Insulation Maintenance & Contracting, LLC *and* Las Vegas Insulators Local 135 Affiliated with International Association of Heat and Frost Insulators & Allied Workers, AFL–CIO. Cases 28–CA–23198, 28–CA–23272, and 28–CA–23316

August 11, 2011

DECISION AND ORDER

BY MEMBERS BECKER, PEARCE, AND HAYES

The Acting General Counsel seeks default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge and amended charges filed by Las Vegas Insulators Local 135, affiliated with International Association of Heat and Frost Insulators and Allied Workers, AFL–CIO (the Union), the Acting General Counsel issued the amended second consolidated complaint on February 15, 2011, against Insulation Maintenance and Contracting, LLC, the Respondent, alleging that it had violated Section 8(a)(3) and (1) of the Act. The Respondent filed an answer.

Subsequently, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Acting Regional Director for Region 28 on March 3, 2011. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to (1) post a notice to employees; (2) pay to employees Chad Evans, Hugo Ramirez-Gusto, Carlos Pineda, Edwin Flamenco, Rafael Izquierdo, Jorge Poblete-Lopez, and Miguel Moline-Mier a specified amount of backpay by April 1, 2011; and (3) expunge from its files any reference to the discriminatees' discharges and notify them in writing that it had taken that action and that the expunged material would not be used against them in any way.[1] The agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on February 15, 2011 in the instant case(s). Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is customary to remedy such violations. The parties further agree that the U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte.

On March 9, 2011, the compliance officer for Region 28 mailed to the Respondent and the Respondent's counsel copies of the Notices to Employees provided for by the terms of the settlement agreement, a letter detailing the Respondent's obligations under the agreement, and a Certification of Posting form, to be signed by an official of the Respondent and returned to Region 28.

The Respondent failed to respond and failed to comply with the terms of the settlement agreement. By email dated April 12, 2011, the compliance officer notified the Respondent's counsel that the Respondent was in noncompliance. The email stated that under the terms of the settlement agreement, if the Respondent did not comply within 14 days, the Regional Director would reissue the complaint and the Acting General Counsel may file a motion for summary judgment. The Respondent failed to respond and failed to comply with the settlement agreement.[2]

Accordingly, on May 17, 2011, the Regional Director reissued the consolidated complaint and the Acting General Counsel filed a Motion for Default Judgment with the Board.[3] On May 19, 2011, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted.[4] 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.

[1] The Notice to Employees included in the settlement agreement states that the employees waived reinstatement.

[2] On May 6 and 19, 2011, respectively, the Respondent's counsel advised the Regional Director and the Board that he was withdrawing as counsel for the Respondent, effective May 6, 2011.

[3] On May 18, 2011, the Charging Party filed a document indicating that it joins the positions taken in the motion for default judgment.

[4] On June 2, 2011, the Acting General Counsel filed a statement in support of his motion.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to post a Notice to Employees, to remit the agreed-upon backpay amount to Chad Evans, David Hernandez, Hugo Ramirez-Gusto, Carlos Pineda, Edwin Flamenco, Rafael Izquierdo, Jorge Poblete-Lopez, and Miguel Moline-Mier, and to expunge material from its files regarding their discharges, and notify them in writing that it has done so. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued consolidated complaint are true.[5] Accordingly, 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 Nevada limited liability company, with an office and place of business in Las Vegas, Nevada (the facility), has been engaged in the installation of mechanical insulation on plumbing and steam pipes in commercial buildings.

During the 12-month period ending September 23, 2010, the Respondent, in conducting its business operations described above, purchased and received at its facility goods valued in excess of $50,000, directly from other enterprises, including Smalley and Company, located within the State of Nevada, each of which other enterprises had received these goods directly from points outside the State of Nevada.

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 Las Vegas Insulators Local 135, affiliated with International Association of Heat and Frost Insulators and Allied Workers, 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 the following individuals held the positions set forth opposite their respective names and have been 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:

Tracy Bullock	-	Owner
Jamie Zerafa	-	Controller and General Manager
Michael Adams	-	Estimator
German Diaz	-	Superintenden
Percida (Persy) Diaz	-	Manager
Lazaro Nunez	-	Foreman
Edgar Videa	-	Foreman

1. (a) On about March 24, 2010, the Respondent, by Lazaro Nunez, at a McDonald's restaurant located on Sahara Avenue and Arville Street, Las Vegas, Nevada (the McDonald's restaurant), threatened its employees with denial of work opportunities and discharge if they communicated with or supported the Union.

(b) In about late March 2010, the Respondent, by Nunez, at the McDonald's restaurant, orally promulgated an overly broad and discriminatory rule prohibiting its employees from speaking with the Union and threatened its employees with discharge if they violated that rule.

