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Prime Protective, Inc. and Special and Superior Officers Benevolent Association. Case 29–CA–116082

April 22, 2014

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA,
AND JOHNSON

The General Counsel seeks a default judgment in this case on the ground that Prime Protective, Inc. (the Respondent) has failed to file an answer to the complaint. Upon a charge and a first amended charge filed on October 28 and December 12, 2013, respectively, by Special and Superior Officers Benevolent Association (the Union), the General Counsel issued the complaint on January 7, 2014, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On February 11, 2014, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on February 12, 2014, 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.

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 the Regional Office by January 22, 2014, 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 January 28, 2014, notified the Respondent that unless an answer was received by February 4, 2014, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we grant the 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 has been a domestic corporation with an office and place of business located at 26 Court Street, Suite 709, Brooklyn, New York, and has been providing security guard services to various customers located in New York City.

Annually, in conducting its business operations described above, the Respondent performed services valued in excess of \$50,000 for Lawrence Nursing Care Center and Telco Stores, enterprises within the State of New York which are directly engaged in interstate commerce.

We find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Terry English held the position of the Respondent's president and chief executive officer and has been 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 uniform guards employed by Respondent, except management and client supervisors.

Since at least January 2013 and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 1, 2013 to May 31, 2014 (the agreement).

At all material times since January 1, 2013, the Union has been the exclusive collective-bargaining representative of the unit.

Since at least June 1, 2013, the Respondent failed to continue in effect all the terms and conditions of the agreement by:

- (a) failing to forward to the Union monthly dues payments automatically deducted from employees' paychecks;
- (b) failing to make monthly contributions to the Special and Superior Officers Benevolent Association Welfare Fund; and

(c) failing to provide vacation pay to certain employees.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

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 unfair labor practices of the Respondent 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)(5) and (1) by failing to continue in effect all the terms and conditions of the agreement by failing, since about June 1, 2013, to forward to the Union monthly dues payments automatically deducted from employees' paychecks, we shall order the Respondent to remit to the Union the dues it failed to remit, with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1171 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Additionally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the agreement by failing, since about June 1, 2013, to make monthly contributions to the Special and Superior Officers Benevolent Association Welfare Fund, we shall order the Respondent to make all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). We shall also order the Respondent to reimburse unit employees for any expenses ensuing from its failure to make the contractually-required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, supra, com-

pounded daily as prescribed in *Kentucky River Medical Center*, supra.¹

Further, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the agreement by failing, since about June 1, 2013, to pay certain employees their accrued vacation pay, we shall order the Respondent to make the affected unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra, and minus tax withholding required by Federal and State laws.

In addition, we shall order the Respondent to compensate the affected 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 unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Prime Protective, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Special and Superior Officers Benevolent Association (the Union) as the exclusive collective-bargaining representative of the employees in the following unit by failing to continue in effect all the terms and conditions of employment of the unit as set forth in the June 1, 2013 to May 31, 2014 collective-bargaining agreement by failing to forward to the Union monthly dues payments automatically deducted from employees' paychecks; failing to make monthly contributions to the Special and Superior Officers Benevolent Association Welfare Fund; and failing to provide vacation pay to certain employees. The appropriate unit is:

All full time and regular part time uniform guards employed by Respondent, except management and client supervisors.

¹ To the extent that an employee has made personal contributions to the fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes to the fund.

(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) Remit to the Union, as provided in the parties' 2013–2014 collective-bargaining agreement, monthly dues deducted from employees' paychecks that have not been remitted since June 1, 2013, with interest, in the manner set forth in the remedy section of this decision.

(b) Make all monthly contributions that have not been made since June 1, 2013, to the Special and Superior Officers Benevolent Association on behalf of unit employees as provided in the parties' 2013–2014 agreement, with interest in the manner set forth in the remedy section of this decision, including any additional amounts due the fund, and make whole the unit employees for any expenses ensuing from the failure to make the fund contributions, with interest, as set forth in the remedy section of this decision.

(c) Make the affected employees whole for its failure to provide them accrued vacation pay, by paying them the amounts it failed to pay, with interest, as set forth in the remedy section of this decision.

(d) Compensate the affected 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 award to the appropriate calendar quarters for each employee.

(e) 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 vacation pay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, 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. 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 June 1, 2013.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 29 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. April 22, 2014

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Harry I. Johnson, III, 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 fail and refuse to bargain collectively and in good faith with Special and Superior Officers Benevolent Association (the Union) as the exclusive collec-

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."

tive-bargaining representative of our employees in the following appropriate unit by failing to continue in effect all the terms and conditions of employment as set forth in our June 1, 2013, to May 31, 2014 collective-bargaining agreement, by failing to forward to the Union monthly dues payments automatically deducted from employees paychecks; failing to make monthly contributions to the Special and Superior Officers Benevolent Association Welfare Fund; and failing to provide vacation pay to certain employees. The appropriate unit is:

All full-time and regular part-time uniform guards employed by us except management and client supervisors.

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 remit to the Union the dues deducted from employees' paychecks pursuant to our 2013–2014 collective-bargaining agreement, plus interest.

WE WILL make all monthly contributions that we have failed to make to the Union's Special and Superior Officers Benevolent Association on behalf of unit employees pursuant to our 2013–2014 collective-bargaining agreement, plus interest.

WE WILL make the affected employees whole for our failure to pay them their accrued vacation pay pursuant to our 2013–2014 collective-bargaining agreement, plus interest.

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

PRIME PROTECTIVE, INC.