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Premier Investigative Service Agency, LLC and National Union of Protective Services Associations (NUPSA). Case 5–CA–35865

November 18, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER
AND HAYES

The Acting General Counsel seeks summary judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge and an amended charge filed on June 3 and September 15, 2010, respectively, by National Union of Protective Services Associations (NUPSA), the Union, the Acting General Counsel issued a complaint on September 30, 2010, against Premier Investigative Service Agency, LLC, the Respondent, alleging that it had violated Section 8(a)(5) 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 Regional Director for Region 5 on December 14, 2010. The Respondent agreed, among other things, to make whole all employees whose names appear on Attachment A of the settlement agreement as well as any other employees whose names were unknown at the time of the settlement agreement in the “amount to be determined by the Regional Director,” and to provide the Union with information it requested on July 28, 2010, relating to the method the Respondent would use to pay retroactive wages, the amount and date the Respondent planned to pay the employees the retroactive pay, and the notice or letter sent to employees regarding the payment of the retroactive pay.

The agreement also contained the following provision:

COMPLIANCE WITH NOTICE. The Charged Party will comply with all the terms and provisions of said Notice. The Charged Party will notify the Region in writing upon completion of all affirmative obligations. In the event of non-compliance with this Settlement Agreement, the allegations in a Complaint issued with regard to the violations covered by the Settlement Agreement will be deemed admitted. Upon Motion for Summary Judgment the Board may, without the necessity of trial, find all allegations of the Complaint to be true, adopt findings of fact and conclusions of law consistent with the Complaint allegations, and issue an appropriate Order providing full remedy for the violations

found, including but not limited to the provisions of this Settlement Agreement. Subsequently, a judgment from a U.S. Court of Appeals may be entered ex parte. [Emphasis in original.]

By letter dated December 17, 2010, the compliance officer for Region 5 notified the Respondent that the settlement agreement had been approved by the Regional Director and that it should proceed with compliance with the settlement’s terms. The letter also requested that the Respondent provide the compliance officer with payroll records covering the period from “December 3, 2009 to present,” which were needed to calculate backpay owed to the employees listed in Appendix A of the settlement agreement.

Subsequently, by letter dated January 13, 2011, the compliance officer advised the Respondent that it had not complied with the terms of the settlement agreement in that the Respondent had failed to provide the requested information to the Union and the requested payroll records to the compliance officer. The letter further stated that the Respondent was to provide payroll records from “December 3, 2009 to present” and that the Respondent should comply by January 20, 2011.

Based on material provided by the Respondent in response to the above requests, by letter dated February 10, 2011, the compliance officer provided the Respondent with nine names of employees to be removed from attachment A and the names of five other employees not previously listed in attachment A, but who were listed in the Respondent’s records and were due backpay. That letter also contained a spreadsheet setting out the names of the 55 employees whom the Regional Director had determined were due backpay, along with the backpay and interest due each employee.

Thereafter, on March 16, 2011, the Respondent provided the compliance officer with copies of bank statements, as well as copies of checks that the Respondent had provided to some, but not all, of the employees eligible for backpay. These checks showed only partial payments to most of the employees.¹ By email dated March 24, 2011, the compliance officer informed the Respondent’s representative, Shawn Gausney, that the Respondent’s payroll records showed that the Respondent’s March 2011 distribution of backpay failed to satisfy its make-whole obligations under the settlement agreement because (1) certain employees who were entitled to backpay received none; (2) certain employees who re-

¹ The email accompanying the payroll bank statements and checks sent to the Region by the Respondent’s representative Shawn Gausney raised no objections to the Regional Director’s determinations concerning the individuals to whom the Respondent owed backpay or the amount owed to each.

ceived backpay did not receive the full amount due them; (3) no employee was paid interest; and (4) the Respondent had failed to take deductions from backpay for payroll taxes due. The Respondent was asked to provide Region 5, by March 31, 2011, with evidence that it had made corrective payments.

By letters and emails dated April 25, August 10 and 16, 2011, the compliance officer again advised the Respondent that it had failed to comply with the terms of the settlement agreement and sought voluntary compliance with the settlement agreement. The August 10 email specifically notified the Respondent that in the absence of a response, a motion for default judgment may be filed.

To date, the Respondent has failed to provide the Union with the information it requested, has failed to pay its employees the remaining amounts of retroactive wages and interest, and has failed to make proper payroll deductions.

