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Myers Investigative and Security Services, Inc. and United Federation of Special Police and Security Officers, Inc. Cases 22–CA–28417 and 22–CA–28575

July 23, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On February 11, 2009, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel filed an exception and a supporting brief.

The National Labor Relations Board¹ has considered the decision and record in light of the exception and brief and has decided to affirm the judge's rulings, findings,² and conclusions, and to adopt the Order as modified and set forth in full below.³

AMENDED REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an

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 *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 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), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

² No exceptions were filed to the judge's findings that the Respondent violated the Act as alleged.

The General Counsel has excepted to the judge's failure to impose a remedy that "includes a bargaining schedule requiring [the] Respondent to meet with the Union not less than 24 hours per month and not less than 6 hours per session or any other schedule mutually agreed upon until a collective bargaining agreement is reached or good faith impasse is reached." We deny the General Counsel's exception, as there is a lack of support for this remedy in current Board law. Chairman Liebman believes, however, that such a remedy may be worthy of consideration in a future case. See *Leavenworth Times*, 234 NLRB 649, 649–651 (1978) (Member Murphy, dissenting in relevant part).

³ We have modified the judge's recommended Order to reflect the violations found and to more closely conform to the Board's standard remedial language. We have also substituted a new notice to employees to comport with these modifications. Finally, we have included an amended remedy.

understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to provide the Union with the information it requested and to bargain on request with the Union over the effects of the possible loss of the Respondent's contract at the Lakehurst, New Jersey facility.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Myers Investigative and Security Services, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union by failing to respond to the Union's requests to meet and continue negotiations, failing and refusing to meet with the Union at reasonable times, and failing and refusing to bargain over the effects of the possible loss of the Respondent's contract at the Lakehurst, New Jersey facility.

(b) Failing and refusing to provide the Union with information that it requested, which information is necessary for, and relevant to, the Union as the collective-bargaining representative of the unit employees.

(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 with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time security guards employed by Respondent at the Lakehurst Naval Base in Lakehurst, New Jersey and the Weapons Naval Station Earle, Colt's Neck, New Jersey, excluding all other employees and supervisors as defined by the National Labor Relations Act.

(b) On request, bargain in good faith with the Union over the effects of a possible loss of the Respondent's contract at the Lakehurst, New Jersey facility.

(c) Furnish the Union with the information that it requested on about July 22, 2008, namely, the names, wages, and benefits of the unit employees.

(d) Within 14 days after service by the Region, post at its principal office in Dunn, North Carolina, as well as all its facilities in the State of New Jersey where its employees are employed, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 22, 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 May 7, 2008.

(e) 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. July 23, 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

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."

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 in good faith with the Union by failing to respond to the Union's requests to meet and continue negotiations, WE WILL NOT fail and refuse to meet with the Union at reasonable times, and WE WILL NOT fail and refuse to bargain over the effects of the possible loss of our contract at the Lakehurst, New Jersey facility.

WE WILL NOT fail and refuse to provide the Union with information that it requested, which information is necessary for, and relevant to, the Union as the collective-bargaining representative of the unit employees.

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 with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, WE WILL embody the understanding in a signed agreement:

All full-time and regular part-time security guards employed by us at our Lakehurst Naval Base in Lakehurst, New Jersey and the Weapons Naval Station Earle, Colt's Neck, New Jersey, excluding all other employees and supervisors as defined by the National Labor Relations Act.

WE WILL, on request, bargain in good faith with the Union over the effects of a possible loss of our contract at the Lakehurst, New Jersey facility.

WE WILL furnish the Union with the information that it requested on about July 22, 2008, namely, the names, wages, and benefits of the unit employees.

MYERS INVESTIGATIVE AND SECURITY SERVICES, INC.

Robert Gonzales, Esq., for the General Counsel.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on January 29, 2009, in Newark, New Jersey. The consolidated amended complaint herein, which issued on January 7, 2009, and was based upon unfair labor practice charges filed on June 23, August 25, and September 26, 2008, by United Federation of Special Police & Security Officers, Inc. (Union), alleges that Myers Investigative and Security Services, Inc. (Respondent), violated Section 8(a)(1) and (5) of the Act by refusing to meet with the Union to continue bargaining for an initial contract, has engaged in delay and failed to meet with the Union at reasonable times, has failed to respond to the Union's request to meet and bargain over the effects of the possible loss of the Respondent's contract at the Lakehurst, New Jersey facility, and has failed to supply the Union with certain requested information, which is relevant to the Union as the collective-bargaining representative of certain of its employees. The consolidated complaint further states that pursuant to the Board's Rules and Regulations, the Respondent's answer must be received by the Regional Office by January 21, 2009. The Respondent failed to file an answer and did not appear at the hearing herein.¹ Counsel for the General Counsel, at the hearing, moved for default judgment, which motion I granted. Based upon the pleadings herein, I make the following findings of fact and conclusions of law:

1(a). The Union filed the charge in Case 22-CA-28417 on June 23, 2008, and a copy was served by regular mail on Respondent on June 24, 2008.

