Pointing Plus Inc. *and* Juan Guzman *and* Jose Samuel Iglesias *and* Wilfredo Ventura Ramos *and* Eliseo Ramos Hernandez. Cases 05–CA–072371, 05–CA–072372, 05–CA–072390, and 05–CA–072394

September 27, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

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 consolidated complaint. Upon charges and amended charges filed by Juan Guzman, Jose Samuel Iglesias, Wilfredo Ventura Ramos, and Eliseo Ramos Hernandez (the Charging Parties), on January 12, March 22 and 23, 2012, respectively, the Acting General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on April 27, 2012, against Pointing Plus Inc. (the Respondent), alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charges and the consolidated complaint, the Respondent failed to file an answer.

On June 7, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. On June 11, 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. On June 25, 2012, the Respondent filed a document titled, "Respondent's Original Answer and Response to Order to Show Cause" (Respondent's submission). Contrary to Section 102.114 of the Board's Rules and Regulations, however, the Respondent did not serve this submission on the Charging Parties. As a result, on July 3, 2012 the Acting General Counsel filed with the Board a motion to strike the Respondent's submission. By letter dated August 20, 2012, the Board advised the Respondent that by September 4, 2012, it must provide an affidavit of service showing that its submission was properly served on all parties. On September 4, 2012, the Respondent filed a document with the Region affirming that the Charging Parties had been served with its submission.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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 May 11, 2012, 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 May 18, 2012, notified the Respondent that unless an answer was received by June 1, 2012, a motion for default judgment would be filed. On May 31, 2012, the Region reminded the Respondent by email that it had not yet filed an answer. However, no answer or request for an extension of time to file an answer was received by June 1, 2012, and, for the reasons discussed below, we find that the Respondent has not established good cause to excuse that failure.

Although the Board has shown some leniency toward respondents who proceed without the benefit of counsel, the Board has consistently held that pro se status alone does not establish a good cause explanation for failing to file a timely answer. See, e.g., *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153 (2003); *Sage Professional Painting Co.*, 338 NLRB 1068, 1068 (2003). Where a pro se respondent fails to respond to complaint allegations until after the Notice to Show Cause has issued, despite having been notified in writing that it must do so, and has provided no good cause explanation for its failure to file a timely answer, subsequent attempts to file an answer will be denied as untimely. *Patrician Assisted Living Facility*, supra at 1153–1154, citing *Kenco Electric & Signs*, 325 NLRB 1118, 1118 (1998).

Here, there is no dispute that the Respondent did not answer the consolidated complaint until after the Notice to Show Cause had issued on June 11, 2012, despite counsel for the Acting General Counsel's repeated directions to do so. In its June 25 submission opposing default judgment, the Respondent asserts that it has a meritorious defense to the consolidated complaint allegations. The Respondent further contends that counsel for the Acting General Counsel orally informed the Respondent's owner on two separate occasions that he would give the Respondent an extension of time to respond to the consolidated complaint, and maintains that the Respondent's owner would testify under oath in this regard at a hearing. However, the Respondent does not specify when these conversations allegedly took place, indicate what the purported new deadline was, or present any documents verifying that any extension was granted.

In contrast, counsel for the Acting General Counsel submitted copies of correspondence between Regional Attorney Albert Palewicz and the Respondent's owner, Danny Palousek regarding the deadline for filing an an-

swer, attached as exhibits to the Motion for Default Judgment. As noted above, by letter dated May 18, 2012 sent from Palewicz to Palousek, the deadline for filing an answer was extended to June 1, 2012 (Exh. 22). By email dated May 31, 2012, Palewicz reminded Palousek of his obligation to file an answer (Exh. 24). In an email dated June 4, 2012, Palousek acknowledged that he had missed the June 1 deadline because he had been attempting to contact his attorney,[1] and indicated he still intended to file a response (Exh. 25). By email dated June 6, 2012, Palousek again acknowledged the missed deadline and inquired whether he could still respond (Exh. 26). By email dated June 7, 2012, Palewicz informed Palousek that it was too late to respond and that the motion for default judgment would be filed that day.

As stated above, the Respondent's status as a pro se litigant does not establish good cause to excuse its failure to file a timely answer. See *Starrs Group Home, Inc*., 357 NLRB No. 100, slip op. at 1 (2011); *Lockhart Concrete*, 336 NLRB 956, 957 (2001). Further, the documents submitted by the Acting General Counsel show that after the deadline for filing had passed, the Respondent's owner corresponded with the Region, acknowledging that he had missed the deadline and seeking a further extension of time. The Respondent does not contest the authenticity of these documents or dispute their contents.