(c) In about mid-April 2010, the Respondent, by Nunez, at the Respondent's jobsite at the Veterans Administration Hospital on Lamb Boulevard and Interstate 215, Las Vegas, Nevada (the VA jobsite), threatened its employees with discharge and other unspecified reprisals if they supported the Union, and orally promulgated an overly broad and discriminatory rule prohibiting its employees from associating with the Union.

(d) On about May 17, 2010, the Respondent, by Persida Diaz (P. Diaz), at the VA jobsite, threatened its employees with discharge if they contacted the Union, and orally promulgated an overly broad and discriminatory rule prohibiting its employees from associating with the Union.

(e) On about May 28, 2010, the Respondent, by Edgar Videa, at the Respondent's jobsite at Windmill Lane and Rainbow Boulevard, Las Vegas, Nevada (the Windmill and Rainbow jobsite), interrogated its employees about their union sympathies and affiliation.

(f) In about May, June, and July 2010, the Respondent, by Nunez, at the McDonald's restaurant, promulgated an overly broad and discriminatory rule prohibiting its employees from associating with the Union, threatened its employees by inviting them to quit if they associated with the Union, and disparaged the Union in order to discourage employees from supporting or assisting the Union by telling its employees that the Union would not assist them if they did not speak English.

[5] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

(g) On about June 3, 2010, the Respondent, by Nunez, at the Windmill and Rainbow jobsite, interrogated its employees about their union sympathies and affiliation.

(h) In about June 2010, the Respondent, by German Diaz (G. Diaz), at a Shell gas station at Decatur Boulevard and Sahara Avenue, Las Vegas, Nevada (the Shell station), interrogated its employees about their union sympathies and support; promulgated an overly broad and discriminatory rule requiring its employees to contact the police if they were approached by the Union; threatened its employees by telling them it would be futile for them to support the Union; disparaged the Union in order to discourage employees from supporting or assisting the Union by telling its employees that the Union was good for nothing and that it would be unable to improve the terms and conditions of the Respondent's employees' terms and conditions of employment; and created the impression among its employees that their union and concerted activities were under surveillance by the Respondent.

(i) On about June 19, 2010, the Respondent, by Nunez, at the McDonald's restaurant, orally promulgated an overly broad and discriminatory rule prohibiting its employees from associating with the Union, and threatened its employees with discharge if they violated that rule.

(j) In about early July 2010, the Respondent, by G. Diaz, by telephone, threatened its employees with discharge if they supported the Union by accepting the Union's offer of a union T-shirt, and engaged in surveillance of its employees engaged in union and concerted activities.

(k) In about early July 2010, the Respondent, by Nunez, at the Respondent's jobsite at Pecos Avenue and Interstate 215, Henderson, Nevada, orally promulgated the following overly broad and discriminatory rules:

(i) prohibiting its employees from having any contact with the Union; and

(ii) requiring its employees to contact the Respondent if the Union were present on any jobsite.

(l) On about July 11, 2010, the Respondent, by Nunez, at the Respondent's facility, orally promulgated an overly broad and discriminatory rule prohibiting its employees from associating with the Union; threatened its employees by inviting them to quit if they engaged in union or other concerted activities; and disparaged the Union in order to discourage employees from supporting or assisting the Union by telling its employees that the Union would not assist them because they do not speak English or are not citizens of the United States.

(m) In about July 2010, the Respondent, by Nunez, at the McDonald's restaurant, threatened its employees by equating union visits with trespass, and threatened its employees with unspecified reprisals if they allowed the Union to visit them at their homes.

(n) In about July 2010, the Respondent, by G. Diaz, at the Shell station, interrogated its employees about their union sympathies and support, and threatened its employees with unspecified reprisals if they associated with the Union.

(o) In about July or August 2010, the Respondent, by Nunez, at the Respondent's jobsite at Valley High School at Eastern and Sahara Avenues, Las Vegas, Nevada, orally promulgated an overly broad and discriminatory rule prohibiting its employees from accepting literature from the Union, and threatened its employees with discharge if they violated that rule.

(p) On about August 21, 2010, the Respondent, by Nunez, at the McDonald's restaurant, threatened its employees with loss of work opportunities because they supported the Union, and disparaged and threatened its employees by telling them they had betrayed him because they associated with the Union.

(q) On about August 28, 2010, the Respondent, by G. Diaz, by telephone, threatened its employees with loss of work opportunities because they supported the Union and engaged in concerted activities, and disparaged and threatened its employees by telling them they were traitors because they supported the Union and engaged in concerted activities.

(r) In about August 2010, the Respondent, by Nunez, at the McDonald's restaurant, threatened its employees with loss of job opportunities if they supported the Union; promised its employees job opportunities to dissuade them from supporting the Union; and created the impression among its employees that their union and concerted activities were under surveillance by the Respondent.

