

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Premier Environmental Solutions, LLC and Teamsters Local Union No. 838, affiliated with International Brotherhood of Teamsters. Case 14-CA-198879

January 25, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS MCFERRAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint, compliance specification, and notice of hearing. Upon a charge and amended charge filed by Teamsters Local Union No. 838, affiliated with International Brotherhood of Teamsters (the Union), on May 16 and August 7, 2017, respectively, the General Counsel issued a complaint, compliance specification, and notice of hearing on August 25, 2017, and an amendment to the complaint, compliance specification, and notice of hearing on August 28, 2017, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer to the complaint, compliance specification, and notice of hearing or the amendment.

On September 28, 2017, the General Counsel filed with the National Labor Relations Board a Motion to Transfer Proceeding to Board and for Default Judgment. On October 2, 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.

The 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 of service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the complaint, compliance specification, and notice of hearing and the amendment both affirmatively stated that unless an answer was received by September 15 and 18, 2017, respectively, the Board may find, pursuant to a motion for default judgment, that

the allegations in the documents are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 19, 2017, advised the Respondent that unless an answer was received by September 26, 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 to the complaint, compliance specification, and notice of hearing or the amendment, we deem the allegations 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 limited liability company with its principal office in Sterling Heights, Michigan, and has operated at customer facilities throughout the United States, including the Recycle Center at the Ford Kansas City Assembly Plant located in Kansas City, Missouri, where it was engaged in providing environmental recycling services.

In conducting its operations during the 12-month period ending March 24, 2017, the Respondent performed services valued in excess of \$50,000 in states other than the State of Missouri.

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, Duane Jones held the position of the Respondent's president and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and 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 warehouse equipment operators employed by the Respondent in the Recycle Center at the Ford Kansas City Assembly Plant located in Kansas City, Missouri.

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 a collective-bargaining agreement, which is effective by its terms from January 7, 2015, to January 6,

2017. About January 9, 2017, the Respondent and the Union, in writing, extended this agreement until terminated, by either party, with at least 7 days written notice of an intention to terminate. Neither party exercised their right to terminate the agreement.

At all times since January 7, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Respondent engaged in the following conduct giving rise to these proceedings:

1. On or about March 3, 2017, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above by deducting dues from unit employees' pay in excess of what employees owed.

2. From January 1 through March 20, 2017, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above by failing to remit to the Union dues and/or initiation fees deducted from unit employees' pay.

3. On or about March 24, 2017, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above by failing to pay unit employees' wages under the terms of the agreement.

4. The terms and conditions of employment described above in paragraphs 1 through 3 are mandatory subjects for the purposes of collective bargaining.

5. The Respondent engaged in the conduct described above in paragraphs 1 through 3 without the Union's consent.

CONCLUSION OF LAW

By the conduct described above in paragraphs 1 through 5, the Respondent has failed and refused 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 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)(5) and (1) by, contrary to the terms of the collective-bargaining agreement still in effect, (1) deducting dues from unit employees' pay in excess of what employees owed and (2) failing to pay unit employees' wages under the terms

of the agreement, we shall order the Respondent to make unit employees whole in the amount set forth in Attachment A to this Decision and Order, plus interest accrued until the date of payment at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws. In addition, we shall order the Respondent to compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Regional Director for Region 14 allocating backpay to the appropriate calendar year. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). Having found that the Respondent violated Section 8(a)(5) and (1) by, contrary to the terms of the collective-bargaining agreement still in effect, failing to remit to the Union dues and/or initiation fees deducted from unit employees' pay, we shall order the Respondent to remit to the Union the amount set forth in Attachment A to this Decision and Order, plus interest accrued until the date of payment at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

ORDER

The National Labor Relations Board orders that Premier Environmental Solutions, LLC, Sterling Heights, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain collectively and in good faith with Teamsters Local Union No. 838, affiliated with International Brotherhood of Teamsters (the Union), as the exclusive collective-bargaining representative of the unit employees by, without the Union's consent, failing to continue in effect the terms and conditions of the collective-bargaining agreement effective since January 7, 2015, by (1) failing to pay unit employees according to the terms of the agreement; (2) deducting union dues from unit employees' paychecks in excess of the amounts provided for in the agreement, and (3) failing to remit, as provided for in the agreement, unit employees' union dues and/or initiation fees that were properly deducted from their paycheck. The unit is:

All full-time and regular part-time warehouse equipment operators employed by the Respondent in the Recycle Center at the Ford Kansas City Assembly Plant located in Kansas City, Missouri.

(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) Make unit employees whole for unpaid wages and excess deductions for union dues in the amounts set forth in Attachment A to this decision, plus interest accrued to the date of payment, and minus tax withholding required by Federal and State laws, as set forth in the remedy section of this decision.

(b) Compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(c) Remit to the Union unit employees' union dues and/or initiation fees that were properly deducted from their paychecks in the amount of \$1158, as set forth in Attachment A to this decision, with interest in the manner set forth in the remedy section of this decision.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"¹ to all employees who were employed by the Respondent at its Kansas City, Missouri facility at any time since January 1, 2017. In addition to physical mailing 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.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 14 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 25, 2018

Marvin E. Kaplan, Chairman

Lauren McFerran, Member

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

William J. Emanuel, 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 to bargain collectively and in good faith with Teamsters Local Union No. 838, affiliated with International Brotherhood of Teamsters (the Union), as the exclusive collective-bargaining representative of the unit employees by, without the Union's consent, failing to continue in effect the terms and conditions of the collective-bargaining agreement effective since January 7, 2015, by (1) failing to pay unit employees according to the terms of the agreement; (2) deducting union dues from unit employees' paychecks in excess of the amounts provided for in the agreement, and (3) failing to remit, as provided for in the agreement, unit employees' union dues and/or initiation fees that were properly deducted from their paycheck. The unit is:

All full-time and regular part-time warehouse equipment operators employed by the Respondent in the Recycle Center at the Ford Kansas City Assembly Plant located in Kansas City, Missouri.

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 unit employees whole for unpaid wages and excess deductions for union dues in the amounts set forth in Attachment A to the Board's decision, plus interest accrued to the date of payment, and minus tax withholding required by Federal and State laws.

WE WILL compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

WE WILL remit to the Union unit employees' union dues and/or initiation fees that were properly deducted from their paychecks in the amount of \$1158, as set forth in Attachment A to this decision, with interest in the manner set forth in the remedy section of this decision.

PREMIER ENVIRONMENTAL SOLUTIONS, LLC

The Board's decision can be found at <http://www.nlr.gov/case/14-CA-198879> 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.



ATTACHMENT A

Unit Employee/ Charging Party	Union Dues (Refund to Employees)	Union Dues (Remit to Union)	Unpaid Wages
Teamsters Local Union No. 838		\$1158	
Armstrong, John	\$107		\$500
Cady, Brent	107		
James, Joseph	80		575
Luna, Brian	80		
Mcquillen, Holden	107		401.75
Norman, Andrew	80		913.28
Short, Kevin	107		460
Stigall, Miles	107		650
Stone, Cody	107		
Vanwinkle, Victor	80		502.04
Wilson, Darren	80		
	\$1042	\$1158	\$4002.07