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W.B. Mason Co., Inc. and International Brotherhood of Teamsters, Local 25. Case 01–CA–180518

April 20, 2017

DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS
PEARCE 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 filed by International Brotherhood of Teamsters, Local 25 (the Union), on July 20, 2016, the General Counsel issued a complaint and notice of hearing on October 31, 2016, against W. B. Mason Co., Inc. (the Respondent), alleging that it has violated Section 8(a)(1), (3), and (4) of the Act. The Respondent failed to file an answer.

On February 3, 2017, the General Counsel filed with the National Labor Relations Board a Motion to Transfer Proceeding to the Board and for Default Judgment. Thereafter, on February 6, 2017, 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.

On the entire record, the National Labor Relations Board makes the following

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 14, 2016, 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 13, 2017, advised the Respondent that unless an answer was received by January 20, 2017, 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 deem the allegations of the consolidated 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, the Respondent has been a Massachusetts corporation with its principal place of business located in Brockton, Massachusetts (the Brockton facility), and place of business in South Boston, Massachusetts (the South Boston facility), where it is engaged in the sale and delivery of office supplies and related products and services.

Annually, in conducting its operations described above, the Respondent sells and ships from the Brockton facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts.

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 opposite their names 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:

Tim Hallinan	Human Resources Manager
Carlos DeAndrade	South Boston Branch Manager

The following events occurred, giving rise to this proceeding.

1. Since about June 13, 2016, the Respondent, by Carlos DeAndrade and Tim Hallinan, has failed to implement a promised wage increase to its employee Kenny DeAndrade.

2. The Respondent engaged in the conduct described above because Kenny DeAndrade and other employees of the Respondent formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

3. The Respondent engaged in the conduct described above for the further reason that Kenny DeAndrade cooperated in the Board investigations, and testified at a Board hearing, in Cases 01–CA–161120, et al.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 1 and 2, 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.

2. By the conduct described above in paragraphs 1 and 3, the Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(4) and (1) of the Act.

3. The Respondent's unfair labor practices described above 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)(1), (3), and (4) by failing to implement a promised wage increase to employee Kenny DeAndrade, we shall order it to make him whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful action against him.¹

Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Additionally, we shall order the Respondent to compensate Kenny DeAndrade for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Regional Director for Region 1 allocating backpay to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

ORDER

The National Labor Relations Board orders that the Respondent, W.B. Mason Co., Inc., South Boston, Mas-

¹ The General Counsel has requested a notice-reading remedy. We agree that this special remedy is appropriate to dispel the effects of the Respondent's unlawful conduct in this case and in related Cases 01-CA-161120, et al., where the Respondent was found to have engaged in multiple 8(a)(1), (3), and (5) violations, including, inter alia, interrogating employee Kenny DeAndrade (the discriminatee in this case), granting benefits to employees and discharging employees in order to discourage them from supporting the Union, and failing to recognize and bargain with the Union and unilaterally granting a wage increase. See *HTH Corp.*, 356 NLRB 1397, 1404 (2011), *enfd.* 693 F.3d 1051 (9th Cir. 2012) (notice reading required because of serious and widespread violations). This notice-reading remedy "serves as a minimal acknowledgement of the obligations that have been imposed by law and provides employees with some assurance that their rights under the Act will be respected in the future." *Whitesell Corp.*, 357 NLRB 1119, 1123-1124 (2011); accord *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), *enfd. mem.* 273 Fed.Appx. 32 (2d Cir. 2008). Therefore, we will require that the Respondent's branch manager, or, at the Respondent's option, a Board agent in the branch manager's presence, read the remedial notice to the Respondent's employees.

sachusetts, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing to implement a promised wage increase to an employee because he and other employees formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(b) Failing to implement a promised wage increase to an employee because the employee participated in proceedings before the National Labor Relations Board.

(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.

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

(a) Make employee Kenny DeAndrade 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 this decision.

(b) Compensate Kenny DeAndrade for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 1, within 21 days of the date of the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(c) 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.

(d) Within 14 days after service by the Region, post at its South Boston facility copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, 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

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."

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 facilities 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 13, 2016.

(e) Within 14 days after service by the Region, hold a meeting or meetings at its South Boston facility, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to the employees by Branch Manager Carlos DeAndrade, or, at the Respondent's option, by a Board agent in the presence of Carlos DeAndrade.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 1 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 20, 2017

Philip A. Miscimarra, Acting Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to implement a promised wage increase to an employee because he and other employees formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT fail to implement a promised wage increase to an employee because he participated in proceedings before the National Labor Relations Board.

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 make employee Kenny DeAndrade whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, plus interest.

WE WILL compensate Kenny DeAndrade for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 1, within 21 days of the date of the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay to the appropriate calendar years.

W.B. MASON CO., INC.

The Board's decision can be found at www.nlrb.gov/case/01-CA-180518 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



(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