

United Plasterers, LLC and Laurie Skinner.
Dun-Rite Drywall and Finish Systems, Inc. and Susan
Grievio. Cases 7-CA-50844 and 7-CA-50845

October 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

The General Counsel seeks a default judgment in this case on the ground that the Respondents have withdrawn their answers to the reissued consolidated complaint. Upon a charge and an amended charge filed by Laurie Skinner (Skinner) in Case 7-CA-50844 against United Plasterers, LLC (Respondent United) on November 9 and December 28, 2007, respectively, and a charge and an amended charge filed by Susan Grievio (Grievio) in Case 7-CA-50845 against Dun-Rite Drywall and Finish Systems, Inc. (Respondent Dun-Rite) on November 9 and December 28, 2007, respectively, the General Counsel issued the original Order consolidating cases, consolidated complaint and notice of hearing on January 30, 2008, alleging that the Respondents have violated Section 8(a)(3) and (1) of the Act. The Respondents jointly filed their original answer to the complaint on February 12, 2008.

Subsequently, the parties entered a private settlement agreement, and on April 7, 2008, the Regional Director for Region 7 issued an Order conditionally approving withdrawal requests, dismissing consolidated complaint and withdrawal of notice of hearing, conditioned upon the performance of the conditions in the settlement agreements. By letter dated May 29, 2008, the Charging Parties advised the Region that the Respondents had failed to comply with the agreements. On June 13, 2008, the Regional Director issued an Order to Show Cause why processing of these matters should not be resumed. On June 19, 2008, the Respondents jointly filed a response, acknowledging that they had not yet fully complied with the settlement agreement.

On July 24, 2008, the Regional Director issued an Order setting aside the Order conditionally approving withdrawal requests, reinstating unfair labor practice charges, consolidating cases, and reissuing the consolidated complaint and notice of hearing. On August 6, 2008, the Respondents jointly filed an answer to the reissued consolidated complaint. However, on September 12, 2008, the Respondents jointly withdrew their answer to the reissued consolidated complaint, and on September 24, 2008, they jointly withdrew their answer to the original complaint.

On September 29, 2008, the General Counsel filed a Motion for Default Judgment with the Board. On Octo-

ber 2, 2008, 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 Respondents filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment¹

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 reissued consolidated complaint affirmatively stated that unless an answer was filed by August 7, 2008, all the allegations in the reissued consolidated complaint could be found to be true. As noted above, on August 6, 2008, the Respondents filed an answer to the reissued consolidated complaint. Thereafter, by letters dated September 12 and 24, 2008, the Respondents withdrew their answer to the reissued consolidated complaint and their answer to the original complaint, respectively. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the reissued consolidated complaint must be considered to be true.²

Accordingly, 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, Respondent United, a limited liability corporation, with an office and place of business in Shelby Township, Michigan, has been engaged in the manufacture, installation, and nonretail sale of residential and commercial interior and exterior stone and plaster finishes.

During the calendar year ending December 31, 2007, a representative period, Respondent United, in conducting its business operations described above, provided services valued in excess of \$50,000 for the city of Detroit, an enterprise within the State of Michigan, which enterprise during the same period of time was directly engaged in interstate commerce.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

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

At all material times, Respondent Dun-Rite, a corporation with an office and place of business in Shelby Township, Michigan, has been engaged as a drywall and plasterer contractor in the construction industry performing residential and commercial construction.

During the calendar year ending December 31, 2007, a representative period, Respondent Dun-Rite, in conducting its business operations described above, provided services valued in excess of \$50,000 for the city of Sterling Heights, an enterprise within the State of Michigan, which enterprise during the same period of time was directly engaged in interstate commerce.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of Respondent United within the meaning of Section 2(11) of the Act and agents of Respondent United within the meaning of Section 2(13) of the Act:

Bruce Schilhl	President
Mike Fedele	Engineering Manager
Danielle Sluiter	Plant Manager

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of Respondent Dun-Rite within the meaning of Section 2(11) of the Act and agents of Respondent Dun-Rite within the meaning of Section 2(13) of the Act:

Bruce Schilhl	President
Michael Schilhl	Vice President

About November 9, 2007, Respondent United, by its agent Bruce Schilhl, at Respondent Dun-Rite's facility, discharged its employee, Laurie Skinner.

Respondent United engaged in the conduct described above based on its belief that Skinner had engaged in protected concerted activities and union activities and to discourage employees from engaging in such activities.

About November 9, 2007, Respondent Dun-Rite, by its agents Bruce Schilhl and Mike Schilhl, at its Shelby Township facility, discharged its employee, Susan Grieco.

Respondent Dun-Rite engaged in the conduct described above based on Grieco's association with Skinner, whom Respondent Dun-Rite believed had engaged in the activities described above.

CONCLUSIONS OF LAW

1. By the conduct described above, the Respondents have interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By the conduct described above, the Respondents have discriminated in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. The Respondents' unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that Respondent United and Respondent Dun-Rite have violated Section 8(a)(3) and (1) by discharging, respectively, employees Laurie Skinner and Susan Grieco, we shall order Respondent United and Respondent Dun-Rite, respectively, to offer Skinner and Grieco full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. 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). Respondent United and Respondent Dun-Rite shall also be required to remove from their files all references to the unlawful discharges, and to notify, respectively, Skinner and Grieco in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that

A. Respondent United Plasterers, LLC, Shelby Township, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because of its belief that they formed, joined, or assisted a labor organization, or engaged in concerted activities, or to discourage employees from engaging in these 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 Laurie Skinner full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed.

(b) Make Laurie Skinner whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, 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 reference to the unlawful discharge, and within 3 days thereafter, notify her in writing that this has been done and that the discharge 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, post at its facility in Shelby Township, Michigan, copies of the attached notice marked "Appendix A."³ Copies of the notice, on forms provided by the Regional Director for Region 7, 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 November 9, 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 at

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

B. Respondent Dun-Rite Drywall and Finish Systems, Inc., Shelby Township, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they associate with individuals whom the Respondent believes formed, joined, or assisted any labor organization, or engaged in concerted activities, or to discourage employees from engaging in these 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 Susan Griego full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed.

(b) Make Susan Griego whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, 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 reference to the unlawful discharge, and within 3 days thereafter, notify the employee in writing that this has been done and that the discharge 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, post at its facility in Shelby Township, Michigan, copies of the attached notice marked "Appendix B."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, 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

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."

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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 November 9, 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.

APPENDIX A

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 discharge employees because we believe they formed, joined, or assisted a labor organization, or engaged in concerted activities, or 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, within 14 days from the date of the Board's Order, offer Laurie Skinner full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Laurie Skinner for any loss of earnings and other benefits suffered as a result of her unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlaw-

ful discharge of Laurie Skinner, and within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

UNITED PLASTERERS, LLC

APPENDIX B

NOTICE TO EMPLOYEES
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The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

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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 associate with individuals whom we believe formed, joined, or assisted any labor organization, or engaged in concerted activities, or 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, within 14 days from the date of the Board's Order, offer Susan Grieco full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Susan Grieco for any loss of earnings and other benefits suffered as a result of her unlawful discharge, with interest.

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

DUN-RITE DRYWALL AND FINISH SYSTEMS, INC.