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Oasis Mechanical Contractors, Inc. and Steamfitters Local 692, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. Case 5-CA-36269

June 29, 2011

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The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge filed by the Union on November 19, 2010, the Acting General Counsel issued the complaint on February 28, 2011, against Oasis Mechanical Contractors, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer to the complaint. However, by email and facsimile dated April 19, 2011, the Respondent withdrew its answer.

On April 25, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 26, 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. In addition, the complaint affirmatively stated that unless an answer was received by March 14, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent filed an answer to the complaint on March 14, 2011, it subsequently withdrew its answer. 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 true.¹ Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Maryland corporation with its principal office and place of business in Lanham, Maryland, has been engaged as a mechanical contractor in the construction industry, performing construction, maintenance, and repair of HVAC and mechanical systems for residential and commercial customers.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Lanham, Maryland location, goods valued in excess of \$50,000 directly from points located outside the State of Maryland.

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 Steamfitters Local 602, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, 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, Richard "Rick" Cummings held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, an unnamed agent held the position of the Respondent's counsel, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, Mechanical Contractors Association of Metropolitan Washington, Inc. (MCAMW) has been an organization composed of approximately 80 employers, one purpose of which is to represent its employer-members, and employers who have authorized the MCAMW to bargain on their behalf, in negotiating and administering collective-bargaining agreements with the Union.

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

All journeymen pipefitters and apprentices performing work as described in the August 1, 2007 through July 31, 2010 and August 1, 2010 through July 31, 2013 collective-bargaining agreements, within the territorial jurisdiction of the Union as described in the collective-bargaining agreements, employed by Respondent.

About August 1, 2004, the Respondent entered into an agreement of assent whereby it agreed to comply with and be bound by all the terms and conditions of employment contained in the then-current collective-bargaining agreement (August 2004 to September 2007), and any subsequently negotiated collective-bargaining agreement between the Union and the MCAMW, said agreement of assent to expire only upon the Respondent's written notice to the Union at least 150 days prior to the expiration date of the then-current labor agreement.

About September 11, 2007, the Union entered into a collective-bargaining agreement with the MCAMW, effective by its terms for the period from August 1, 2007, through July 31, 2010.

Based on its conduct described above, the Respondent was bound to the August 1, 2007 through July 31, 2010 collective-bargaining agreement.

About April 26, 2010, the Respondent entered into a collective-bargaining agent authorization, in which it authorized the MCAMW to bargain collectively, on its behalf, with the Union concerning wages, hours, and other terms and conditions of employment of the unit.

During the period from June 15 to October 12, 2010, the Union and the MCAMW met for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment.

About October 12, 2010, the MCAMW and the Union reached complete agreement on a collective-bargaining contract covering the unit and, about November 1, 2010, executed the agreement, which is effective for the period from August 1, 2010 through July 31, 2013.

Based on its conduct described above, the Respondent was bound to the August 1, 2010 through July 31, 2013 collective-bargaining agreement.

For the period from August 1, 2004, to July 31, 2013, based on Section 9(a) of the Act, the Union is the limited exclusive collective-bargaining representative of the unit.²

The Respondent has further engaged in the following conduct.

1. About June 22 and July 9, 2010, the Respondent, by letters from its unnamed agent, gave notice to the Union that it was withdrawing its authorization for the MCAMW to bargain collectively on its behalf with the Union concerning wages, hours, and other terms and conditions of employment of the unit.

2. On about August 26, 2010, the Respondent, by letter from its unnamed agent, gave notice to the Union that:

(i) it was withdrawing recognition of the Union as the exclusive, collective-bargaining representative of the unit; and

(ii) it was refusing to abide by the terms of employment set forth in the August 1, 2007 through July 31, 2010 collective-bargaining agreement, described above, and would refuse to adhere to any future collective-bargaining agreement to be negotiated between the Union and the MCAMW.

3. The notices given by the Respondent, described above in paragraphs 1 and 2, were untimely and of no effect.

4. By letter dated July 12, 2010, the Union informed the Respondent that its notices, described above in paragraph 1, were untimely and ineffective in terminating the agreement of assent and the collective-bargaining agent authorization.

5. By letter dated August 31, 2010, the Union informed the Respondent that its notice, described above in paragraph 2, was untimely and ineffective in terminating the August 1, 2004 agreement of assent and the April 26, 2010 collective-bargaining agent authorization.

