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Vocell Bus Company, Inc. and Steven Richemond.
Case 1-CA-46854

November 29, 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 Steven Richemond, the Charging Party, on June 7, 2011, the Acting General Counsel issued a complaint on August 31, 2011, against Vocell Bus Company, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On October 6, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on October 7, 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.

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 September 14, 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 letter dated September 26, 2011, notified the Respondent that unless an answer was received by October 3, 2011, the Region would seek summary judgment in this case based on the Respondent's failure to respond to the complaint allegations. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer to the complaint, we deem the allegations in the complaint and notice of hearing 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 with an office and place of business located at 378 Commercial Street, Malden, Massachusetts, the Malden facility, has been engaged in the business of providing school and community bus transportation services.

Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$250,000 and purchases and receives at its Malden facility goods valued in excess of \$5000 directly from points outside the Commonwealth of Massachusetts.

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 International Brotherhood of Teamsters, Local 25, 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:

Paul Goodman	—	President
Steven Darragh	—	Manager
Lisa Bucciero	—	Dispatcher

At all material times, Jennifer Newell has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about June 3, 2011, the Respondent discharged its employee Steven Richemond.

The Respondent engaged in the conduct described above because Richemond, and other employees of the Respondent, formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the conduct described 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. The Respondent's unfair labor practices 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. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by discharging Steven Richemond, we shall order the Respondent to offer Richemond full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to make Richemond whole for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against him. 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), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).¹ The Respondent shall also be required to remove from its files any reference to the unlawful discharge of Steven Richemond and to notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Vocell Bus Company, Inc., Malden, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they form, join, or assist International Brotherhood of Teamsters, Local 25, or any other labor organization, or engage in concerted activities.

(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.

¹ In the complaint and motion for default judgment, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. Further, the Acting General Counsel requests that the Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enf. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

(a) Within 14 days from the date of this Order, offer Steven Richemond full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Steven Richemond whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, plus 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 reference to the unlawful discharge of Steven Richemond, and within 3 days thereafter, notify the employee in writing that this has been done and that the unlawful discharge will not be used against him 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 Malden, Massachusetts facility copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, 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. 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 em-

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.

ployees and former employees employed by the Respondent at any time since June 3, 2011.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 1, 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. November 29, 2011

Mark Gaston Pearce, Chairman

Craig Becker, Member

Brian E. Hayes, 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 discharge or otherwise discriminate against you because you form, join, or assist International Brotherhood of Teamsters, Local 25, or any other labor organization, or engage in 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 Steven Richemond full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Steven Richemond whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Steven Richemond, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

VOCELL BUS COMPANY, INC.