

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

RJS DEAN ENTERPRISE, LLC

Case 8-CA-139052

and

YOUNGSTOWN GENERAL CONSTRUCTION
COMPANY, INC.

JOINT VENTURERS

and

RAYMOND COLLIER (PROPRIETOR) d/b/a
YOUNGSTOWN GENERAL CONSTRUCTION
COMPANY INC.

and

TERRANCE PHILLIPS (PROPRIETOR) d/b/a
YOUNGSTOWN GENERAL CONSTRUCTION
COMPANY INC.

and

RAYMOND COLLIER, (AN INDIVIDUAL)

and

LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL UNION NO. 125

Sharlee Cendrosky, Esq., for the General Counsel.

James L. Messenger, Esq. (Henderson, Covington, Messenger, Newman & Thomas, Youngstown, Ohio) for Respondent RJS Dean.

James Gentile, Esq., Youngstown, Ohio,

for Respondents Raymond Collier, Youngstown General Construction Company,
and Terrence Phillips.

Joseph J. Guarino, III, Esq. (Mangano Law Offices, Cleveland, Ohio),
for the Charging Party.

DECISION

STATEMENT OF THE CASE

5 Arthur J. Amchan, Administrative Law Judge. This case was tried in Cleveland, Ohio on
November 16 and 18, 2015. Laborers Local 125 filed the initial charge on October 20, 2014. It
filed amended charges against RJS Dean and Youngstown General Construction Company on
November 12, 2015 and February 25, 2015. A third amended charge was filed on August 14,
10 2015 against RJS Dean, Youngstown General Construction Company, Raymond Collier, d/b/a
Youngstown General Construction Company and Terrence Phillips, d/b/a Youngstown General
Construction Company. The General Counsel issued the complaint on August 28, 2015.

15 The merits of this case are fairly straight forward. The General Counsel alleges that
Respondents, by Raymond Collier, violated Section 8(a)(1) by threatening and interrogating
employee Rashad Robinson and created the impression that Robinson's protected activities were
under surveillance. The General Counsel also alleges the Respondents, by Collier, violated
Section 8(a)(3) and (1) by failing to schedule Robinson for work and then discharging him.

20 What is not straight forward is the status and relationships of the various Respondents
and the Board's jurisdiction over them. After considering the briefs filed by the General Counsel
and Respondents, I make the following findings of fact.

The Respondents

25 Steven C. Jones is the Chief Executive Officer of RJS Dean and Managing Member. The
only other member of RJS Dean in 2014 was Sterling Williams, Jones' accountant. However,
Raymond Collier holds himself out as a vice-president of RJS Dean. He distributes a business
card that identifies him as such, which RJS Dean orders for him, G.C. Exh. 13.

30 RJS Dean is a certified Minority Business Enterprise (MBE). As such it is eligible to
receive contracts for projects that require a certain percentage of the work to be performed by
MBEs. The City of Youngstown, Ohio awards such contracts.

35 RJS Dean does not perform construction work, other than possibly renovating homes,
some of which Steven Jones owns, Tr. 416-17. It subcontracts much of the work for which it
gets a subcontract to Raymond Collier. Collier does business under the name of Youngstown
General Construction Company. However, it is unclear what, if any, legal status, that company
has. The State of Ohio cancelled its articles of incorporation in 2011. In 2013, RJS Dean and
Youngstown General Construction signed a joint venture agreement for street resurfacing work
40 in Youngstown during 2014. The joint venture agreement covered work that a non-union
contractor, R. T. Vernal, had subcontracted to RJS Dean.

45 Collier works regularly with a number of people, including Terrance Phillips and Jerome
"Hank" Griffin, who are nominally the president and vice-president of Youngstown General
Construction Company. Phillips signed the joint venture agreement with RJS Dean as president
of Youngstown General. However, I find that Phillips and Griffin are manual laborers who do
not supervise or manage anything. They sign official documents for Youngstown General

Construction Company, but their managerial status is a sham.¹ Collier pays Phillips and Griffin an hourly wage rate in cash.

5 Raymond Collier pays all of his employees in cash. He keeps very little in the way of records, or in any event failed to produce these records in response to General Counsel's subpoena. What records Collier does keep are of very questionable accuracy.

