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C.W. Wright Construction Company, LLC and International Brotherhood of Electrical Workers, Local Union 70. Case 05–CA–180732

April 5, 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seeks a default judgment in this case on the ground that C.W. Wright Construction Company, LLC (the Respondent) has withdrawn its answer to the complaint. Upon a charge and an amended charge filed by International Brotherhood of Electrical Workers, Local Union 70 (the Union), on July 21 and November 3, 2016, respectively, the General Counsel issued a complaint on November 30, 2016, against the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Thereafter, on December 14, 2016, the Respondent filed an answer to the complaint. On March 9, 2017, the Acting Regional Director issued an Order withdrawing paragraphs 8(b) and 12 of the complaint, and approving the Union’s request to withdraw the corresponding allegations in paragraph 4 of the first amended charge. Also on March 9, 2017, the Respondent withdrew its answer and its affirmative defenses to the complaint.

On March 10, 2017, the General Counsel filed with the National Labor Relations Board a Motion to Transfer Case to the Board and for Default Judgment. On March 15, 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 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 December 14, 2016, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent filed an answer on December 14, 2016, it subsequently withdrew its answer on March 9, 2017. The withdrawal of an answer has the

same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹ Accordingly, based on the withdrawal of the Respondent’s answer, we deem the allegations in the complaint to be admitted as true, and 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 an office and place of business in Forestville, Maryland (the Forestville facility), and has been an electrical contractor providing services to the utility industry.

In conducting its operations during the 12-month period ending October 31, 2016, the Respondent performed services valued in excess of \$50,000 in states other than the State of Maryland.

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 held the positions set forth opposite their respective 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:

R.J. Akers - General Foreman/General Manager
Mike Diaz - Vice President of Operations/Division Manager
Hank May - General Foreman
Lee Robbins - President
Larry Young - Division Manager

The following events occurred, giving rise to this proceeding.

1. The Respondent, by Akers, engaged in the following conduct:

(a) About May 17, 2016, in an office at the Forestville facility, threatened its employees with unspecified reprisals should they engage in union activities and/or protected concerted activities;

(b) About May 25, 2016, in the parking lot at the Forestville facility, by telling employees that he would see them later that night, created an impression among its

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

employees that their union activities were under surveillance by the Respondent; and

(c) About May 25, 2016, near the Union's hall in Forestville, Maryland, engaged in surveillance of employees' union activities.

2. About May 2016, the Respondent, by Young, at the Forestville facility, by telling employees that the Respondent would never go union, informed its employees that it would be futile for them to select the Union as their bargaining representative.

3. About June 7, 2016, the Respondent, by Robbins at a meeting at the Colony South hotel in Clinton, Maryland, promised its employees if they refrained from union organizational activity:

(a) Increased wages; and

(b) Expanded eligibility criteria for per diem benefits.

4. About July 2016, the Respondent, by Diaz at the Forestville facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union organizational activity.

5. About June 2016, the Respondent granted a wage increase to employees employed at the Respondent's Northern Division facilities.

6. About June 2016, the Respondent expanded its eligibility criteria for per diem payments for employees employed at the Respondent's Northern Division facilities.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 1 through 4, the Respondent has been interfering with, restraining, and coercing employees 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 the conduct described above in paragraphs 5 and 6, 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)(1) and (3) 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.

ORDER

The National Labor Relations Board orders that the Respondent, C.W. Wright Construction Company, LLC,

Forestville, Maryland, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Threatening employees with unspecified reprisals should they engage in union activities and/or protected concerted activities.

(b) Creating the impression among employees that their union activities are under surveillance.

(c) Engaging in surveillance of employees' union activities.

(d) Telling employees that it would be futile for them to select the Union as their bargaining representative by stating that the Respondent would never go union.

(e) Promising employees increased wages and expanded eligibility criteria for per diem benefits if they refrain from union organizational activity.

(f) Soliciting employee complaints and grievances, thus promising employees increased benefits and improved terms and conditions of employment if they refrain from union organizational activity.

(g) Granting employees a wage increase in order to discourage them from union membership.

(h) Expanding its eligibility criteria for per diem payments for employees, in order to discourage them from union membership.

(i) 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 after service by the Region, post at its Forestville facility copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5, 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 facilities involved in these pro-

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."

ceedings, 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 May 1, 2016.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 5 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 5, 2018

Marvin E. Kaplan, Chairman

Lauren McFerran, Member

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 threaten you with unspecified reprisals should you engage in union activities and/or protected concerted activities.

WE WILL NOT create the impression that your union activities are under surveillance.

WE WILL NOT engage in surveillance of your union activities.

WE WILL NOT inform you that it would be futile for you to select a union as your bargaining representative by stating that we would never go union.

WE WILL NOT promise you increased wages and expanded eligibility criteria for per diem benefits if you refrain from union organizational activity.

WE WILL NOT solicit complaints and grievances from you, thus promising you increased benefits and improved terms and conditions of employment if you refrain from union organizational activity.

WE WILL NOT grant a wage increase to you in order to discourage you from union membership.

WE WILL NOT expand our eligibility criteria for per diem payments for you in order to discourage you from union membership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

C.W. WRIGHT CONSTRUCTION COMPANY, LLC

The Board's decision can be found at <https://www.nlr.gov/case/05-CA-180732> 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.

