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Biosource Landscaping Services, LLC and Laborers International Union of North America, Local 1410, AFL-CIO. Case 9-CA-46347

September 9, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER
AND HAYES

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 complaint. Upon a charge filed by Laborers International Union of North America, Local 1410, AFL-CIO (the Union) on April 1, 2011, the Acting General Counsel issued the complaint on June 16, 2011, against Biosource Landscaping Services, LLC (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act.¹ The Respondent failed to file an answer.

On July 12, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on July 13, 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 August 16, 2011, the Board issued a revised Notice to Show Cause and served it by certified mail on the Respondent, noting that the original Notice was served on the Respondent only by regular mail. The Respondent filed no response. The allegations in the motion are therefore undisputed.

¹ The Acting General Counsel's Motion for Default Judgment indicates that the complaint was served on the Respondent by certified and regular mail, and by facsimile, and to its counsel of record by regular mail. However, on June 23, 2011, the copy sent to the Respondent by certified mail was returned with a notation that it had been refused. There is no indication that the copies of the complaint sent by regular mail have been returned. On June 30, 2011, the Respondent's counsel of record sent a letter to the Region advising that she no longer represented the Respondent. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003), and cases cited therein. Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd.* 843 F.2d 1392 (6th Cir. 1988). Moreover, the Respondent's lack of representation does not excuse it from its obligation to file an appropriate answer to the complaint. See generally *Newark Symphony Hall*, 323 NLRB 1297 (1997).

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 June 30, 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 notified the Respondent that unless an answer was received by July 8, 2011, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint 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, the Respondent, a corporation, has been engaged as a contractor performing commercial and residential landscaping and in the production and sale of landscaping products at its Xenia, Ohio location. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$10,000 directly from points outside the State of Ohio. 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 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, Theresa Lee 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.

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 employees engaged in work within the chartered trade jurisdiction of the Laborers International Union of North America, AFL-CIO, and employed in Highway-Heavy-Municipal and Utility Construction in the State of Ohio.

At all times since May 14, 2009, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. Such recognition is embodied in the terms of the current collective-bargaining agreement, which became effective May 14, 2009.

About March 5, 2011, the Union, by letter, requested that the Respondent provide an itemized list of all unit employees who have worked any hours during the period June 2009 through September 2010 within the Union's jurisdiction, which would include the following Ohio counties: Champaign, Clark, Darke, Green, Logan, Miami, Montgomery, and Preble.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about March 5, 2011, the Respondent has failed and refused to furnish the Union with the information it requested.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 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)(5) and (1) by failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested since March 5, 2011.

ORDER

The National Labor Relations Board orders that the Respondent, Biosource Landscaping Services, LLC, Xenia, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Laborers International Union of North America, Local 1410, AFL-CIO by failing and refusing to furnish it with requested information that is necessary for, and relevant to, the performance of its duties as the

exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees engaged in work within the chartered trade jurisdiction of the Laborers International Union of North America, AFL-CIO, and employed in Highway-Heavy-Municipal and Utility Construction in the State of Ohio.

(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) Furnish the Union with the information it requested since March 5, 2011.

(b) Within 14 days after service by the Region, post at its facility in Xenia, Ohio, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, 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.³ 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 March 5, 2011.

(c) 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. September 9, 2011

² 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."

³ 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.

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Mark Gaston Pearce,	Chairman
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Craig Becker,	Member
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Brian E. Hayes,	Member

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Laborers International Union of North America, Local 1410, AFL-CIO by failing and refusing to furnish it with requested information that is necessary for, and relevant to, the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees engaged in work within the chartered trade jurisdiction of the Laborers International Union of North America, AFL-CIO, and employed in Highway-Heavy-Municipal and Utility Construction in the State of Ohio.

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 furnish the Union with the information it requested since March 5, 2011.

BIOSOURCE LANDSCAPING SERVICES, LLC

(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