10 The City of Youngstown also awarded a contract for resurfacing and paving city streets (infrastructure) to Shelly and Sands, a general contractor, that is signatory to a collective bargaining agreement with Laborers' Local 125. Shelley and Sands subcontracted part of the work to RJS Dean. Raymond Collier, Terrance Phillips, Jerome Griffin and others did the work for this subcontract. The work entailed flagging traffic on the streets while work was ongoing and adjusting the sewer manholes so that they were level with the asphalt pavement.

15 *Jurisdiction*

The General Counsel's contention that it has jurisdiction over the Respondents is predicated on RJS Dean's business with companies that do business outside of Ohio. Dean had just over \$250,000 in sales in 2014, but there is no evidence that it did business outside of Ohio.

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Dean billed Warren Glass, a company that does business in Ohio and Pennsylvania for \$102,846.58 on January 1, 2014, for materials.

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In calendar year 2014, Warren Glass paid Dean over \$224,000. Warren Glass billed all its customers in Ohio for over \$2,000,000 in 2014. Its retail store in Hermitage, Pennsylvania sold \$897,165 worth of goods and/or services in 2014.

RJS Dean had a contract with Shelly and Sands for approximately \$12,400 in 2014.

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Shelly and Sands paid RJS Dean \$11,150 in 2014, G.C. Exh. 11

R.T. Vernal paid RJS Dean \$9,000 in 2014. Vernal which is based in Lima, Ohio, performed over \$500,000 worth of services outside of Ohio. It purchased materials worth more than \$50,000 directly from points outside of Ohio.

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Jack Gibson Construction Company paid Dean \$3,750.

Dean paid just over \$33,000 to "1099 employees."

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Dean paid just over \$35,000 to subcontractors.

¹ For example, Phillips, the so-called President of Youngstown General Construction Company, has never talked to Jerry Sutton, Youngstown's accountant. Both Phillips and Griffin testified that they are manual laborers and do not have any other responsibilities for Youngstown General.

Similarly, the General Counsel's case for jurisdiction over Raymond Collier is predicated, at least in part, on the amount R. T. Vernal paid to Collier in 2014, in addition to what Vernal paid to RJS Dean: \$62,695, Tr. 127-28, G.C. Exh. 20.

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The Merits

Rashad Robinson worked for Raymond Collier/RJS Dean on a number of projects, including those on which R.T. Vernal and Shelly and Sands were the general contractor.² These were projects that RJS Dean either had a joint venture agreement with Youngstown General or had been subcontracted from Dean. Collier, who is Robinson's godfather, paid Robinson in cash in amounts between \$100 and \$150 per day.

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Dan Smolak, is an inspector for Thomas & Folk, the engineering firm hired by the City of Youngstown to design and monitor the infrastructure contract with Shelly and Sands. Smolak, who is also a retired member of the Union, observed Rashad Robinson working on the Shelly and Sands project on several occasions in August and/or September 2014. In August 2014 or September, after speaking with Smolak, Robinson contacted the Union about his wages. The Shelly and Sands project was a prevailing wage job. After Robinson called the Union, the Union sought to obtain the certified payroll records that RJS Dean was obligated to submit to the City of Youngstown. The Union filed a mandamus lawsuit against the City on September 23, 2014. Ultimately, the Union received certified payroll records signed by Jerome "Hank" Griffin.

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On or about September 20, 2014, Raymond Collier told Robinson that he had heard that Robinson was talking to the Union. He told Robinson to "leave it alone." A few days later, when he was not scheduled for work, Robinson called Collier. Collier told Robinson he was trying to find out what was going on between Robinson and the Union. Collier had been a union member in the past.

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In September and October 2014 Robinson performed flagging work for Collier on a project for which Collier had a subcontract with RJS Dean (or was subject to the joint venture agreement between Dean and Youngstown General). On about October 20, Collier called Robinson and told him that there would be no more work for him because Robinson had turned Collier in to the Union.

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Analysis

First of all, the proper Respondents in this case are RJS Dean and Raymond Collier. As a legal matter, there is no such thing as Youngstown General Construction Co. Youngstown General in 2014 was Raymond Collier operating as an agent of RJS Dean. Collier, with RJS

² I credit Robinson's testimony regarding his work for Collier and RJS Dean. To the extent his testimony is disputed by witnesses Collier, Griffin and Phillips, I discredit their testimony. In this regard, at Tr. 357-8, Phillips testified that he recalled Robinson "being out there" and that if he had a reflective vest on, Robinson was working. At Tr. 370-71, Phillips denied working with Robinson, but again recalled that Robinson was "out there." Phillips did not opine as to what else Robinson would have been doing on the jobsite. At Tr. 387, Collier testified that if Robinson worked, he worked for Youngstown General; not Collier. To contrary, I find that Robinson worked and that he worked for Collier as an agent of RJS Dean.

