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Advantage Fire Sprinkler, LLC and Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO.
Case 30-CA-18321

August 12, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND BECKER

The General Counsel seeks summary judgment in this case on the ground that the Respondent, Advantage Fire Sprinkler, LLC, has failed to file a sufficient answer to the complaint. On April 28, 2009,¹ Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO (the Union) filed a charge in this proceeding. Thereafter, on June 29, the Regional Director for Region 30 issued a complaint alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish, upon request, information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Respondent's employees. The information requested pertains to the Respondent's relationship with an entity identified as Firestopping Specialists, LLC. The Respondent, by counsel, filed an answer to the complaint on July 9, asserting that the Respondent has no assets, employees, or resources, and is financially broke and has surrendered all of its assets to its first lien secured creditor. Attached to the answer are a copy of the Respondent's voluntary surrender agreement with the creditor and an affidavit identified by counsel as that of the Respondent's former owner, Mark Blemberg.² The Respondent's counsel also stated that henceforth it will no longer represent the Respondent in this matter.³

On July 22, the General Counsel notified the Respondent's counsel that the July 9 answer failed to specifi-

¹ All dates hereafter are in 2009, unless otherwise noted.

² Blemberg's affidavit, dated May 28, 2009, states that the Respondent was dissolved on December 10, 2008, and addresses whether there is a relationship, in certain respects, between the Respondent and Firestopping Specialists, LLC. Also attached to the answer are documents purported to be from the State of Wisconsin Department of Financial Institutions pertaining to the Respondent and Firestopping Specialists, LLC. These letters and attachments, which were sent to the Union, provided only some of the information and documents requested by the Union.

³ Respondent's counsel submitted two similar letters to the General Counsel, both dated July 9, 2009, described therein as answers to the complaint. The first letter is addressed to the Regional Director for Region 30. The second letter is addressed jointly to the Union's counsel and to a Board agent for Region 30.

cally admit, deny, or explain the factual allegations contained in the complaint and, therefore, the answer did not meet the requirements of Section 102.20 of the Board's Rules and Regulations. The General Counsel extended the date for the filing of an adequate answer to July 29 and indicated that the failure to file a sufficient answer will result in the filing of a motion for summary judgment. On July 27, the Respondent's counsel informed the General Counsel that "this letter will serve as official notice I am no longer acting as counsel" for the Respondent and that the Respondent's former owner no longer has an association with the Respondent. The Respondent has not otherwise responded to the complaint or to the General Counsel's notification that the July 9 answer is insufficient.

On August 7, the General Counsel filed a Motion for Summary Judgment with the Board. The Motion for Summary Judgment was sent to the Respondent, and a courtesy copy was sent to the Respondent's counsel of record. On August 10, 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 Summary Judgment

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 to the contrary is shown. Section 102.20 further states that the answer "shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial." The General Counsel's complaint in this case cites Section 102.20, and affirmatively states that unless a timely answer is received the Board may find that the allegations in the complaint are true.

As noted, by letter dated July 9, the Respondent, by counsel, stated that the Respondent is dissolved and has surrendered all of its assets to its first lien secured creditor. Further, the undisputed allegations in the Motion for Summary Judgment disclose that, on July 22, the General Counsel notified the Respondent and its counsel that the Respondent's answer did not admit, deny, or explain each of the facts alleged in the complaint as required by Section 102.20, and that a Motion for Summary Judgment would be filed unless the Respondent filed an appropriate answer by July 29. On July 27, the Respon-

dent's counsel stated that he no longer represented the Respondent in this matter.

We find that the Respondent's July 9 answer asserting economic difficulties is insufficient to constitute an adequate answer to the complaint under Section 102.20 of the Board's Rules and Regulations because it does not specifically admit, deny, or explain each of the allegations in the complaint. See *O. P. Held, Inc.*, 286 NLRB 676 (1987).⁴ We also find that the affidavit of Mark Blemberg, attached to the July 9 answer, and the other attachments, fail to specifically admit, deny, or explain the specific complaint allegations and do not meet the requirements of Section 102.20.⁵

In the absence of good cause being shown for the failure to file an adequate answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.

Accordingly, based on the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Wisconsin corporation, with facilities in Appleton, Wisconsin, was engaged, until at least December 2008, in the installation of sprinkler systems for fire protection in new and existing buildings, where it annually purchased and received goods and supplies valued in excess of \$50,000 directly from points outside the State of Wisconsin. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

All journeymen and apprentice sprinkler fitters employed by the Respondent out of its Appleton, Wisconsin facility; excluding guards and supervisors as defined by the Act.

⁴ Furthermore, economic difficulty or necessity is not cognizable as a defense to the allegation of an unlawful refusal to bargain. *Auburn Die Co.*, 282 NLRB 1044 (1987).

⁵ In granting the General Counsel's motion, Member Schaumber has carefully reviewed the Respondent's answer letter, affidavit, and other supporting documentation. To the extent that the Respondent has already provided the Union with information responsive to its request or has indicated that no such information or documentation exists (we have indicated at fn. 2 above that the Respondent provided "some of the information and documents requested by the Union"), Member Schaumber would not require the Respondent do anything further.

Since at least March 2005, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the foregoing unit within the meaning of Section 9(a) of the Act and has been so recognized by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2007, to March 31, 2010.

On about December 4, 2008, the Union, by letter, requested that the Respondent furnish the Union with information. On January 9, 2009, the Union, by letter, repeated its request for information to the Respondent. The December 4, 2008 written request, comprised of 12 pages, sought information, including written documentation, pertaining to the relationship between the Respondent and Firestopping Specialists, LLC, and other information concerning the activities of these entities. It is undisputed that, since December 2008, the Respondent has failed and refused to furnish the Union with the information sought or has failed and refused to adequately respond to the Union's request for information.⁶ It is also undisputed that the information requested by the Union on December 4, 2008, was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By failing and refusing to furnish, or to adequately furnish, necessary and relevant information to the Union, upon request, the Respondent has failed and refused to bargain collectively with the Union as the exclusive collective-bargaining representative of its employees and, therefore, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 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 steps to effectuate the policies of the Act. Having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union relevant and necessary information requested on about December 4, 2008, we shall order the Respondent to furnish the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Advantage Fire Sprinkler, LLC, Appleton,

⁶ The Respondent does not contend in its answer that Blemberg or the Respondent, at any time, by virtue of any of the documents described in fn. 2, supra, adequately responded to the Union's December 4, 2008 request for information.

Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Road Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO (the Union) by failing and refusing to provide requested information that is relevant and necessary to the Union as the collective-bargaining representative of employees in the following appropriate unit:

All journeymen and apprentice sprinkler fitters employed by the Respondent out of its Appleton, Wisconsin facility; excluding guards and supervisors as defined by the Act.

(b) In any like or related matter 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) Furnish the Union with the information that it requested on about December 4, 2008, to the extent it has not already been provided.

(b) Within 14 days after service by the Region, post at its facilities in Appleton, Wisconsin, copies of the attached notice marked “Appendix.”⁷ Copies of the notice, on forms provided by the Regional Director for Region 30, 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 December 4, 2008.

(c) 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 at-

⁷ 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.”

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 12, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, 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.

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 collectively with Road Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO, by failing and refusing to provide requested information that is relevant and necessary to that Union as the collective-bargaining representative of employees in the following appropriate unit:

All journeymen and apprentice sprinkler fitters employed by us out of our Appleton, Wisconsin facility; excluding guards and supervisors as defined by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL furnish the Union the information it requested on about December 4, 2008.

ADVANTAGE FIRE SPRINKLER, LLC