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Neises Construction Corp. and Indiana/Kentucky/Ohio Regional Council of Carpenters. Case 13–CA–210180

March 29, 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. Upon a charge filed by the Indiana/Kentucky/Ohio Regional Council of Carpenters (the Union) on November 20, 2017,¹ the General Counsel issued a complaint on December 19 against Neises Construction Corp. (the Respondent), alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On February 8, 2018, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on February 13, 2018, 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 from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before January 2, 2018, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. 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 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

¹ All subsequent dates are in 2017 unless otherwise noted.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, Neises Construction Corp., an Indiana corporation with an office and place of business in Crown Point, Indiana, has been engaged in the construction industry as a concrete contractor for residential construction.

In conducting its business operations during the past calendar year, a representative period, the Respondent purchased and received at its Crown Point, Indiana facility goods, materials, and supplies valued in excess of \$50,000 from other enterprises located within the State of Indiana, each of which other enterprises had received those goods, materials, and supplies directly from points located outside the State of Indiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find 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, Brian Neises has been the co-owner of the Respondent 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 part-time wall and footer carpenters employed by the Employer working out of its facility located at 1640 East North Street, Crown Point, Indiana; but excluding all other employees, all employees who are currently represented by other labor organizations, managerial employees, professional employees, confidential employees, clerical employees, supervisors, and guards as defined by the Act.

On October 16, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since October 16, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About October 30, November 8, and December 11, the Union requested in writing that the Respondent recognize it as the exclusive collective-bargaining representative of the unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about October 30, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

By the above conduct, the Respondent has unlawfully failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By failing and refusing since about October 30, 2017, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining representative for the period provided by law, we shall construe the initial period of the certification as beginning the date when the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Neises Construction Corp., Crown Point, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the Indiana/Kentucky/Ohio Regional Council of Carpenters as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(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) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and part-time wall and footer carpenters employed by the Employer working out of its facility located at 1640 East North Street, Crown Point, Indiana; but excluding all other employees, all employees who are currently represented by other labor organizations, managerial employees, professional employees, confidential employees, clerical employees, supervisors, and guards as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in Crown Point, Indiana, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, 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 October 30, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 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. March 29, 2018

Marvin E. Kaplan, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

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."

(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 recognize and bargain with the Indiana/Kentucky/Ohio Regional Council of Carpenters (Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

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, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning

terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and part-time wall and footer carpenters employed by the Employer working out of its facility located at 1640 East North Street, Crown Point, Indiana; but excluding all other employees, all employees who are currently represented by other labor organizations, managerial employees, professional employees, confidential employees, clerical employees, supervisors, and guards as defined by the Act.

NEISES CONSTRUCTION CORP.

The Board's decision can be found at www.nlr.gov/case/13-CA-210180 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.