(s) In about early October 2010, the Respondent, by G. Diaz, at the VA jobsite, threatened its employees with discharge if they engaged in union or other concerted activities; threatened its employees by telling them it was futile for them to support the Union or to engage in concerted activities; threatened its employees by telling them the Union could not protect them; and interrogated its employees about their union and other concerted activities.

(t) In about early October 2010, the Respondent, by P. Diaz, by telephone, created the impression among its employees that their union and concerted activities were under surveillance by the Respondent, and threatened its employees by telling them they were discharged because they engaged in union and other concerted activities.

(u) In about the second or third week of October 2010, the Respondent, by G. Diaz, at the VA jobsite, threatened its employees with loss of job opportunities if they sup-

ported the Union, and disparaged and threatened its employees by telling them they were not loyal if they supported the Union.

(v) On about October 22, 2010, the Respondent, by G. Diaz, by telephone, threatened its employees with discharge and other loss of employment opportunities because they engaged in union and other concerted activities.

(w) In about early November 2010, the Respondent, by Nunez, at the McDonald's restaurant, threatened its employees by telling them they would lose pay and other employment opportunities because they engaged in union and other concerted activities.

(x) On about November 15, 2010, the Respondent, by Nunez, at Nunez's residence, threatened its employees by telling them immigration authorities would take action against them because they engaged in union or other concerted activities.

(y) On about November 22, 2010, the Respondent, by Nunez, by telephone, threatened its employees by telling them that their compensation status had been changed because they engaged in union or other concerted activities; threatened its employees by telling them immigration authorities would take action against them because they engaged in union or other concerted activities; threatened its employees by telling them that their wages were being withheld because they engaged in union or other concerted activities; threatened its employees with unspecified reprisals because they engaged in union and other concerted activities; disparaged and threatened its employees by calling them gay and traitors because of their union and other concerted activities; and threatened its employees with loss of job opportunities because of their union and other concerted activities.

(z) On about November 22, 2010, the Respondent, by G. Diaz, at the Rebel gas station located at Washington Avenue and Decatur Boulevard, Las Vegas, Nevada, threatened its employees by telling them it was futile for them to support the Union, and threatened its employees with unspecified reprisals because they engaged in union or other concerted activities.

2. (a) On about June 29, 2010, the Respondent discharged its employees David Hernandez and Chad Evans.

(b) On about August 3, 2010, the Respondent discharged its employee Hugo Ramirez-Gusto.

(c) On about August 27, 2010, the Respondent discharged its employee Carlos Pineda.

(d) On about August 28, 2010, the Respondent discharged its employee Edwin Flamenco.

(e) In about early November 2010, the Respondent discharged its employee Rafael Izquierdo.

(f) On about November 22, 2010, the Respondent discharged its employees Jorge Poblete-Lopez and Miguel Moline-Mier.

The Respondent engaged in the conduct described in paragraph 2 above because the named employees of the Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the conduct described in paragraph 1 above, 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 in paragraph 2 above, the Respondent has been discriminating in regard to the hire or tenure or terms or 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 described above 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, as requested by counsel for the Acting General Counsel. Specifically, the Respondent shall comply with the terms of the settlement agreement approved by the Acting Regional Director for Region 28 on March 3, 2011, by posting a Notice to Employees, making discriminates Evans, Hernandez, Ramirez-Justo, Pineda, Flamenco, Izquierdo, Poblete-Lopez, and Moline-Mier whole by the payment of backpay provided for in the settlement agreement, and expunging from its files any reference to their discharges and informing them in writing that it has taken that action and that the expunged material will not be used against them in any way. The backpay due under the settlement agreement shall be paid with interest at the rate 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).

In limiting our affirmative remedies to those enumerated above, we are mindful that the Acting General Counsel is empowered under the default provision of the settlement agreement to seek "full remedy for the violations found as is customary to remedy such violations," including reinstatement and backpay beyond that speci-

fied in the agreement.[6] However, in his Motion for Default Judgment, the Acting General Counsel has not sought such additional remedies and we will not, sua sponte, include them within this remedy.[7]

ORDER

The National Labor Relations Board orders that the Respondent, Insulation Maintenance & Contracting, LLC, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because of their support of or activity on behalf of Las Vegas Insulators Local 135, affiliated with International Association of Heat and Frost Insulators & Allied Workers, AFL–CIO, or any other union.

(b) Threatening employees with denial of work opportunities, loss of pay, change in compensation status, discharge, immigration action, and other unspecified reprisals if they communicate with, have contact with, or support the Union.

(c) Threatening employees by telling them they were discharged because they engaged in union and other concerted activities.

(d) Threatening employees by telling them that the Union could not protect them and that it would be futile for them to support the Union or engage in concerted activities.

