

Casworth Enterprises, Inc. and Pedro A. Mendez.
Case 04–CA–142471

June 24, 2015

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON,
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent failed to file an answer to the complaint. Upon a charge and an amended charge filed by employee Pedro A. Mendez on December 8, 2014, and March 13, 2015, respectively, the General Counsel issued a complaint on March 27, 2015, against Casworth Enterprises, Inc. (the Respondent), alleging that it has violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer.

On April 24, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 28, 2015, 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 April 10, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed assertions in the General Counsel's motion disclose that the Region, by letter dated April 16, 2015, advised the Respondent that unless an answer was received by April 23, 2015, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.¹

¹ The Motion for Default Judgment and attached exhibits indicate that the Region sent a copy of the complaint to the Respondent's owner, John Casciano, by certified mail to the Respondent's address in Westville, New Jersey. Tracking information provided by the U.S. Postal Service shows that this document was unclaimed. In addition, the Region sent a copy of the complaint to the Respondent's owner, Frank Holzworth, by regular mail to the Respondent's address in Deptford, New Jersey. There is no indication that this letter was returned to the Region. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the Postal Service

In the absence of good cause being shown for the Respondent's failure to file an answer, we deem the allegations in the complaint to be admitted as true, and 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, Respondent, a New Jersey corporation with an office and place of business in Westville, New Jersey (the facility), has been engaged in providing trash collection and recycling services to business and residential customers.

During the 12-month period ending March 27, 2015, the Respondent, in conducting its business operations described above, purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

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 Teamsters Union Local No. 115 a/w International Brotherhood of Teamsters (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, Frank Holzworth and John Casciano have been the Respondent's owners, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

During the week of November 17, 2014, the Respondent, by John Casciano, at the facility, interrogated employees concerning the union sympathies and activities of its other employees.

During the first half of November 2014, the Respondent more closely scrutinized and monitored the work its employee Pedro A. Mendez was doing.

On about November 13, 2014, the Respondent discharged Mendez.

The Respondent engaged in the conduct described above because Mendez supported the Union and engaged in union activities, and to discourage employees from seeking union representation.

CONCLUSIONS OF LAW

1. By interrogating employees, the Respondent has been interfering with, restraining, and coercing employ-

to return the documents served by regular mail indicates actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd.* 843 F.2d 1392 (6th Cir. 1988).

ees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By discharging Pedro A. Mendez, and by more closely scrutinizing and monitoring the work of Mendez, the Respondent has been discriminating in regard to the hire or tenure, or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. 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)(3) and (1) of the Act by more closely scrutinizing and monitoring the work of Pedro A. Mendez and discharging him, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to make Mendez whole for any loss of earnings and other benefits he may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, we shall order the Respondent to compensate Mendez for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Finally, the Respondent shall also be required to remove from its files any and all references to the unlawful scrutiny, monitoring, and discharge of Mendez, and to notify him in writing that this has been done and that the unlawful conduct will not be used against him in any way.²

² In the complaint, the General Counsel requests that Mendez be reimbursed for any out-of-pocket expenses incurred while searching for work as a result of the discrimination against him. 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

ORDER

The National Labor Relations Board orders that the Respondent, Casworth Enterprises, Inc., Westville, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning the union sympathies and activities of other employees.

(b) More closely scrutinizing and monitoring the work of employees because they support Teamsters Union Local No. 115 a/w International Brotherhood of Teamsters, or any other labor organization.

(c) Discharging or otherwise discriminating against employees for supporting Teamsters Union Local No. 115 a/w International Brotherhood of Teamsters, or any other labor organization.

(d) 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) Within 14 days from the date of this Order, offer Pedro A. Mendez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Mendez whole for any loss of earnings and other benefits he may have suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

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

(d) Within 14 days from the date of this Order, remove from its files any references to the unlawful scrutiny, monitoring, and discharge of Mendez and, within 3 days thereafter, notify him in writing that this has been done and that its unlawful conduct will not be used against him in any way.

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.

In addition, the General Counsel has requested that the notice to employees be read to employees during worktime. We deny this request because the General Counsel has not shown that the Board's traditional remedies are insufficient to remedy the violations committed by the Respondent. *Bruce Packing Co.*, 357 NLRB 1084, 1090 fn. 4 (2011); *First Legal Support Services, LLC*, 342 NLRB 350, 350 fn. 6 (2004).

(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 backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Westville, New Jersey, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 4, 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 November 13, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 4 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.

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.

³ 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."

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 interrogate you concerning the union sympathies and activities of our other employees.

WE WILL NOT more closely scrutinize and monitor the work you do because you support Teamsters Union Local No. 115 a/w International Brotherhood of Teamsters, or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against you for supporting Teamsters Union Local No. 115 a/w International Brotherhood of Teamsters, or any other labor organization.

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, within 14 days from the date of the Board's Order, offer Pedro A. Mendez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Pedro A. Mendez whole for any loss of earnings and other benefits he may have suffered as a result of our unlawful conduct, plus interest.

WE WILL compensate Pedro A. Mendez for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful scrutiny, monitoring, and discharge of Pedro A. Mendez, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that our unlawful conduct will not be used against him in any way.

CASWORTH ENTERPRISES, INC.

The Board's decision can be found at www.nlr.gov/case/04-CA-142471 or by using the QR code

below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

