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Case Farms Processing, Inc. and United Food and Commercial Workers Union, Local No. 880.

Cases 8-CA-37850, 8-CA-38244, 8-CA-38285, 8-CA-38412, and 8-CA-38439

September 9, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE
AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the fourth amended consolidated complaint and has withdrawn its answers to prior complaints. Upon charges and amended charges filed by the Union, the General Counsel issued the fourth amended consolidated complaint on June 16, 2010 against Case Farms Processing, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the Act.¹ By letter dated June 24, 2010, the Respondent informed the Region that it had decided not to file an answer to the fourth amended consolidated complaint, with the understanding that the General Counsel intended to file a motion for default judgment, and that it was withdrawing its answers to previous complaints. Accordingly, the Respondent failed to file an answer.

On June 29, 2010, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on July 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. By letter dated July 9, 2010, the Respondent notified the Board that it would not file any opposition to the Acting General Counsel's Motion for Default Judgment and respectfully requested the Board to proceed as expeditiously as possible in considering the motion and issuing an appro-

¹ The General Counsel issued the original complaint on December 31, 2008, which was the subject of an informal settlement agreement that was approved on February 20, 2009. Thereafter, based on additional charges filed by the Union, the General Counsel issued a consolidated complaint, amended consolidated complaint, and second amended consolidated complaint on July 31, August 18, and September 30, 2009, respectively. Subsequently, having concluded that the informal settlement agreement should be vacated and set aside, the General Counsel issued an order consolidating cases, order revoking informal settlement agreement, third amended consolidated complaint and notice of hearing on November 30, 2009. The parties reached a non-Board settlement of certain matters set forth in the third amended consolidated complaint. Thereafter, on June 11, 2010, the General Counsel issued an order approving withdrawal or partial withdrawal of certain allegations and severing Cases 8-CA-38340, 8-CA-38380, 8-CA-38381, and 8-CA-38400 from the instant proceeding.

priate order. 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 fourth amended consolidated complaint affirmatively stated that unless an answer was received by June 30, 2010, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. As stated above, the Respondent failed to file an answer to the fourth amended consolidated complaint and withdrew its answers to prior complaints. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted as true.²

Accordingly, based on the withdrawal of the Respondent's answers to prior complaints, and in the absence of good cause being shown for the failure to file an answer to the fourth amended consolidated complaint, we deem the allegations in the fourth amended consolidated complaint to be admitted as true, and we grant the Acting 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, an Ohio corporation with a place of business located at 1818 County Road 160, Winesburg, Ohio (the Respondent's facility), has been engaged in the business of processing chickens. Annually, in the course and conduct of its business, the Respondent sells and ships goods valued in excess of \$50,000 directly to points located outside the State of Ohio.

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 United Food and Commercial Workers Union, Local No. 880 (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/or agents of the Respondent within the meaning of Section 2(13) of the Act:

² See *Maislin Transport*, 274 NLRB 529 (1985).

Paul Nelson	Plant Manager
Guillermo Ibarra	Human Resource Manager
Armando Campos	Human Resource Manager
Bill McAfee	Supervisor
Paul Storsin	Supervisor
Sharon Jellel	Second Processing Manager
Pedro Valdez	Supervisor
Angel Melendez Garcia	Supervisor
Jonathan Martinez Castro	Supervisor
Barbara Gomez	Supervisor

1. On about June 28, 2008, the Respondent, by its supervisor and/or agent Armando Campos, unlawfully interrogated employees about their union activities outside of the Super 8 motel located near the Respondent's facility.

2. At a new employee training meeting on about June 12, 2008, the Respondent, by its supervisor and/or agent Armando Campos:

- (a) unlawfully threatened employees that no wage increases would be granted as long as the Union was at the facility;
- (b) made unlawful statements of futility by telling employees that the Union could not help employees; and
- (c) coercively informed employees that the Respondent had eliminated the union at its North Carolina plant by hiring Puerto Rican employees to remove the union and coercively informed employees that the Respondent brought the new employees to the Respondent's facility to remove the Union.

3. On about August 5, 2008; March 24, 2009; and April 14, 2009; the Respondent, by its supervisors and/or agents, including Sharon Jellel and Armando Campos, unlawfully created the impression that employees' protected activities were under surveillance.

4. On about March 19, 2009, the Respondent, by its supervisors and/or agents, at the Respondent's facility:

- (a) unlawfully coerced employees by telling them that there would be no jobs for them if they did not sign a decertification petition; and
- (b) unlawfully threatened an employee that he would not have a job if he did not sign a decertification petition.

5. On about March 24, 2009, the Respondent, by its supervisor and/or agent Pedro Valdez, unlawfully interrogated an employee about the employee's union and/or protected concerted activities.

6. On about April 14, 2009, the Respondent, by its supervisor and/or agent Armando Campos, at the Respondent's facility:

- (a) unlawfully threatened an employee with discipline in retaliation for the employee's union and/or protected concerted activity; and
- (b) coercively informed an employee that she was talking to other employees too much, in order to discourage the employee's union and/or protected concerted activity.

7. On about April 20, 2009, the Respondent, by its supervisors and/or agents, including Paul Nelson, Pedro Valdez, Sharon Jellel, and Armando Campos, at the Respondent's facility, held a coercive meeting with an employee in retaliation for the employee's union and/or protected concerted activity.

8. On about April 20, 2009, the Respondent, by its supervisor and/or agent Armando Campos, at the Respondent's facility, unlawfully threatened to discipline an employee because of his union and/or protected concerted activities.

