Infinity Scaffold, Inc. *and* Pacific Northwest Regional Council of Carpenters. Case 19–CA–32239

September 20, 2010

DECISION AND ORDER

BY MEMBERS BECKER, 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 complaint. Upon a charge filed by the Union on December 2, 2009, the General Counsel issued the complaint on May 25, 2010 against Infinity Scaffold, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On July 21, 2010, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on July 27, 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 the 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 the answer must be received by the Regional Office on or before June 8, 2010. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letters dated June 14 and 17, 2010, notified the Respondent that it was extending the deadline for filing an answer in view of the nondelivery of the original complaint, and that unless an answer was received by June 30, 2010, a motion for default judgment would be filed.[1]

In the absence of good cause being shown for the failure to file an answer, 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

The Respondent, a Washington State corporation with an office and place of business in Seattle, Washington, is engaged in the business of erecting and dismantling scaffolding in the building and construction industry. The Respondent, during the 12-month period preceding the issuance of the complaint, a representative period, in conducting its business operations described above, derived gross revenues in excess of $500,000, and performed services valued in excess of $50,000 for various enterprises located in states other than the State of Washington. 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 Pacific Northwest Regional Council of Carpenters, 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 the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the unit):

> All employees of Respondent who perform handling, building, erecting, modifying and dismantling of scaffolding and shoring, including shrink wrapping, excluding yard workers, all other employees, supervisors and guards as defined in the Act.

On about May 15, 2009, the Respondent, an employer engaged in the building and construction industry, entered into a collective-bargaining agreement effective from June 1, 2008 through May 31, 2011 (the 2008–2011 agreement) whereby it recognized the Union as the exclusive collective-bargaining representative of the unit.

Since about May 15, 2009, pursuant to the agreement described above, the Union has been recognized as the

[1] The Acting General Counsel's Motion for Default Judgment and attached exhibits indicate that the complaint was served on the Respondent by certified and first-class mail, addressed to 277 Ferndale Ave., S.E., Renton, WA, 98056, on May 25, 2010. By letter dated June 14, 2010, sent by first-class mail to the same address, with a copy sent to 7910 Occidental Ave. S, Seattle, WA, 98108, the Region provided the Respondent with additional time to file an answer to the complaint. Thereafter, the documents that had been sent by certified mail were returned the Regional Office, marked as "unclaimed." On June 17, 2010, the Region sent another letter to the address at 277 Ferndale Ave., S.E., Renton, WA, 98056, noting the return of the original documents, enclosing additional copies of those documents, and again extending the deadline for filing an answer. No answer was received. There is no indication that the documents sent by regular first-class mail were returned. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited therein. Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. Id.; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), enfd. 843 F.2d 1392 (6th Cir. 1988).

exclusive collective-bargaining representative of the unit by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

For the period from May 15, 2009, to May 31, 2011, based on Section 9(a) of the Act, the Union has been, and is, the limited exclusive collective-bargaining representative of the unit.[2]

Since about November 6, 2009, the Union, by email, has requested that the Respondent furnish the Union with the following information:

> (i) Names, home addresses, telephone numbers and current job sites of all employees in the unit;
>
> (ii) Date of hire and date of dispatch from the Union hiring hall; and
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> (iii) Names, home address, current job site for all foremen and the names of workers under that particular foreman.

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

Since about November 6, 2009, the Respondent has failed and refused to furnish the Union with the information requested by it.

On about September 2, 2009, the Respondent attempted to withdraw from and abrogated the collective-bargaining agreement.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees, and has thereby 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 affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by attempting to withdraw from and abrogating its 2008–2011 collective-bargaining agreement with the Union, we shall order the Respondent to honor the terms and conditions of its collective-bargaining agreement with the Union. We shall also order the Respondent to make whole its unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's abrogation, on September 2, 2010, of the 2008–2011 collective-bargaining agreement. In addition, we shall order the Respondent to make all contractually-required fringe benefit fund contributions, if any, that have not been made since September 2, 2010, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).[3] Further, the Respondent shall reimburse the unit employees for any expenses ensuing from its failure to make the required contributions since that date, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1171 (1987).

Finally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to furnish the Union with information relevant and necessary to its role as the limited exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on November 6, 2009.

ORDER

The National Labor Relations Board orders that the Respondent, Infinity Scaffold, Inc., Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Pacific Northwest Regional Council of Carpenters as the limited exclusive collective-bargaining representative of the employees in the following unit by attempting to withdraw from and abrogating its 2008–2011 collective-bargaining agreement with the Union. The unit is:

> All employees of Respondent who perform handling, building, erecting, modifying and dismantling of scaffolding and shoring, including shrink wrapping, ex-

[2] The complaint alleges that the Respondent is a construction industry employer and that it granted recognition to the Union without regard to whether the Union had established majority status. Accordingly, we find that the relationship was entered into pursuant to Sec. 8(f) of the Act and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See, e.g., *A.S.B. Cloture, Ltd.*, 313 NLRB 1012 (1994).

[3] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the respondent's delinquent contributions during the period of delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

cluding yard workers, all other employees, supervisors and guards as defined in the Act.

(b) Failing to furnish the Union with information that is necessary and relevant to its role as the limited exclusive 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) Continue in force and effect the terms and conditions of its 2008–2011 collective-bargaining agreement with the Union as the limited collective-bargaining representative of the unit employees.

(b) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its failure to comply with the collective-bargaining agreement since September 2, 2009, with interest, in the manner set forth in the remedy section of this decision.

(c) Make all contractually-required benefit fund contributions, if any, that have not been made to the fringe benefit funds since September 2, 2009, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, with interest, in the manner set forth in the remedy section of this decision.

(d) Furnish the Union with the information requested on November 6, 2009.

(e) 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.

(f) Within 14 days after service by the Region, post at its facility in Seattle, Washington, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 19, 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 September 2, 2009.

(g) 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 20, 2010

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Craig Becker, Member

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Mark Gaston Pearce, Member

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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 fail and refuse to bargain collectively with Pacific Northwest Regional Council of Carpenters as the limited exclusive collective-bargaining representative of the employees in the following unit by attempting to withdraw from and abrogating our collective-bargaining agreement with the Union, which is effective from June 1, 2008, through May 31, 2011. The unit is:

[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."

All employees of Infinity Scaffold, Inc. Respondent who perform handling, building, erecting, modifying and dismantling of scaffolding and shoring, including shrink wrapping, excluding yard workers, all other employees, supervisors and guards as defined in the Act.

WE WILL NOT fail to furnish the Union with information that is necessary and relevant to its role as the limited exclusive 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 continue in force and effect the terms and conditions of employment of our 2008–2011 collective-bargaining agreement with the Union.

WE WILL make whole our unit employees for any loss of earnings and other benefits they may have suffered as a result of our failure to comply with the collective-bargaining agreement since September 2, 2009, with interest.

WE WILL make all contractually-required benefit fund contributions, if any, that have not been made on behalf of employees in the unit since September 2, 2009, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL furnish the Union with the information it requested on November 6, 2009.

INFINITY SCAFFOLD, INC.