In these circumstances, we find that the Respondent's assertion that it was twice orally granted an extension of time in which to file an answer and thus should be excused for its failure to file a timely answer is inconsistent with the documents submitted by the Acting General Counsel. In addition, even assuming that the Respondent's assertion is true, the Respondent has failed to articulate what new date was given for filing an answer, or to establish that it met that purported new deadline. Accordingly, we find that the Respondent has provided no good cause explanation for the failure to file a timely answer. Further, regarding the Respondent's claim that it has a meritorious defense, the Board will not address a respondent's assertions that it has a meritorious defense unless good cause has been shown for the late response. *Dong-A Daily North America, Inc*., 332 NLRB 15, 16 (2000).

In the absence of good cause being shown for the failure to file a timely answer to the consolidated complaint, we deem the allegations 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 District of Columbia corporation with its principal office and place of business in Washington, D.C., has been engaged in the business of providing residential painting and masonry services in the Washington, D.C. metropolitan area.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, purchased and received goods and materials valued in excess of $5000, directly from points located outside 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.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Danny Palousek, the Respondent's owner, 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.

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

On about January 9, 2012, the Respondent's employees Jose Samuel Iglesias, Wilfredo Ventura Ramos, and Eliseo Ramos Hernandez engaged in a work stoppage in protest of the Respondent's failure to pay them in a timely manner.

On about January 9, 2012, the Respondent discharged Jose Samuel Iglesias, Wilfredo Ventura Ramos, and Eliseo Ramos Hernandez.

The Respondent engaged in the conduct described above because Jose Samuel Iglesias, Wilfredo Ventura Ramos, and Eliseo Ramos Hernandez engaged in a work stoppage in protest of the Respondent's failure to pay them in a timely manner and to discourage employees from engaging in these or other concerted activities.

On about January 10, 2012, the Respondent, by Palousek, at a jobsite located in Washington, D.C., threatened employees by telling employees they will not be employed by the Respondent if they engage in protected concerted activity or support such activity.

On about January 10, 2012, Juan Guzman told Palousek that he supported the activity of Jose Samuel Iglesias, Wilfredo Ventura Ramos, and Eliseo Ramos Her-

[1] The Acting General Counsel's Motion for Default Judgment states that prior to the issuance of the complaint the Region made repeated efforts to procure a Notice of Appearance from the Respondent's apparent counsel, H. Peyton Inge IV, but neither Inge nor the Respondent filed such a notice.

nandez, of engaging in a work stoppage in protest of the Respondent's failure to pay them in a timely manner.

On about January 10, 2012, the Respondent discharged Guzman.

The Respondent discharged Guzman because Guzman engaged in the conduct described above, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described 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. 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)(1) of the Act by discharging Jose Samuel Iglesias, Wilfredo Ventura Ramos, Eliseo Ramos Hernandez, and Juan Guzman because they engaged in protected concerted activities, we shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against them.[2] 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).[3]

The Respondent shall also be required to remove from its files any reference to the unlawful discharges of Jose Samuel Iglesias, Wilfredo Ventura Ramos, Eliseo Ramos Hernandez, and Juan Guzman and to notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Pointing Plus Inc., Washington, District of Columbia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engage in protected concerted activities.

(b) Threatening employees by telling them they will not be employed if they engage in protected concerted activities or support such activities.

(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) Make Jose Samuel Iglesias, Wilfredo Ventura Ramos, Eliseo Ramos Hernandez, and Juan Guzman whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Jose Samuel Iglesias, Wilfredo Ventura Ramos, Eliseo Ramos Hernandez, and Juan Guzman, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(c) 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.

(d) Within 14 days after service by the Region, post at its Washington, D.C., facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained

[2] The Acting General Counsel's Motion for Default Judgment states that all four employees were reinstated shortly after their discharges. Therefore, the Order does not include a reinstatement provision.

[3] In the complaint, 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 unlawful conduct. 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), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

[4] 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."

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. 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 January 9, 2012.

(e) 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. September 27, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, 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 you for engaging in protected concerted activities.

WE WILL NOT threaten you by telling you that you will not be employed if you engage in protected concerted activities or support such 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 make Jose Samuel Iglesias, Wilfredo Ventura Ramos, Eliseo Ramos Hernandez, and Juan Guzman whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest. These employees have been reinstated.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Jose Samuel Iglesias, Wilfredo Ventura Ramos, Eliseo Ramos Hernandez, and Juan Guzman, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

POINTING PLUS INC.