Dean's approval, held himself out as a vice-president of RJS Dean. Moreover, Collier only satisfied the City of Youngstown's requirement for a Minority Business Enterprise contractor as an agent of RJS Dean.

5 I find any conduct of Collier as RJS Dean's agent imputable to that company. I also find that Raymond Collier is individually liable for any remedy due to Rashid Robinson, *Total Property Services*, 317 NLRB 975, 979 (1995). Regardless of whether Youngstown General Construction, existed in fact, Raymond Collier ran this company as if it existed, paid employees (faux officers) and received payments from R.T. Vernal in excess of \$50,000.

10 The General Counsel's case for jurisdiction over RJS Dean is paper thin. There is no evidence that Dean and/or Collier do business outside the State of Ohio. The General Counsel asserts jurisdiction on the basis of Dean's business with Shelly and Sands, R.T. Vernal and Warren Glass, Ohio companies that do business outside Ohio.

15 Warren Glass and R.T. Vernal are clearly engaged in commerce with the meaning of the Act. Warren Glass paid RJS Dean approximately \$224,000 in 2014. It is not clear whether Dean did anything other than buy supplies for Warren Glass and whether Warren Glass used any of those materials outside of Ohio. Similarly, there is no evidence that any money paid by Vernal to RJS Dean had anything to do with Vernal's operations outside the State of Ohio. Nevertheless, under prevailing Board precedent, *Siemons Mailing Service*, 122 NLRB 81 (1958), the Board has jurisdiction over both RJS Dean and Raymond Collier, *Also see, NLRB v. Marsden*, 701 F.2d 238 (2d Cir. 1983). They meet the \$50,000 outflow-inflow standard for nonretail enterprises announced by the Board in 1958.

25 THE REMEDY

30 The Respondents, having discriminatorily discharged Rashad Robinson, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *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 No. 8 (2010). Backpay shall also include any loss of earnings and benefits suffered as a result of Respondent's failure to schedule Rashad Robinson for work prior to his termination.

35 Respondent shall reimburse the discriminatee in amounts equal to the difference in taxes owed upon receipt of a lump-sum backpay award and taxes that would have been owed had there been no discrimination. Respondent shall also take whatever steps are necessary to insure that the Social Security Administration credits the discriminatee's backpay to the proper quarters on their Social Security earnings records.

40 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Order

The Respondents, RJS Dean Enterprise, LLC., its officers, agents, successors, and assigns, and Raymond Collier, shall

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1. Cease and desist from

(a) Interfering, coercing or restraining an employee by such means as interrogating or threatening the employee about his or her union or other protected activities; and giving an employee the impression that his or her protected activities are under surveillance.

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(b) Discharging or otherwise discriminating against any employee for engaging in union or other protected activity.

(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.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Rashad Robinson 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.

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(b) Make Rashad Robinson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

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(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge and within 3 days thereafter notify Rashad Robinson in writing that this has been done and that the discharge will not be used against him in any way.

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(d) 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.

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(e) Within 14 days after service by the Region, post at its Youngstown, Ohio. facilities copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in

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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."

conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the 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 September 20, 2014.

(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 12, 2016



Arthur J. Amchan
Administrative Law Judge

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 restrain, interfere with or coerce you in the exercise of your protected rights by such means as interrogation, threats or creating the impression that your protected activities are under surveillance

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in union or other protected activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Rashad Robinson 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 Rashad Robinson whole for any loss of earnings and other benefits resulting from his discharge and our failure to schedule him for work prior to his termination, less any net interim earnings, plus interest compounded daily.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge Rashad Robinson.

WE WILL, within 3 days thereafter, notify Rashad Robinson in writing that this has been done and that the discharge will not be used against him in any way.

RJS DEAN ENTERPRISE, LLC

(Employer)

Dated _____ By _____

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

1240 East 9th Street, Room 1695, Cleveland, OH 44199-2086

(216) 522-3715, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/08-CA-139052 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.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (216) 522-7960.

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RAYMOND COLLIER (PROPRIETOR) D/B/A
YOUNGSTOWN GENERAL CONSTRUCTION
COMPANY, INC.

(Employer)

Dated _____ By _____

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