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Presidential Maintenance, LLC and Denise Booker and David Dowdell. Cases 5–CA–36428 and 5–CA–36429

August 9, 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. Upon separate charges filed on February 9, 2011, by Denise Booker and David Dowdell, respectively, the Acting General Counsel issued the consolidated complaint on April 19, 2011, against Presidential Maintenance, LLC (the Respondent) alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On June 14, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. On June 16, 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. On July 21, 2011 the Board issued a revised Notice to Show Cause. 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 May 3, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by a telephone conversation on May 25, 2011, reiterated to the Respondent the complaint allegations and requested a response from the Respondent. When the Respondent stated that it had not received the complaint, the Region granted the Respondent an extension of time until June 8, 2011, to file an answer. By certified letter that same day the Region repeated that unless the Respondent filed an answer by June 8 a motion for default judgment would be filed. A copy of the complaint was included with the

Region's letter, which was sent by certified mail. The United States Postal Service confirmed delivery on May 31, 2011. Despite its receipt of the complaint and the extension of time, the Respondent failed to file an answer.

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

At all material times, the Respondent, a Virginia corporation with an office and place of business in Richmond, Virginia, and a worksite at the Virginia Department of Motor Vehicles facility located at 2300 West Broad Street in Richmond, Virginia, the DMV facility, has been engaged in the business of providing contracted janitorial services.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 to the Commonwealth of Virginia, an entity which is directly involved 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.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Luther R. Palmer has held the position of the Respondent's owner and sole supervisor 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.

1. Since about August 23, 2010, employees circulated a petition among themselves discussing and disputing employees' wages, hours, and working conditions.

2. On about August 27, 2010, the Respondent, by Luther R. Palmer, at the DMV facility in Richmond, Virginia:

(a) interrogated employees about their participation in the employee petition described above;

(b) told employees he was mad at them for circulating the petition described above;

(c) threatened employment by telling employees he was going to discharge them for circulating the petition described above; and

(d) told employee David Dowdell he was destroying the company by circulating the petition described above.

3. On about August 27, 2010, after the discharge of employee David Dowdell on that same date, the Respon-

dent, by Luther R. Palmer, at a meeting with employees, engaged in the following conduct:

(a) interrogated employees about why they signed the petition described above;

(b) told employees he could fire them at any time; and

(c) threatened employees with job loss because they engaged in protected, concerted activity regarding the petition described above.

4. On about the dates indicated below, the Respondent, by Luther R. Palmer, at the DMV facility in Richmond, Virginia:

(a) at some point during the first week of September 2010, interrogated employees with regard to their participation in the petition described above;

(b) on about October 13, 2010, told Charging Party Booker she was being terminated for engaging in protected, concerted activity by signing the petition described above.

5. On about August 27, 2010, the Respondent terminated the employment of Charging Party Dowdell.

6. On about October 13, 2010, the Respondent terminated the employment of Charging Party Booker.

7. The Respondent engaged in the conduct described in paragraphs 5 and 6 above, because its employees Denise Booker and David Dowdell engaged in protected concerted activities, and to discourage employees from engaging in those activities, in violation of Section 8(a)(1) of the Act.

CONCLUSION OF LAW

By the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting 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)(1) of the Act by discharging employees David Dowdell and Denise Booker because they engaged in protected concerted activities, we shall order the Respondent to offer these employees full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent or similar positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and to make Booker and Dowdell whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions 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), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). The Respondent shall also be required to remove from its files any and all references to the unlawful terminations of Booker and Dowdell and to notify these employees in writing that this has been done and that the terminations will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Presidential Maintenance, LLC, Richmond, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their participation in and their reasons for signing an employee petition discussing and disputing employees' wages, hours, and working conditions.

(b) Telling employees that the Respondent was mad at them for circulating the petition.

(c) Threatening employees with discharge because they engaged in protected concerted activity regarding the petition.

(d) Telling employees that they are destroying the Company by circulating the petition.

(e) Telling employees that the Respondent could fire them at any time.

(f) Threatening employees with job loss because they engaged in protected, concerted activity regarding the petition.

(g) Telling employees that they are being discharged for engaging in protected concerted activity by signing the petition.

(h) Discharging or otherwise discriminating against employees because they engaged in concerted activities, and to discourage employees from engaging in these or other concerted activities.

(i) 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 David Dowdell and Denise Booker 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 or privileges previously enjoyed.

(b) Make David Dowdell and Denise Booker whole for any loss of earnings and other benefits suffered as a

result of the discrimination against them, 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 references to the unlawful discharges of employees David Dowdell and Denise Booker, and within 3 days thereafter, notify these employees in writing that this has been done and that the unlawful discharges will not be used against them 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 Richmond, Virginia, copies of the attached notice marked "Appendix".¹ 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. 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 27, 2010.

(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.

Dated, Washington, D.C. August 9, 2011

¹ 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."

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, 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 participation in and their reasons for signing an employee petition discussing and disputing their wages, hours, and working conditions.

WE WILL NOT tell employees we are mad at them for circulating the petition.

WE WILL NOT threaten employees with discharge for engaging in protected concerted activity regarding the petition.

WE WILL NOT tell employees that they are destroying the Company by circulating the petition.

WE WILL NOT tell employees that we could fire them at any time.

WE WILL NOT threaten employees with job loss because they engaged in protected, concerted activity regarding the petition.

WE WILL NOT tell employees that they are being discharged for engaging in protected concerted activity by circulating the petition.

WE WILL NOT discharge or otherwise discriminate against employees because they engaged in protected concerted activities for the purpose of mutual aid and

protection and to discourage employees from engaging in these and other concerted activities.

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, within 14 days from the date of the Board's Order, offer David Dowdell and Denise Booker 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 or privileges previously enjoyed.

WE WILL make David Dowdell and Denise Booker whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

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

PRESIDENTIAL MAINTENANCE, LLC