Accordingly, on September 22, 2011, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On September 23, 2011, the Board issued an Order Transferring the Proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the motion for summary judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to provide the Union with the requested information, by failing to remit the full backpay and interest owing the employees identified as eligible for retroactive pay, and by failing to make the appropriate payroll deductions. Consequently, pursuant to the "Compliance with Notice" provision in the settlement agreement set forth above, we find that the allegations in the complaint are true. Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Maryland corporation with its principal place of business in Upper Marlboro, Maryland, operates as a provider of detective, guard or armored car services at various firms and institutions located throughout the greater Washington, D.C. metropolitan area, including the Government Printing Office in Washington, D.C.

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 in the District of Columbia, and performed services valued in excess of \$50,000 in locations other than the District of Columbia.

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

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 full-time and part-time security officers, including sergeants, employed by Respondent at the US Government Printing Office, Washington, DC, and excluding temporary personnel, employees participating in pre-assignment training programs, managerial personnel as defined by the National Labor Relations Act, and all other personnel.

On about March 6, 2009, based on Section 9(a) of the Act, the Union was certified as the exclusive collective-bargaining representative of the unit.

Since about March 6, 2009, the Union has been recognized by the Respondent as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement, which is effective from September 1, 2009 to August 31, 2012.

On about October 27, 2009, the Union and the Respondent reached complete agreement on the collective-bargaining agreement described above, which included the payment to unit employees of a retroactive wage increase.

Since about July 28, 2010, the Union, by email, requested that the Respondent furnish it with the following information:

- (a) the medium by which the Respondent planned to pay the employees the retroactive pay owed by the Respondent to the employees;
- (b) the amount and date the Respondent planned to pay the employees the retroactive pay; and
- (c) the notice or letter the Respondent planned to send to employees regarding the payment of the retroactive pay.

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 July 28, 2010, the Respondent has failed and refused to furnish the Union with the requested information.

At all material times, including the 6 months prior to the date the charge was filed, the Respondent has failed and refused to pay the retroactive payment owed to the unit, as described above.

During the 6 months prior to the date the charge was filed, the Respondent has acknowledged its obligation under the collective-bargaining agreement described above to pay a retroactive wage increase to its employees in the unit.

The payment of a retroactive wage increase to employees in the unit relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the 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. The 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 the Acting General Counsel. Specifically, the Respondent shall comply with the terms of the settlement agreement approved by the Regional Director for Region 5 on December 14, 2010, by furnishing the Union with the information it requested on July 28, 2010, as set out above and not yet provided, and by immediately paying to its employees \$4,874.59, plus the Respondent's share of FICA and interest as set forth in Exhibit 26, attached to the Acting General Counsel's Motion for Summary Judgment, and incorporated into this Decision and Order as "Appendix A."

In limiting our affirmative remedies to those enumerated above, we are mindful that the Acting General Counsel is empowered under the "Compliance with Notice" provision of the settlement agreement to seek "full remedy for the violations found, including but not lim-

ited to the provisions of this Settlement Agreement." However, in his Motion for Summary Judgment, the Acting General Counsel has not sought such additional remedies and we will not, *sua sponte*, include them within this remedy.²

ORDER

The National Labor Relations Board orders that the Respondent, Premier Investigative Service Agency, LLC, Upper Marlboro, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect the terms and conditions of the collective-bargaining agreement reached with the National Union of Protective Services Associations (NUPSA) as set forth in the September 1, 2009 to August 31, 2012 collective-bargaining agreement by failing to pay to its unit employees a retroactive wage increase provided for in the parties' collective-bargaining agreement. The unit is:

All full-time and part-time security officers, including sergeants, employed by Respondent at the US Government Printing Office, Washington, DC, and excluding temporary personnel, employees participating in pre-assignment training programs, managerial personnel as defined by the National Labor Relations Act, and all other personnel.

(b) Failing and refusing to provide the Union with requested information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(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) Furnish to the Union the information it requested on July 28, 2010 concerning the medium by which the

² See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The Acting General Counsel specifically requested, in his statement in support of the Motion for Summary Judgment, that the Board

(1) without the necessity of trial, find all allegations of the Complaint to be true; (2) without the necessity of trial, issue a Decision and Order containing findings of fact and conclusions of law consistent with those allegations adverse to Respondent on all issues raised by the pleadings and that they be so found, and (3) issue an [] order requiring Respondent to comply with the remaining terms of the settlement agreement by providing to Charg[ing] Party the information not yet provided and by immediately paying to its employees, \$4,874.59, plus Employer's share of FICA and interest as set forth in Exhibit 26. Counsel for the Acting General Counsel seeks only the remedies set forth in this paragraph. . . .

