

*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.*

**Copper State Bolt & Nut Company, Inc. and Charus Ryce.** Case 28–CA–232050

September 9, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND KAPLAN

The General Counsel seeks a default judgment in this case on the ground that Copper State Bolt & Nut Company, Inc. (the Respondent) has failed to file an answer to the complaint. Upon a charge and amended charge filed by Charus Ryce on November 30 and December 11, 2018,<sup>1</sup> respectively, the General Counsel issued a complaint and notice of hearing on June 5, 2019, against the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent failed to file an answer.

On July 2, 2019, the General Counsel filed a Motion for Default Judgment with the Board. On July 3, 2019, 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 after the service of the complaint, unless good cause is shown. Moreover, the complaint affirmatively stated that unless an answer was received by June 19, 2019, 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 June 20, 2019, notified the Respondent that unless an answer was received by June 27, 2019, 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 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

<sup>1</sup> All dates are in 2018 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Phoenix, Arizona, and has been engaged in the manufacture and nonretail sale of fasteners and related products.

In conducting its operations during the 12-month period ending November 30, 2018, the Respondent purchased and received at the Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Arizona.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) 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:

Paul Tiffany Vice President of Manufacturing  
Robert Berry Manager of Heat Treat Operations  
Sam Tiffany Human Resources Manager  
Kevin Smith Warehouse Supervisor  
Bryan Cates Executive Vice President of Operations

1 From about September 25 to about October 25, 2018, the Respondent's employee Charus Ryce engaged in concerted activities with other employees for the purpose of mutual aid and protection by complaining to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, discussing pay with other employees, and raising concerns about pay with the Respondent.

2(a) About September 25, the Respondent, by Robert Berry, (i) promulgated and since then has maintained a rule or directive requiring employees to bring job-related concerns exclusively to Berry, and (ii) threatened employees with unspecified reprisals if they violated the above-mentioned rule or directive.

(b) About October 4, the Respondent, by Berry, (i) interrogated and threatened to interrogate employees about their protected concerted activities and the protected concerted activities of other employees; (ii) promulgated and since then has maintained a rule or directive prohibiting employees from discussing pay; and (iii) threatened employees with discharge for engaging in protected concerted activities.

(c) About October 4, the Respondent suspended its employee Ryce.

(d) About October 23, the Respondent discharged Ryce.

(e) About October 25, the Respondent was hiring or had concrete plans to hire at least one employee and refused to consider for hire or hire Ryce.

3(a) The Respondent engaged in the conduct described above in paragraphs 2(c) through (e) because Ryce engaged in the conduct described above in paragraph 1, and to discourage employees from engaging in these or other concerted activities.

(b) In the alternative to the allegation set forth above in paragraph 3(a), the Respondent engaged in the conduct described above in paragraphs 2(c) through (e) because the Respondent believed Ryce engaged in the conduct described above in paragraph 1, and to discourage employees from engaging in these or other concerted activities.

(c) The Respondent engaged in the conduct described above in paragraphs 2(c) through (e) because Ryce violated the rules or directives described above in paragraphs 2(a)(i) and 2(b)(ii).

(d) In the alternative to the allegation set forth above in paragraph 3(c), the Respondent engaged in the conduct described above in paragraphs 2(c) through (e) because the Respondent believed Ryce violated the rules or directives described above in paragraphs 2(a)(i) and 2(b)(ii).

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, or 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. The unfair labor practices of the Respondent 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 has violated Section 8(a)(1) by promulgating, maintaining, and enforcing rules or directives prohibiting employees from discussing pay and requiring employees to bring job-related concerns exclusively to an agent of the Respondent, we shall order the Respondent to rescind the unlawful rules or directives and to advise its employees in writing that it has done so.

