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Adriana Moreno, a sole proprietorship d/b/a New Age Communications and International Brotherhood of Electrical Workers, Local 340, AFL-CIO.
Case 20-CA-34742

May 12, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS
BECKER AND PEARCE

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 consolidated complaint and compliance specification. Upon a charge and amended charges filed by the Union on November 17, December 7 and 18, 2009, respectively, the Acting General Counsel issued an order consolidating complaint and compliance specification, consolidated complaint and compliance specification, and notice of hearing (the consolidated complaint and compliance specification) on January 12, 2011, against Adriana Moreno, a sole proprietorship d/b/a New Age Communications (the Respondent), alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer to the consolidated complaint and compliance specification.

On March 8, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on March 9, 2011, 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 stated that unless an answer was received by February 2, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint

and compliance specification are true.¹ Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated February 25, 2011, notified the Respondent that unless an answer was received by March 4, 2011, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer to the consolidated complaint and compliance specification, we deem the allegations in the consolidated complaint and compliance specification 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 until January 20, 2010, when it ceased operations, the Respondent was owned by Adriana Moreno, a sole proprietorship doing business as New Age Communications.

At all material times until January 20, 2010, the Respondent, with an office and a place of business in Sacramento, California (the Respondent's facility), was engaged in the business of providing satellite dish installation and repair.

During the calendar year ending December 31, 2009, the Respondent, in the course and conduct of its business operations described above, provided services valued in excess of \$50,000 to DirecTV, an enterprise 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 International Brotherhood of Electrical Workers, Local 340, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, the following individuals held the positions set forth opposite their respective names and were 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:

Adriana Moreno	Owner/Sole Proprietor
Chris Stauffer	Manager
Jeff Nelson	Communications Manager

¹ By letter dated January 27, 2011, which was served by certified mail with a copy of the consolidated complaint and compliance specification, the Region notified the Respondent that the date for filing an answer was extended to February 17, 2011.

Carlos Haro Communications
 Field Supervisor

2. The Respondent, by Jeff Nelson:

(a) About November 11, 2009, in a telephone conversation, interrogated employees about their union activities and the union activities of other employees;

(b) About November 11, 2009, in his office, interrogated employees about their union activities and the union activities of other employees;

(c) About November 14, 2009, in a telephone conversation, interrogated employees about their union activities and the union activities of other employees.

3. The Respondent, by Chris Stauffer:

(a) About November 12, 2009, in a telephone conversation, interrogated employees about their union activities and the union activities of other employees;

(b) About November 14, 2009, in a telephone conversation, interrogated employees about their union activities and the union activities of other employees;

(c) About November 14, 2009, in a telephone conversation, threatened employees with termination if they signed a union card;

(d) About November 14, 2009, in a telephone conversation, informed employees that it would be futile for them to select the Union as their bargaining representative;

(e) About November 16, 2009, in a telephone conversation, interrogated employees about their union activities;

(f) About November 17, 2009, in a telephone conversation, interrogated employees about the union activities of other employees;

(g) About November 17, 2009, in a telephone conversation, informed employees that it would be futile for them to select the Union as their bargaining representative.

4. About November 12, 2009, the Respondent, by Chris Stauffer and Jeff Nelson in Stauffer's office at the Respondent's facility, interrogated employees about their union activities and the union activities of other employees.

5. About November 13, 2009, the Respondent, by Jeff Nelson and Carlos Haro, engaged in surveillance of employees' union activities.

6. On various dates between about November 13, 2009 and December 8, 2009, the Respondent, by Jeff Nelson and Carlos Haro, engaged in surveillance of employees' union activities.

7. About November 13, 2009, the Respondent terminated employee Larry Biegler because Biegler assisted the Union and engaged in other concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 2 through 6, 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 the conduct described above in paragraph 7, the Respondent has been discriminating in regard to the hire or tenure or terms and 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.

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 terminating Larry Biegler, we shall order the Respondent, in the event that it resumes the same or similar business operations,² to offer Larry Biegler full reinstatement to his former position, or, if that position no longer exists, to a substantially similar position, without prejudice to his seniority and other rights and privileges previously enjoyed. In addition, we shall order the Respondent to make Biegler whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, 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), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus withholdings required by Federal and State laws. The Respondent shall also be required to remove from its files all references to the unlawful termination of Larry Biegler, and to notify him in writing that this has been done and that the unlawful termination will not be used against him in any way. Finally, in view of the fact that the Respondent's facility is closed, we shall order the Respondent to mail a copy of the attached

² As set forth in the compliance specification, the backpay period for Biegler began on November 14, 2009, and ended when the Respondent ceased operations on January 20, 2010.

notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding. In addition to mailing paper notices, we shall order the Respondent to distribute notices electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

ORDER

The National Labor Relations Board orders that the Respondent, Adriana Moreno, a sole proprietorship d/b/a New Age Communications, Sacramento, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Interrogating employees about their union activities and the union activities of other employees.
 - (b) Threatening employees with termination if they signed a union card.
 - (c) Informing employees that it would be futile for them to select the Union as their bargaining representative.
 - (d) Engaging in surveillance of employees' union activities.
 - (e) Terminating employees because they assisted the Union and engaged in other concerted activities, or to discourage employees from engaging in these activities.
 - (f) 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 Larry Biegler full reinstatement to his former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
 - (b) Make Larry Biegler whole for the loss of earnings and other benefits suffered as a result of his unlawful termination, by paying him the amount of \$4,590.95, 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 termination of Larry Biegler, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful conduct will not be used against him in any way.
 - (d) 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, copies of

the attached notice marked "Appendix"³ to the Union and to all employees who were employed by the Respondent at its Sacramento, California facility at any time from November 11, 2009, until it ceased operations on January 20, 2010. In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

- (e) 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. May 12, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, 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 mail 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.

³ 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 Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT interrogate you about your union activities and the union activities of other employees.

WE WILL NOT threaten you with termination if you signed a union card.

WE WILL NOT inform you that it would be futile for you to select the Union as your bargaining representative.

WE WILL NOT engage in surveillance of your union activities.

WE WILL NOT terminate you because you assisted the Union and engaged in other concerted activities, or to discourage you 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 Larry Biegler full reinstatement to his former posi-

tion, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Larry Biegler whole for the loss of earnings and other benefits suffered as a result of his unlawful termination, by paying him the amount set forth in the Board's Order, 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 our unlawful termination of Larry Biegler, and WE WILL within 3 days thereafter, notify him in writing that this has been done and that the unlawful conduct will not be used against him in any way.

ADRIANA MORENO, A SOLE PROPRIETORSHIP
D/B/A NEW AGE COMMUNICATIONS