(e) Threatening employees by inviting them to quit if they associate with the Union, by equating union visits with trespass,

(f) Disparaging and threatening employees by telling employees they were gay and traitors because they supported the Union and engaged in concerted activities, by telling employees they were not loyal if they supported the Union, and by telling employees that they had betrayed the Respondent by supporting the Union.

(g) Promulgating overly broad and discriminatory rules prohibiting employees from associating with the Union; requiring employees to contact the police if they are approached by the Union; requiring employees to contact the Respondent if the Union is present on the jobsite; and prohibiting employees from accepting union literature in order to discourage employees from supporting the Union.

(h) Interrogating employees about their union sympathies and affiliation and other concerted activities.

(i) Disparaging the Union in order to discourage employees from supporting or assisting the Union by telling employees that the Union would not assist them if they did not speak English or if they were not United States citizens, and by telling employees that the Union was good for nothing and would be unable to improve their terms and conditions of employment.

(j) Creating the impression among its employees that their union and concerted activities were under surveillance by the Respondent.

(k) Engaging in surveillance of employees engaged in union and concerted activities.

(l) Promising employees job opportunities to dissuade them from supporting the Union.

(m) 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) Make whole the employees named below for any loss of earnings and other benefits suffered as a result of the unlawful actions against them, by payment to each of them of the backpay amount shown with interest, in accordance with the terms of the settlement agreement approved by the Acting Regional Director on March 3, 2011:

David Hernandez	$0.
Chad Evans	$0.
Hugo Ramirez-Justo	$5,833.
Carlos Pineda	$5.833.
Jorge Poblete-Lopez	$5,833.
Rafael Izquierdo	$5,833.
Miguel Molina-Mier	$5,833.
Edwin Flamenco	$5,833.

(b) Remove from its files all references to the discharges of Hernandez, Evans, Ramirez-Justo, Pineda, Poblete-Lopez, Izquierdo, Molina-Mier, and Flamenco, and notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(c) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada, copies of the attached

[6] As set forth above, the settlement agreement provided that, in case of noncompliance, the Board could "issue an order providing full remedy for the violations found as is customary to remedy such violations."

[7] The Acting General Counsel specifically requested, in his statement in support of the motion for default judgment, that the Board "issue a Decision and Order requiring Respondent to comply with the terms of the [settlement] Agreement, including by posting a Notice to Employees, making the eight named discriminatees whole by the payment of the backpay amounts specified in the Agreement, with interest, and taking the action provided for in the Agreement."

notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 28, 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.[9] 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.[10] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 March 24, 2010.

(d) 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 11, 2011

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[8] 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."

[9] Pursuant to the terms of the settlement agreement, the Region may provide Notices in more than one language as deemed appropriate by the Regional Director.

[10] 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.

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 do anything that interferes with these rights. More particularly:

WE WILL NOT threaten to deny you work opportunities and loss of pay; threaten to fire you; threaten you with immigration action; or threaten you with unspecified reprisals because of your support for and activities on behalf of Las Vegas Insulators Local 135, affiliated with International Association of Heat and Frost Insulators and Allied Workers, AFL–CIO (the Union).

WE WILL NOT prohibit you from speaking with or associating with the Union or accepting union T-shirts or literature and threaten to fire you because you do so.

WE WILL NOT ask you questions about your union affiliation or support.

WE WILL NOT forbid you from getting involved with the Union and invite you to quit because you do so.

WE WILL NOT tell you that you should not allow union representatives to contact you at your home, tell you that you should contact the police should the Union approach you at home or tell you that a union visit at home is trespass.

WE WILL NOT tell you that it is a waste of your time to support the Union.

WE WILL NOT watch your union or concerted activities or lead you to believe that we are watching your union or concerted activities.

WE WILL NOT require that you contact us if union representatives are present on any jobsite.

WE WILL NOT tell you that the Union will not assist you because you do not speak English.

WE WILL NOT tell you that you will be fired because you had contact with the Union's lawyers or because you signed any documents with them seeking wages due you.

WE WILL NOT call you names or denigrate you because of your support for the Union.

WE WILL NOT fire you because of your union support or because you had contact with the Union's lawyers or because you signed any documents with them seeking wages due you.

WE WILL NOT in any similar fashion frustrate you in the exercise of your rights described above.

WE WILL make whole David Hernandez, Chad Evans, Hugo Ramirez-Justo, Rafael Izquierdo, Jorge Poblete-Lopez, Carlos Pineda, Miguel Molina-Mier, and Edwin Flamenco, who have waived reinstatement, for any loss of wages and benefits as a result of their discharge.

WE WILL within 14 days remove from our files, any and all records and the basis for the discharge of the above mentioned employees and WE WILL notify them in writing that we have taken this action and that the material removed will not be used as a basis or referred to in any inquiry from an employer, employment agency, unemployment insurance office, or reference seeker or otherwise used against them.

INSULATION MAINTENANCE & CONTRACTING, LLC