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Bobbitt Electrical Service, Inc. and International Brotherhood of Electrical Workers, Local Union No. 481, a/w International Brotherhood of Electrical Workers. Case 25–CA–31185

May 28, 2010

DECISION AND ORDER

BY MEMBERS SCHAUMBER, BECKER, AND PEARCE

DECISION AND ORDER

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 29 and December 29, 2009, respectively, the General Counsel issued the complaint on January 28, 2010, against Bobbitt Electrical Service, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer.

On April 5, 2010, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 6, 2010, 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 received by February 11, 2010, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true.¹ Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 12, 2010, notified the Respondent that unless an answer was received by March 26, 2010, a motion for default judgment would be filed.

¹ The General Counsel's motion indicates that the copy of the complaint sent by mail on January 26, 2010, was sent to an incorrect address. However, the General Counsel's motion indicates that another copy of the complaint, extending the date for receipt of the answer to the complaint until March 25, 2010, was hand-delivered to Respondent's business address.

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 an office and place of business in Indianapolis, Indiana (the Respondent's facility), has been engaged as an electrical contractor in the construction industry.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Indianapolis, Indiana facility goods valued in excess of \$50,000 directly from points outside the State of Indiana.

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 Brotherhood of Electrical Workers, Local Union No. 481, a/w International Brotherhood of Electrical Workers (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, Bernard Bobbitt held the position of the Respondent's owner/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.

About October 16, 2009, the Respondent discharged its employee Robert Scott.

The Respondent engaged in the conduct described above because the named employee of the Respondent formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By discharging Robert Scott because he assisted the Union and engaged in concerted activities, the Respondent has discriminated in regard to the hire or tenure or terms and 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. 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 violated Section 8(a)(3) and (1) of the Act by discharging Robert Scott, we shall order the Respondent to offer Scott full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed. We also shall order the Respondent to make Scott whole for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against him. 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).²

The Respondent shall be required to remove from its files any references to the unlawful discharge of Scott, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

Finally, in view of the fact that the Respondent has completed work at its VA Hospital jobsite in Indianapolis, Indiana, we shall order the Respondent to mail a copy of the notice to the Union and to the last known addresses of its unit employees employed by the Respondent on or after October 16, 2009, at its VA Hospital jobsite in Indianapolis, Indiana, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Bobbitt Electrical Service, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they join, support, or assist International Brotherhood of Electrical Workers, Local Union No. 481, a/w International Brotherhood of Electrical Workers, or any other labor organization, or engage in concerted activities.

(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) Within 14 days from the date of this Order, offer Robert Scott full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Robert Scott whole for any loss of earnings and other benefits suffered as a result of the unlawful dis-

charge, 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 references to the unlawful discharge of Robert Scott and, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him 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, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"³ to the Union and to all unit employees who were employed by the Respondent at its VA Hospital jobsite in Indianapolis, Indiana since October 16, 2009.

(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 28, 2010

Peter C. Schaumber,	Member
Craig Becker,	Member
Mark Gaston Pearce	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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).

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed By Order of the National Labor Relations Board" shall read "Mailed 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 mail 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 discharge employees because they join, support, or assist International Brotherhood of Electrical Workers, Local Union No. 481, a/w International Brotherhood of Electrical Workers, or any other labor organization, or engage in concerted activities.

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 Robert Scott full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Robert Scott whole for any loss of earnings and other benefits resulting from his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful discharge of Robert Scott, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

BOBBITT ELECTRICAL SERVICE, INC.