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Berkebile Bros., Inc. and/or RCC Construction LLC, single employer and/or alter ego and Greater Pittsburgh Regional Council of Carpenters a/w United Brotherhood of Carpenters and Joiners of America. Case 06–CA–071326

December 17, 2013

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON, AND SCHIFFER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the reissued complaint. Upon a charge and a first amended charge filed by Greater Pittsburgh Regional Council of Carpenters a/w United Brotherhood of Carpenters and Joiners of America (the Union) on December 23, 2011, and January 13, 2012, respectively, the General Counsel issued a complaint on May 31, 2012, against Berkebile Bros., Inc. and/or RCC Construction LLC, single employer and/or alter ego (collectively, the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer, admitting in part and denying in part the allegations of the complaint.

On October 10, 2012, the Regional Director issued an order dismissing the complaint and approving the Union's request to withdraw the charges, based on a non-Board settlement. By letter dated May 7, 2013, the Regional Director informed the Respondent that due to its failure to comply with any of the settlement agreement's financial terms he was revoking the approval of the withdrawal of the charges and reissuing the complaint.

On June 20, 2013, the General Counsel reissued the complaint, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act. The Respondent did not file an answer to the reissued complaint.

On July 25, 2013, the General Counsel filed a Motion for Default Judgment with the Board. By letter dated July 26, 2013, the Associate Executive Secretary informed the Respondent that the proceeding had been transferred to the Board and that the Respondent could file with the Board a response showing why the General Counsel's Motion should not be granted. The Respondent filed no response. 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 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 July 5, 2013, 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 General Counsel's motion disclose that the Region, by letter dated July 16, 2013, notified the Respondents that unless an answer was received by the close of business on the third business day following receipt of the letter, a motion for default judgment would be filed.

In the Motion for Default Judgment, the General Counsel contends that the Respondent has failed to file an answer to the reissued complaint, and that the Board should find the allegations of that complaint to be true and issue an order based on these findings.

The record shows that the Respondent did not file an answer to the reissued complaint. The record also shows, however, that the Respondent filed an answer to the original complaint. That answer denied allegations that are substantially the same as the unfair labor practice allegations contained in the reissued complaint presently before the Board. The Board has denied summary judgment when the record reveals that the Regional Director issued a complaint, the respondent filed an answer, the parties executed a non-Board settlement agreement, the Regional Director thereafter withdrew approval of the settlement agreement and reissued the complaint, and the respondent failed to file an answer to the reissued complaint. See, e.g., *West Fork Energy, Inc.*, 305 NLRB 870 (1991).

In *West Fork*, the Board found that an answer to an original complaint survived a breached non-Board settlement agreement and a subsequent unanswered reissued complaint. The Board distinguished *West Fork* from cases in which the Regional Director approved an *informal Board* settlement agreement under Form NLRB-4775. The Board reasoned that the language of that form specifically provides that the approved settlement agreement withdrew outstanding complaints and answers.¹ In the instant matter, as in *West Fork*, there is no evidence that the non-Board settlement agreement, which is not part of the record, provided for the withdrawal of the answer to the original complaint. In addition, the Region's withdrawal of the original complaint made no reference to the Respondent's previously filed answer.

¹ See, e.g., *Orange Data, Inc.*, 274 NLRB 1018 (1985).

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That answer denied the commission of any unfair labor practice and contested the complaint's assertions. Under these circumstances, we find that the answer to the original complaint survives the breached non-Board settlement agreement and subsequent unanswered reissued complaint.² Therefore, we shall deny the General Counsel's Motion for Default Judgment.

ORDER

It is ordered that the General Counsel's Motion for Default Judgment is denied.

² As noted above, the reissued complaint allegations are substantially unchanged from the allegations contained in the original complaint. The difference between the two complaints is that the reissued complaint contains updated information regarding the status of collective-bargaining agreements.

It is further ordered that the proceeding is remanded to the Regional Director for Region 6 for further appropriate action.

Dated, Washington, D.C. December 17, 2013

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

Nancy Schiffer, Member

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