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International Protective Services, Inc. d/b/a International Services, Inc. and Kiranjit Gill. Case 20–CA–33500

June 17, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND BECKER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint and compliance specification. Upon a charge and a first amended charge filed by the Charging Party on July 13 and October 11, 2007, respectively, the General Counsel issued the complaint on November 30, 2009, against International Protective Services, Inc. d/b/a International Services, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer to the complaint. Thereafter, on January 21, 2010, the General Counsel issued the consolidated complaint and compliance specification. Again, the Respondent failed to file an answer.

On February 25, 2010, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on March 2, 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. Similarly, Section 102.56 of the Board’s Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively states 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 and compliance specification are true. Further, the undisputed allegations in the General Counsel’s motion disclose that the

Respondent, by letter dated February 17, 2010, notified the Respondent that unless an answer was received by February 24, 2010, 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.¹

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 at San Francisco International Airport, in California (the Respondent’s facility), has been engaged in providing armed and unarmed security and guard services. During the calendar year ending December 31, 2007, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 for FedEx at the San Francisco International Airport, an enterprise within the State of California that is directly engaged in interstate commerce. 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 SEIU, Local 24/7 IUSO, 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, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Alan Bailey	-	Vice President
Cassandra Mitchell	-	Branch Manger, San Leandro, CA
H. Birdi	-	Field Supervisor

The Respondent and the Union were signatory to a collective-bargaining agreement that was in effect through June 30, 2007.

¹ The consolidated complaint and compliance specification indicate that the Respondent has filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933, 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited there; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

The complaint alleges that the Respondent engaged in the following conduct:

1. On about March 2007, the Respondent, by Cassandra Mitchell, at the Respondent's facility:

(a) stated she was tired of employees complaining to the Union, that she did not like it, and threatened employees with not protecting them if a client complained about them in the future;

(b) threatened employees with discharge if they complained to the Union;

(c) threatened employees with discipline by H. Birdi because employees complained that H. Birdi performed bargaining unit work.

2. On about June 18, 2007, the Respondent, by Alan Bailey, at the Respondent's facility:

(a) interrogated employees about why they called the Union;

(b) threatened employees with unspecified reprisals for calling the Union about a contract violation.

3. On about May 30, 2007, the Respondent disciplined employee Kiranjit Gill.

4. On about June or July 24, 2007, the Respondent suspended employee Kiranjit Gill.²

5. On about August 2, 2007, the Respondent discharged employee Kiranjit Gill.

The Respondent engaged in the conduct described above in paragraphs 3–5 because Kiranjit Gill assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, 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 disciplining, suspending, and discharging Gill, 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.

² The complaint alleges that Gill was suspended on June 24, 2007, but the compliance specification alleges that she was suspended on July 24, 2007. We need not resolve this discrepancy, because in either case, we find that Gill is owed the amount set forth in the compliance specification, plus interest accrued to the date of payment.

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 disciplining, suspending, and discharging Kiranjit Gill, we shall order the Respondent, in the event that it resumes the same or similar business operations,³ to offer Kiranjit Gill full reinstatement to her former position, or, if that position no longer exists, to a substantially similar position, without prejudice to her seniority and other rights and privileges previously enjoyed. In addition, we shall order the Respondent to make Gill whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, as set forth in the compliance specification, with interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws.⁴ The Respondent shall also be required to remove from its files all references to the unlawful discipline, suspension, and discharge of Kiranjit Gill, and to notify her in writing that this has been done and that the unlawful discipline, suspension, and discharge will not be used against her in any way. Finally, because the Respondent ceased operations on April 27, 2009, we shall order it to mail, rather than post, copies of the attached notice to employees.

ORDER

The National Labor Relations Board orders that the Respondent, International Protective Services, Inc. d/b/a International Services, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that the Respondent's supervisor is tired of employees complaining to the Union and does not like it, and threatening employees with not protecting them if a client complained to the Respondent about them in the future.

(b) Threatening employees with discharge if they complained to the Union.

³ The compliance specification states that the Respondent ceased operations on April 27, 2009, and the backpay period ends on that date.

⁴ Appendix A of the compliance specification sets forth the backpay owed to Gill, with interest calculated through December 31, 2009, using a compound interest formula. As we have indicated in prior cases, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Austin Printing Co.*, 353 NLRB No. 54, slip op. at 3 fn. 3 (2008); *Glen Rock Ham*, 352 NLRB 516, 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

(c) Threatening employees with discipline because employees complained that the Respondent's agent performed bargaining unit work.

(d) Interrogating employees about why they called the Union.

(e) Threatening employees with unspecified reprisals for calling the Union about a contract violation.

(f) Disciplining, suspending, and discharging employees because they assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(g) 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) In the event that the Respondent resumes the same or similar business operations, within 14 days thereafter, offer Kiranjit Gill full reinstatement to her former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Kiranjit Gill whole for any loss of earnings and other benefits suffered as a result of her unlawful suspension and discharge, by paying her the amount of \$48,679.64, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this Decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to its unlawful discipline, suspension, and discharge of Kiranjit Gill, and within 3 days thereafter, notify her in writing that this has been done and that the unlawful conduct will not be used against her 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, a copy of the attached notice marked "Appendix"⁵ to all employ-

ees who have been employed by the Respondent at any time since March 2007.

(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 17, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, 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

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 tell our employees that our supervisor is tired of employees complaining to the Union and does not like it, and WE WILL NOT threaten employees with not protecting them if a client complains about us in the future.

WE WILL NOT threaten employees with discharge if they complain to the Union.

WE WILL NOT threaten employees with discipline because employees complained that our agent performed bargaining unit work.

WE WILL NOT interrogate employees about why they called the Union.

⁵ 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 Judge"

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT threaten employees with unspecified reprisals for calling the Union about a contract violation.

WE WILL NOT discipline, suspend, or discharge employees because they assist the Union and engage in concerted activities, and to discourage employees from engaging in these 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, in the event that we resume the same or similar business operations, within 14 days thereafter, offer Kiranjit Gill full reinstatement to her former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Kiranjit Gill whole for any loss of earnings and other benefits suffered as a result of her unlawful suspension and discharge, by paying her the amount of \$48,679.64, plus interest, and minus tax withholdings required by Federal and State laws.

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

INTERNATIONAL PROTECTIVE SERVICES, INC.
D/B/A INTERNATIONAL SERVICES, INC.