6. About December 13, 2010, the Union, by letter, requested that the Respondent adhere to the August 1, 2010 through July 31, 2013 collective-bargaining agreement.

7. Since about August 26, 2010, the Respondent has refused to adhere to the August 1, 2010 through July 31, 2013 collective-bargaining agreement.

8. Since about November 1, 2010, the Respondent has refused to adhere to the August 1, 2010 through July 31, 2013 collective-bargaining agreement.

CONCLUSION OF LAW

By the conduct described in paragraphs 1, 2, 7, and 8 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 within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

² The complaint alleges that the Respondent is a construction industry employer, and alleges that the Union is the limited exclusive collective-bargaining representative of the unit employees. Further, the complaint does not state that the Respondent granted recognition to the Union on the basis of majority status under Sec. 9(a) of the Act. Accordingly, we conclude that the Respondent granted recognition to the Union without regard to whether the Union had established majority status, that the relationship was entered into pursuant to Sec. 8(f) of the Act, and that the Union is the limited 9(a) representative of the unit employees for the periods covered by the contracts. See, e.g., *A.S.B. Clouture, Ltd.*, 313 NLRB 1012 fn. 2 (1994), citing *Electri-Tech, Inc.*, 306 NLRB 707 fn. 2 (1992), and *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enfd.* sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

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) of the Act by failing, from about August 26, 2010, to adhere to the terms and conditions of the August 1, 2010 through July 31, 2013 collective-bargaining agreement, we shall order the Respondent to honor the terms and conditions of that agreement. 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 refusal to apply the terms and conditions of the agreement since August 26, 2010. Backpay 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 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

In addition, we shall order the Respondent to make all contractually-required fringe benefit fund contributions, if any, that have not been made since August 26, 2010, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979).³ Further, the Respondent shall reimburse the unit employees for any expenses ensuing from its failure to make the required contributions, 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 the unit employees shall be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra, and *Kentucky River Medical Center*, supra.

Furthermore, having found that the Respondent unlawfully withdrew recognition from the Union on about August 26, 2010, we shall order the Respondent to recognize the Union as the limited exclusive collective-bargaining representative of the unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Oasis Mechanical Contractors, Inc.,

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 the 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.

Lanham, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from Steamfitters Local 602, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, as the limited exclusive collective-bargaining representative of the unit employees in the following unit:

All journeymen pipefitters and apprentices performing work as described in the August 1, 2007 through July 31, 2010 and August 1, 2010 through July 31, 2013 collective-bargaining agreements, within the territorial jurisdiction of the Union as described in the collective-bargaining agreements, employed by Respondent.

(b) Failing since August 26, 2010, to apply the terms and conditions of the August 1, 2010 through July 31, 2013 collective-bargaining agreement.

(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) Recognize the Union as the limited exclusive collective-bargaining representative of the unit employees.

(b) Continue in effect the terms and conditions of the August 1, 2010 through July 31, 2013 collective-bargaining agreement with the Union.

(c) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its failure to continue in effect the terms and conditions of the collective-bargaining agreement since August 26, 2010, with interest, as set forth in the remedy section of this decision.

(d) Make all contractually required benefit fund contributions, if any, that have not been made to the fringe benefit funds since August 26, 2010, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, with interest, as set forth in the remedy section of this decision.

(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 Lanham, Maryland, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 5, 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. In addition to physical posting 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.⁵ 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 August 26, 2010.

(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. June 29, 2011

Craig Becker,	Member
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

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."

⁵ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

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 withdraw recognition from Steamfitters Local 602, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO as the limited exclusive collective-bargaining representative of the employees in the following unit:

All journeymen pipefitters and apprentices performing work as described in the August 1, 2007 through July 31, 2010 and August 1, 2010 through July 31, 2013 collective-bargaining agreements, within the territorial jurisdiction of the Union as described in the collective-bargaining agreements, employed by us.

WE WILL NOT fail to apply the terms and conditions of the August 1, 2010 through July 31, 2013 collective-bargaining agreement.

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

WE WILL recognize the Union as the limited exclusive collective-bargaining representative of our unit employees.

WE WILL continue in effect the terms and conditions of the August 1, 2010 through July 31, 2013 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 continue in effect the terms and conditions of the collective-bargaining agreement since August 26, 2010, with interest.

WE WILL make all contractually-required benefit fund contributions, if any, that have not been made since August 26, 2010, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

OASIS MECHANICAL CONTRACTORS, INC.