) Informing employees that the Respondent laid off employees because they supported and assisted the Union.

(f) Threatening to have employees who supported the Union killed.

(g) Laying off employees because they supported or assisted the Union, or to discourage employees from supporting the Union.

(h) 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 Matthew Whittaker, Kenneth Whittaker, and Joseph Perry full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Matthew Whittaker, Kenneth Whittaker, and Joseph Perry whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, 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 layoffs of Matthew Whittaker, Kenneth Whittaker, and Joseph Perry, and within 3 days thereafter, notify these employees in writing that this has been done, and that the unlawful layoffs will not be used against them 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 Yardley, Pennsylvania, copies of the attached notice marked "Appendix."⁴ 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 employed by the Respondent at any time since October 22, 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. June 30, 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.

⁴ 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."

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 interrogate employees concerning their union sympathies and activities.

WE WILL NOT tell employees that they can no longer work for us because they supported Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland, the Union, or that employees must go to the union hall and wait for work because they signed with the Union.

WE WILL NOT threaten employees with job loss because they support the Union.

WE WILL NOT threaten to kill and bury union representatives.

WE WILL NOT inform employees that we laid off employees because they supported or assisted the Union.

WE WILL NOT threaten to have employees who supported the Union killed.

WE WILL NOT lay off employees because they supported or assisted the Union, or to discourage employees from supporting the Union.

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, within 14 days from the date of the Board's Order, offer Matthew Whittaker, Kenneth Whittaker, and Joseph Perry full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Matthew Whittaker, Kenneth Whittaker, and Joseph Perry whole for any loss of earnings and other benefits resulting from their layoffs, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoffs of Matthew Whittaker, Kenneth Whittaker, and Joseph Perry, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done, and that the unlawful layoffs will not be used against them in any way.

JOHN SUCCI CONTRACTING, INC. D/B/A JOHN SUCCI
GENERAL CONTRACTORS A/K/A SUCCI, JOHN GENERAL
CONTRACTORS