In addition, having found that the Respondent further violated Section 8(a)(1) by suspending, discharging, and refusing to consider for hire or to hire Charus Ryce because Ryce engaged in protected concerted activities or

because the Respondent believed that Ryce engaged in protected concerted activities, we shall order the Respondent to reinstate Ryce and make him whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination. 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 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Ryce for search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, we shall order the Respondent to compensate Ryce for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 28 allocating the backpay award to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

The Respondent shall also be required to remove from its files any reference to the unlawful suspension, discharge, refusal to consider for hire, and refusal to hire Ryce and to notify him in writing that this has been done and that the unlawful suspension, discharge, refusal to consider for hire or to hire will not be used against him in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, Copper State Bolt & Nut Company, Inc., Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating, maintaining, or enforcing a rule or directive requiring employees to bring job-related concerns exclusively to Robert Berry or any other agent of Copper State Bolt & Nut Company, Inc.

(b) Threatening employees with unspecified reprisals if they fail to bring job-related concerns exclusively to Robert Berry or any other agent of Copper State Bolt & Nut Company, Inc.

(c) Coercively interrogating or threatening to interrogate employees about their protected concerted activities and the protected concerted activities of other employees.

(d) Promulgating, maintaining, or enforcing a rule or directive prohibiting employees from discussing pay.

(e) Threatening employees with discharge for engaging in protected concerted activities.

(f) Suspending, discharging, or otherwise discriminating against employees because they discuss pay or other terms and conditions of employment, engage in protected concerted activities, or fail to bring job-related concerns exclusively to Robert Berry or any other agent of Copper State Bolt & Nut Company, Inc.

(g) Refusing to consider for hire or to hire employee-applicants because they discuss pay or other terms and conditions of employment, engage in protected concerted activities, or fail to bring job-related concerns exclusively to Robert Berry or any other agent of Copper State Bolt & Nut Company, Inc.

(h) 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) Rescind the unlawful rules or directives requiring employees to bring job-related concerns exclusively to Robert Berry and prohibiting employees from discussing pay.

(b) Within 14 days from the date of this Order, offer Charus Ryce 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.

(c) Make Charus Ryce 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 and Order.

(d) Compensate Charus Ryce for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 28, 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.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension, discharge, refusal to consider for hire, and refusal to hire Charus Ryce, and within 3 days thereafter notify him in writing that this has been done and that the unlawful suspension, discharge, refusal to consider for hire, and refusal to hire will not be used against him in any way.

(f) 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 elec-

tronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Phoenix, Arizona, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, 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 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 September 25, 2018.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 28 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. September 9, 2019

\_\_\_\_\_  
John F. Ring, Chairman

\_\_\_\_\_  
Lauren McFerran, Member

\_\_\_\_\_  
Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> 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."

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 promulgate, maintain, or enforce a rule or directive requiring you to bring job-related concerns exclusively to Robert Berry or any other agent of Copper State Bolt & Nut Company, Inc.

WE WILL NOT threaten you with unspecified reprisals if you fail to bring job-related concerns exclusively to Robert Berry or any other agent of Copper State Bolt & Nut Company, Inc.

WE WILL NOT promulgate, maintain, or enforce a rule or directive prohibiting you from discussing pay or any other term and condition of employment.

WE WILL NOT coercively interrogate or threaten to interrogate you about your protected concerted activities or the protected concerted activities of other employees.

WE WILL NOT suspend, discharge, or otherwise discriminate against you because you discuss pay or other terms and conditions of employment, engage in protected concerted activities, or fail to bring job-related concerns exclusively to Robert Berry or any other agent of Copper State Bolt & Nut Company, Inc.

WE WILL NOT refuse to consider for hire or refuse to hire employee-applicants because they discuss pay or other terms and conditions of employment, engage in protected concerted activities, or fail to bring job-related concerns exclusively to Robert Berry or any other agent of Copper State Bolt & Nut Company, Inc.

WE WILL 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 rescind our unlawful rules or directives requiring employees to bring job-related concerns exclusively to Robert Berry and prohibiting employees from discussing pay.

WE WILL, within 14 days from the date of the Board's Order, offer Charus Ryce 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 Charus Ryce whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings, plus interest, and WE WILL also make him whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Charus Ryce for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 28, 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 years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension, discharge, refusal to consider for hire, and refusal to hire Charus Ryce, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the suspension, discharge, refusal to consider for hire, and refusal to hire will not be used against him in any way.

COPPER STATE BOLT & NUT COMPANY, INC.

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-232050> 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.

