

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Tate & Hill, Inc. and International Brotherhood of Electrical Workers, Local Union No. 666. Case 05–CA–086896

January 10, 2013

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 complaint. Upon a charge filed by International Brotherhood of Electrical Workers, Local Union No. 666 (the Union) on August 7, 2012,¹ the Acting General Counsel issued a complaint and notice of hearing on October 19, against Tate & Hill, Inc. (the Respondent) alleging that it violated Section 8(a)(1) and (5) of the Act by failing to execute a collective-bargaining agreement with the Union, which it had adopted by its conduct. The Respondent failed to file an answer.

On November 20, the Acting General Counsel filed with the Board a Motion for Default Judgment. Thereafter, on the same date, 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 November 2, 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 November 7, notified the Respondent that unless an answer was received by November 16, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

¹ All dates refer to 2012 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Virginia corporation with its principal office and place of business in Richmond, Virginia, has been engaged in the business of providing electrical construction services.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Richmond, Virginia facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Virginia.

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, the following individuals have 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/or agents of the Respondent within the meaning of Section 2(13) of the Act:

William A. Phillips, Jr. - Co-owner and President

William A. Phillips, Sr. - Co-owner

The following employees of the Respondent (the unit), constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees in the collective-bargaining unit described in Section 3.05 of the Inside Construction Agreement between the International Brotherhood of Electrical Workers Local Union #666 and Tate & Hill, Inc.

Since about February 4, 1990, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit employees. This recognition has been embodied in a recognition agreement dated February 4, 1990, and in successive collective-bargaining agreements, the most recent of which is effective by its terms, from March 1, 2012 to February 28, 2015.

At all times, since about February 4, 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

On about November 23, 2011, the Union and the Respondent, by William A. Phillips, Jr., signed a written document whereby they agreed to negotiate a successor

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

collective-bargaining agreement to replace the agreement that was scheduled to expire on February 29, 2012.

On about January 4, 2012, the Union gave the Respondent, specifically William A. Phillips, Jr., a written list of its opening proposals for the collective-bargaining agreement.

In about April 2012, the Union gave the Respondent, specifically William A. Phillips, Jr., a proposed Inside Construction Agreement (the agreement) to be effective by its terms from March 1, 2012 to February 28, 2015.

Since about April 2012, the Respondent has complied with the terms and conditions of the Inside Construction Agreement, described above, and has, by its conduct, adopted the agreement.

Since about July 2012, the Union has requested that the Respondent execute the written agreement, described above.

Since about July 2012, the Respondent has failed and refused to execute the agreement.

CONCLUSION OF LAW

By failing and refusing, since the Union's request in about July 2012, to execute the Inside Construction Agreement, adopted by the Respondent through its conduct in about April 2012, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) 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 violated Section 8(a)(5) and (1) of the Act by failing and refusing, since in about July 2012, to execute the written Inside Construction Agreement, we shall order the Respondent to execute and implement the Inside Construction Agreement and give retroactive effect to its terms. We shall also order the Respondent to make whole the unit employees for any losses attributable to its failure to execute the agreement, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), and *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), *enfd. mem.* 661 F.2d 940 (9th Cir. 1981), 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).

Additionally, in accordance with our recent decision in *Latino Express*, 359 NLRB No. 44 (2012), we shall order

the Respondent to compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each unit employee.

ORDER

The National Labor Relations Board orders that the Respondent, Tate & Hill, Inc., Richmond, Virginia, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute, as requested by the International Brotherhood of Electrical Workers, Local Union No. 666 (the Union) in about July 2012, the Inside Construction Agreement (the agreement) adopted by the Respondent through its conduct in about April 2012, and effective by its terms from March 1, 2012 to February 28, 2015, containing the terms and conditions of employment of the following unit employees:

All employees in the collective-bargaining unit described in Section 3.05 of the Inside Construction Agreement between the International Brotherhood of Electrical Workers Local Union #666 and Tate & Hill, Inc.

(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) Execute the agreement with the Union, adopted by the Respondent through its conduct in or around April 2012, and give retroactive effect to its terms.

(b) Make unit employees whole for any loss of earnings and other benefits they have suffered as a result of the Respondent's failure to execute the agreement, plus daily compound interest, as set forth in the remedy section of this decision.

(c) Compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each unit employee.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay, if any, due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Richmond, Virginia, copies of the attached

TATE & HILL, INC.

notice marked "Appendix."² 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 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. 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 in or around April 2012.

(f) 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. January 10, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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."

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 fail and refuse to execute, as requested by International Brotherhood of Electrical Workers, Local Union No. 666 (the Union) in or around July 2012, the Inside Construction Agreement (the agreement) adopted by us through our conduct since in or around April 2012 and effective by its terms from March 1, 2012 to February 28, 2015, containing the terms and conditions of employment of the following unit employees:

All employees in the collective-bargaining unit described in Section 3.05 of the Inside Construction Agreement between the International Brotherhood of Electrical Workers Local Union #666 and Tate & Hill, Inc.

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 execute and implement the agreement with the Union, adopted by us through our conduct in or around April 2012, and give retroactive effect to its terms.

WE WILL make unit employees whole for any loss of earnings and other benefits they may have suffered as a result of our failure to execute the agreement, plus daily compound interest.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each unit employee.

TATE & HILL, INC.