9. On about May 27, 2009, the Respondent, by its supervisor and/or agent Armando Campos, at the Respondent's facility:

- (a) threatened an employee with termination in retaliation for his union and/or protected concerted activities; and
- (b) coercively informed an employee that the Respondent had problems with the Respondent's employees because the Union wanted to represent the employees at the Respondent's facility.

10. In or around May 2009, the Respondent, by its supervisor and/or agent Paul Storsin, at the Respondent's facility, unlawfully interrogated an employee about his protected activities and the protected activities of other employees.

11. During June and July 2009, the Respondent, by its supervisors and/or agents, including Armando Campos, at the Respondent's facility:

- (a) coercively held a meeting to urge an employee to sign a decertification petition and placed his name on a decertification petition over his objections;
- (b) unlawfully promised an employee that the employees would get a raise if they signed a decertification petition or got rid of the Union;
- (c) coercively informed an employee that since he removed his name from a decertification petition, the

Respondent would no longer assist the employee if he had problems with his coworkers; and

(d) unlawfully threatened an employee with termination because the employee had removed his name from a decertification petition.

12. In disposition of Case 8–CA–37850, the Respondent and the Union entered into an informal settlement agreement that addressed the allegations set forth in paragraphs 1, 2, and 3 (to the extent it alleges conduct by Sharon Jellel), which was approved on February 20, 2009. By the conduct described in paragraphs 3 through 11, the Respondent violated the terms of the settlement agreement. Accordingly, the Regional Director for Region 8 issued an order, pursuant to Section 101.9(e)(2) of the Board’s Rules and Regulations and Statements of Procedure, vacating and setting aside the settlement agreement.

CONCLUSION OF LAW

By the 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, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(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 affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Case Farms Processing, Inc., Winesburg, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union and/or protected concerted activities and the protected activities of other employees.

(b) Threatening employees that no wage increases would be granted as long as United Food and Commercial Workers Union, Local No. 880 (the Union) is at the facility.

(c) Telling employees that the Union could not help employees.

(d) Coercively informing employees that the Respondent had eliminated the union at its North Carolina plant by hiring Puerto Rican employees to remove the union and coercively informing employees that the Respondent brought the new employees to the Respondent’s facility to remove the Union.

(e) Creating the impression that employees’ protected activities are under surveillance.

(f) Coercing employees by telling them that there would be no jobs for them if they did not sign a decertification petition.

(g) Threatening employees that they would not have jobs if they did not sign a decertification petition.

(h) Threatening employees with discipline in retaliation for their union and/or protected concerted activities.

(i) Coercively informing employees that they were talking to other employees too much, in order to discourage the employees’ union and/or protected concerted activities.

(j) Holding coercive meetings with employees in retaliation for their union and/or protected concerted activities.

(k) Threatening employees with termination in retaliation for their union and/or protected concerted activities.

(l) Coercively informing employees that the Respondent has problems with its employees because the Union wanted to represent the employees at the Respondent’s facility.

(m) Coercively holding meetings to urge employees to sign a decertification petition and placing their names on a decertification petition over their objections.

(n) Promising employees that they would get a raise if they signed a decertification petition or got rid of the Union.

(o) Coercively informing employees that since they removed their names from a decertification petition, the Respondent would no longer assist the employees if they had problems with their coworkers.

(p) Threatening employees with termination because the employees removed their names from a decertification petition.

(q) 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 after service by the Region, post at its facility in Winesburg, Ohio, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 8, 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 cus-

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.”

tomarily 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 June 12, 2008.

(b) 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. September 9, 2010

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, 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 interrogate employees about their union and/or protected concerted activities and the protected activities of other employees.

WE WILL NOT threaten employees that no wage increases would be granted as long as United Food and Commercial Workers Union, Local No. 880 (the Union) is at the facility.

WE WILL NOT tell employees that the Union could not help employees.

WE WILL NOT coercively inform employees that we had eliminated the union at our North Carolina plant by hiring Puerto Rican employees to remove the union and WE WILL NOT coercively inform employees that we brought the new employees to our facility to remove the Union.

WE WILL NOT create the impression that employees' protected activities are under surveillance.

WE WILL NOT coerce employees by telling them that there would be no jobs for them if they did not sign a decertification petition.

WE WILL NOT threaten employees that they would not have jobs if they did not sign a decertification petition.

WE WILL NOT threaten employees with discipline in retaliation for their union and/or protected concerted activities.

WE WILL NOT coercively inform employees that they were talking to other employees too much, in order to discourage the employees' union and/or protected concerted activities.

WE WILL NOT hold coercive meetings with employees in retaliation for their union and/or protected concerted activities.

WE WILL NOT threaten employees with termination in retaliation for their union and/or protected concerted activities.

WE WILL NOT coercively inform employees that we have problems with our employees because the Union wanted to represent the employees at our facility.

WE WILL NOT coercively hold meetings to urge employees to sign a decertification petition, and WE WILL NOT place employees' names on a decertification petition over their objections.

WE WILL NOT promise employees that they would get a raise if they signed a decertification petition or got rid of the Union.

WE WILL NOT coercively inform employees that since they removed their names from a decertification petition, we would no longer assist the employees if they had problems with their coworkers.

WE WILL NOT threaten employees with termination because they removed their names from a decertification petition.

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.

CASE FARMS PROCESSING, INC.