(b) The Union filed its first amended charge in Case 22-CA-28417 on August 25, 2008, and a copy was served by regular mail on the Respondent on August 27, 2008.

(c) The Union filed the charge in 22-CA-28575 on September 26, 2008, and a copy was served by regular mail on Respondent on September 26, 2008.

2. At all material times Respondent, a North Carolina corporation, with its office and place of business in Dunn, North Carolina (Respondent's principal office), has been engaged in providing security services for customers located in various states of the United States, including facilities located in Colt's Neck and Lakehurst, New Jersey, the only facilities involved herein.

3. During the preceding 12 months Respondent, in conducting its business operations described above in paragraph 2, performed services valued in excess of \$50,000 in states other than the State of North Carolina.

4. At all material times Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. The following employees of 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 full-time and regular part-time security guards employed by Respondent at the Lakehurst Naval Base in Lakehurst, New Jersey, and the Weapons Naval Station Earle, Colt's Neck, New Jersey, excluding all other employees and supervisors as defined in the National Labor Relations Act.

7. On March 18, 2008, the Union was certified as the exclusive collective-bargaining representative of the unit.

8. At all times since March 18, 2008, based on Section 9(a) of the Act, the Union has been the exclusive bargaining representative of the unit.

9. About March 25, 2008, the Union by electronic mail, requested that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

10(a). About May 6, 2008, Respondent and the Union began negotiations for an initial collective-bargaining agreement.

(b) Since May 7, 2008, Respondent has failed to respond to Union requests to meet and continue negotiations for an initial collective-bargaining agreement.

(c) Since May 7, 2008, Respondent has engaged in chronic delay in meeting with the Union and has failed to meet at reasonable times to continue negotiations for an initial collective-bargaining agreement.

(d) Since September 17, 2008, Respondent failed to respond to the Union's requests to meet and bargain over the effects of the possible loss of Respondent's contract at the Lakehurst, New Jersey facility.

11. Since about July 22, 2008, the Union, by electronic mail, has requested that Respondent furnish the Union with the following information: names, wages, and benefits of employees in the unit.

12. The information requested by the Union, as described above in paragraph 11, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

13. Since about July 22, 2008, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraphs 11 and 12.

14. By the conduct described in paragraphs 10 and 13, 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, in violation of Section 8(a)(1) and (5) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist from engaging in these activities, and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. In this regard, as requested in the complaint

¹ The initial consolidated complaint issued on November 24, 2008. After receiving no answer from the Respondent, the Region, by letter to the Respondent dated December 17, 2008, stated that unless a timely answer was received by December 24, 2008, the Region would move for default judgment. No answer was received in response to the complaint or the subsequent letter.

herein, I recommend that the Respondent be ordered to bargain in good faith with the Union for a period of 1 year commencing on the date of the first collective-bargaining session between the parties after the issuance of this Decision. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). I also recommend that the Respondent be ordered to furnish the Union with the names, wages, and benefits of the employees in the unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Myers Investigative and Security Services, Inc., its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union by failing to respond to the Union's requests to meet and continue negotiations, failing and refusing to meet at reasonable times, and failing and refusing to bargain over the effects of the possible loss of Respondent's contract at the Lakehurst, New Jersey facility.

(b) Failing and refusing to provide the Union with information that it requested, which information is necessary for, and relevant to, the Union as the collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Notify the Union within 10 days of receipt of this Decision that it will bargain in good faith with the Union about the terms and conditions of employment of the unit employees for a period of 1 year, and that it will respond to the Union's requests to bargain and will meet with the Union at reasonable times to continue the negotiations.

(b) Furnish the Union with the information that it requested on about July 22, 2008, namely the names, wages, and benefits of the unit employees.

(c) Within 14 days after service by the Region, post at its principal office in Dunn, North Carolina, as well as all its facilities in the State of New Jersey where its employees are employed, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places in-

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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."

cluding 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 May 7, 2008.

(d) 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. February 11, 2009

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 refuse to bargain in good faith with United Federation of Special Police & Security Officers, Inc. (the Union), by failing to respond to the Union's request to meet and bargain, by refusing to meet with the Union at reasonable times to continue negotiations, by refusing to furnish the Union with information that it requested, which was relevant to the Union and the collective-bargaining representative of certain of our employees, and by failing to respond to the Union's request to bargain over the effects of the possible loss of our contract at the Lakehurst, New Jersey facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL within 10 days of the receipt of this Decision notify the Union that we will bargain in good faith with respect to the terms and conditions of employment of our full-time and regular part-time security guards employed at the Lakehurst Naval Base and the Weapons Naval Station Earle in Lakehurst and Colts Neck, New Jersey, and WE WILL meet at reasonable times, without delay, WE WILL bargain in good faith with the Union over the effects of a possible loss of our contract at the Lakehurst facility, and WE WILL furnish the Union with the names, wages, and benefits of our unit employees.

MYERS INVESTIGATIVE AND SECURITY SERVICES, INC.