Respondent planned to pay the employees the retroactive pay owed by the Respondent to the employees, the amount and date the Respondent planned to pay the employees the retroactive pay, and a copy of the notice or letter the Respondent planned to send to employees regarding the payment of the retroactive pay.

(b) Make whole the unit employees named in Appendix A of this decision for any loss of earnings and other benefits suffered as a result of the unlawful actions against them, by paying to its employees \$4,874.59 (wages), plus its share of FICA and interest as set forth in Appendix A, in accordance with the terms of the settlement agreement approved by the Regional Director for Region 5 on December 14, 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 at-

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 18, 2011

Mark Gaston Pearce, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Total Retroactive Pay Remaining Due
September 1 to December 15, 2009

	Amount Paid		Total Remaining Due	
	Wages	Interest	Wages	Interest
			\$ 160.58	\$ 8.46
Anyaike, Okechukwu(SGT)	\$ 451.77		\$ 435.49	\$ 21.48
Barnes, Micheal			\$ 411.44	\$ 19.61
Braimoh, Malik			\$ 268.62	\$ 12.33
	\$ 406.26		\$ 19.38	
Boyd, Daisey			\$ 378.88	\$ 17.98
	\$ 427.35		\$ 20.33	
Collins, Lyden	\$ 543.16		\$ 25.73	
	\$ 396.64		\$ 18.95	
Harris, Lavera	\$ 375.92		\$ 16.94	
	\$ 361.49		\$ 17.03	
Henson, Patricia	\$ 404.78		\$ 19.26	
Hill, Anita			\$ 47.36	\$ 2.29
	\$ 401.08		\$ 18.94	
Hursey, Raiford	\$ 318.57		\$ 15.01	
Jabbie, Lasana			\$ 56.24	\$ 2.50
	\$ 490.25		\$ 20.15	
King, Micheal	\$ 422.17		\$ 9.62	\$ 20.45
			\$ 145.04	\$ 6.87
Lawal, Ganiu	\$ 345.31		\$ 11.80	
	\$ 463.98		\$ 21.90	
Miles, Jerry	\$ 481.74		\$ 22.71	
Murray, Aline	\$ 219.04		\$ 9.75	
	\$ 183.52		\$ 8.70	
Onaolopa Bosede	\$ 343.36		\$ 64.38	\$ 19.51
	\$ 47.36		\$ 2.11	
Prather-EI, Alexander			\$ 106.56	\$ 4.74
	\$ 375.18		\$ 17.70	
Rodoye, Olubukola			\$ 197.21	\$ 9.49
	\$ 426.24		\$ 20.21	
Simpson, Jenean	\$ 414.40		\$ 19.62	

Premier Investigative Services
NLRB Case 5-CA-35865

Total Retroactive Pay Remaining Due
September 1 to December 15, 2009

	Amount Paid		Total Remaining Due	
	Wages	Interest	Wages	Interest
	\$ 371.11			\$ 17.34
Solomon, Anita	\$ 423.65			\$ 20.04
			\$ 432.16	\$ 20.50
Staci-Harris, Britina	\$ 41.44			\$ 2.26
	\$ 435.86			\$ 20.64
Walker, Monica			\$ 434.75	\$ 20.94
	\$ 426.24			\$ 20.27
Wright, Santresa	\$ 298.59			\$ 14.35
	\$ 466.20			\$ 21.81
Bedney, Rubin	\$ 428.46			\$ 20.00
			\$ 83.25	\$ 4.20
Cross Sidra	\$ 227.34		\$ 84.20	\$ 14.97
	\$ 401.45			\$ 19.13
Hicks-Roach, Ada	\$ 125.20		\$ 46.48	\$ 7.64
			\$ 308.21	\$ 14.81
Jones, Stacy			\$ 39.22	\$ 2.12
			\$ 169.09	\$ 7.52
Parker, Talitha	\$ 149.25		\$ 157.68	\$ 14.66
			\$ 82.14	\$ 3.66
Robinson, Helen	\$ 97.20		\$ 36.00	\$ 5.93
	\$ 278.64		\$ 103.20	\$ 18.01
Van, Chaka			\$ 157.62	\$ 7.01
			\$ 459.17	\$ 21.50

