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**Knight Protective Services, Inc.<sup>1</sup> and United Security & Police Officers of America (USPOA). Case 05-CA-036224**

February 29, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES  
AND GRIFFIN

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 by United Security & Police Officers of America (USPOA), the Union, on November 5 and December 23, 2010, respectively, the Acting General Counsel issued a complaint on January 31, 2011, against Knight Protective Services, Inc., 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 March 16, 2011. The settlement agreement required the Respondent, upon request, to meet and bargain collectively and in good faith with the Union as the exclusive representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, to embody it in a signed agreement. The settlement 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 the affirmative obligations of 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 Com-*

<sup>1</sup> The Acting General Counsel's motion requests that all allegations of the complaint be dismissed as to another charged party, Phair Security Solutions Inc. (PSSI), because the Acting General Counsel no longer seeks summary judgment as to that entity. As indicated below, we shall grant the motion to dismiss the complaint allegations as to PSSI, and we have amended the case caption accordingly.

*plaint 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.]*<sup>2</sup>

As set forth in the Acting General Counsel's motion, on May 10, 2011, the Union met and bargained with PSSI, who at that time was the subcontractor and a joint employer with the Respondent. On the same date, the Union and PSSI reached agreement on many issues, and the Union and PSSI further agreed that the remaining issues would be bargained directly between the Union and the Respondent.

On June 10, 2011, the Respondent informed the Union that PSSI was no longer the subcontractor for the Respondent and on that same date the Respondent requested that the Union send its most recent proposal so that the Respondent and the Union could finish bargaining.

By letter dated June 20, 2011, the Regional Director for Region 5 informed the Respondent that the case was closed on compliance and would remain closed as long as there was continuing compliance with the terms of the settlement agreement.

On July 21, 2011, the Respondent informed the Union that it would not bargain because it was no longer the contractor. On July 27, 2011, the Union filed a new charge alleging that the Respondent was failing to bargain in violation of Section 8(a)(5) and (1), and prompting the Region to investigate a breach of the settlement agreement.<sup>3</sup> The Acting General Counsel subsequently determined that the Respondent continued to be the contractor and employer of the security officers in the unit at least through November 30, 2011.<sup>4</sup>

Accordingly, on November 4, 2011, the Acting General Counsel filed a motion to transfer case to the Board, dismiss complaint in part, and for summary judgment

<sup>2</sup> The settlement agreement also provided that "Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response."

<sup>3</sup> The charge was originally mailed to the Respondent on July 29, 2011, but was returned due to an incorrect address. A copy of the charge was served by mail on the Respondent on August 17, 2011.

<sup>4</sup> Pursuant to an inquiry by counsel for the Acting General Counsel, the contracting officer for the worksites at issue responded by email dated September 30, 2011, confirming that the Respondent was the contractor at the sites through November 30, 2011. A copy of this email and supporting docuMotion for Summary Judgment. The September 30, 2011 email further indicates that a new contract for the work sites at issue would be awarded in mid to late October 2011. Although the Acting General Counsel's motion was filed on November 4, 2011, it does not indicate whether the Respondent was awarded the new contract.

with the Board. Thereafter, on January 18, 2012, 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.<sup>5</sup> 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 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 bargain collectively and in good faith with the Union as the exclusive representative of the unit employees. Consequently, pursuant to the "Compliance with Notice" provision in the settlement agreement set forth above, we find the allegations in the complaint are true.<sup>6</sup> Accordingly, we grant the Acting General Counsel's motion to dismiss complaint in part, and for summary judgment.<sup>7</sup>

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 office and place of business in Lanham, Maryland, has been engaged in providing security guard services to the United States Government at various facilities, including the National Targeting Center facilities in Reston, Virginia, referred to as NTC 1; and Herndon, Virginia, referred to as NTC 2 Worldgate.

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 United States Government, outside the State of Maryland.

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.

<sup>5</sup> PSSI filed a response to the Notice to Show Cause.

<sup>6</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

<sup>7</sup> As noted above, the complaint originally alleged that Phair Security Solutions Inc. (PSSI), was a joint employer with the Respondent and also liable for the alleged unfair labor practices therein. However, the Acting General Counsel's motion requests that all allegations of the complaint be dismissed as to PSSI because PSSI bargained with the Union in good faith until it was no longer an employer of the unit. Accordingly, the Acting General Counsel's motion is granted, and the complaint allegations as to PSSI are dismissed.

##### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Macon Sims, Jr. has held the position of president and CEO 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 full-time and regular part-time security officers employed by Respondent at the NTC 1 and NTC 2 Worldgate facilities located at 12825 Worldgate Drive, Herndon, Virginia, and 12379 Sunrise Valley Drive, Reston, Virginia; but excluding sergeants, captains, lieutenants, project managers, professional employees, office clerical employees and supervisors as defined in the Act.

On September 16, 2009, the Union was certified as the exclusive, collective-bargaining representative of the unit employed by the Respondent.

Since about September 16, 2009, based on Section 9(a) of the Act, the Union has been the exclusive, collective-bargaining representative of the unit employed by the Respondent.

At all times since about September 14, 2010, the Respondent has refused to meet and bargain with the Union.

#### 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 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, the Respondent shall comply with the terms of the settlement agreement approved by the Regional Director for Region 5 on March 16, 2011, by, on request, bargaining collectively and in good faith with the Union as the exclusive representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embodying the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Knight Protective Services, Inc., Lanham, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Security & Police Officers of America (USPOA) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(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) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

All full-time and regular part-time security officers employed by the Respondent at the NTC 1 and NTC 2 Worldgate facilities located at 12825 Worldgate Drive,

Herndon, Virginia, and 12379 Sunrise Valley Drive, Reston, Virginia; but excluding sergeants, captains, lieutenants, project managers, professional employees, office clerical employees and supervisors as defined in the Act.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 5, 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. February 29, 2012

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Mark Gaston Pearce, Chairman

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Brian E. Hayes, Member

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Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD