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**Tri-City Fire Protection Services, LLC and Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO.** Cases 01-CA-222718

November 15, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN  
AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge and amended charges filed by Road Sprinkler Fitters Local Union 669, U.A., AFL-CIO (the Union) on June 25, September 5, and September 20, 2018, respectively, alleging that the Respondent violated Section 8(a)(1), (3), and (5) of the Act,<sup>1</sup> the Respondent and the Union entered into an informal settlement agreement, which the Regional Director for Region 1 approved on December 4, 2018. Among other things, the settlement agreement required the Respondent to: (1) post the Notice to Employees for 60 consecutive days in places where notices to employees are customarily posted; (2) mail the Notice to all current employees and former employees who were employed at any time since June 15, 2018, and provide written confirmation of the date of mailing and a list of all of the recipients' addresses to the Acting Regional Director; and (3) make whole two named employees as identified in the backpay paragraph of the settlement agreement by paying to them, within 14 days from the settlement agreement's approval, the amounts set forth therein, including interest as specified.

The settlement agreement also contained the following provision:

The Charged Party agrees that in case of non-compliance with the terms of this Settlement Agreement that requires it to post the Notice, pay the amounts listed above to Michael Donovan and Christopher Dean, and, upon their unconditional offer to return to work to reinstate them to their former positions, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as

<sup>1</sup> The 8(a)(5) allegation in the second amended charge was subsequently withdrawn and is no longer part of the case.

well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement described above. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order *ex parte*, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

On December 28, 2018, the compliance officer for Region 1, by email, sent to the Respondent's then-counsel and the Respondent's owner a letter soliciting compliance and notified them that the Respondent was in danger of defaulting on the settlement agreement, as the Respondent had neither notified the Region that it had posted and mailed the required notices nor submitted to the Region the agreed-upon payments to distribute to the employees named in the agreement. The compliance officer asked whether the Respondent intended to comply with the agreement and when the Region could expect the required payments and documentation, and she advised that failure to comply with the agreement could result in the Regional Director issuing complaint and invoking the default language in the agreement. The compliance officer having received no response from the Respondent,<sup>2</sup> the Region's compliance supervisor, by email dated February 4, 2019,<sup>3</sup> again sent the Respondent's owner a copy of the letter soliciting the Respond-

<sup>2</sup> The Respondent's former counsel apparently responded and advised the Region that he was no longer representing the Respondent.

<sup>3</sup> All subsequent dates are in 2019, unless otherwise indicated.

ent's compliance, detailed the Respondent's failure to comply with the agreement's terms and the Region's repeated efforts to reach the Respondent, and advised that, if the Respondent did not contact the compliance supervisor by February 6, she would recommend that the Regional Director invoke the agreement's default provisions. The Respondent failed to respond or comply.

Accordingly, pursuant to the terms of the non-compliance provisions of the settlement agreement, on April 3, the Acting Regional Director issued a Complaint. On June 17, the General Counsel filed a Motion for Default Judgment with the Board. On June 18, the Board issued an order transferring the proceeding to the Board, and on July 25 it issued a Notice to Show Cause why the motion should not be granted.<sup>4</sup> 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

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.<sup>5</sup> Accordingly, 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 an office and place of business in Tolland, Connecticut (its facility), and has been engaged in providing service, inspection, and installation of fire protection systems.

Annually, in conducting its business operations, the Respondent purchases and receives at its facility goods valued in excess of \$50,000 directly from points outside the State of Connecticut.

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

<sup>4</sup> On June 12, the General Counsel had filed a Motion for Summary Judgment, which was rejected on June 18 as an improper filing. That motion was superseded by the otherwise identical Motion for Default Judgment filed on June 17. On June 18, the Board issued an order transferring the proceeding to the Board but the included Notice to Show Cause inadvertently referenced the rejected Motion for Summary Judgment. On July 25, therefore, the Board reissued the Notice to Show Cause in regard to the Motion for Default Judgment.

<sup>5</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

(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

1. At all material times, David Fusco was the Respondent's owner 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.

2. At all material times, Alex Salony held the position of the Respondent's office manager and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

3. About mid-June 2018, the Respondent, by Salony, at its facility, threatened employees that the Respondent would close or operate under a different name if the employees selected the Union as their bargaining representative.

4. About July 9, 2018, the Respondent, by Fusco, at a jobsite in Waterbury, Connecticut:

(a) interrogated employees about how they were going to vote in an upcoming representation election;

(b) promised employees benefits if they did not vote for the Union;

(c) threatened employees that it would be futile to select the Union as their bargaining representative; and

(d) threatened employees with closure of the facility if they selected the Union as their bargaining representative.

5. From about June 15, 2018, to August 3, 2018, the Respondent reduced the work hours of its employees Michael Donovan and Christopher Dean.

6. Respondent engaged in the conduct described above in paragraph 5 because Donovan and Dean supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

##### CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 3 and 4, the Respondent has been interfering with, restraining, and coercing its 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 and 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.

3. 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 take certain affirmative action designed to effectuate the policies of the Act, as requested by the General Counsel.

Specifically, having found that the Respondent violated Section 8(a)(1) of the Act by threatening the employees with company or facility closure or operation under a different name if the employees selected the Union as their bargaining representative; interrogating employees about how they were going to vote in an upcoming representation election; promising employees benefits if they did not vote for the Union; and threatening employees that it would be futile to select the Union as their bargaining representative, we will order the Respondent to cease and desist from such conduct and to post a remedial notice.

Having found that the Respondent violated Section 8(a)(3) and (1) of the Act by reducing the work hours of Michael Donovan and Christopher Dean, we will order the Respondent to make Donovan and Dean whole for any loss of earnings and other benefits suffered as a result of the unlawful action against them, to the extent that the Respondent has not already done so.<sup>6</sup> Backpay shall be computed in accordance with *Ogle Protection Service, Inc.*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), 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). We shall further order the Respondent to compensate Donovan and Dean for any adverse tax consequences of receiving lump-sum backpay awards, to the extent that the Respondent has not already done so, and to file with the Regional Director for Region 1 a report allocating the backpay award to the appropriate calendar years for each employee. *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 reduction of work hours for Donovan and Dean and to notify them in writing that this has been done and that the unlawful reduction in hours will not be used against them in any way.

## ORDER

The National Labor Relations Board orders that the Respondent, Tri-City Fire Protection Services, LLC, Tol-

<sup>6</sup> Because it is unclear whether the total amounts set forth in the settlement agreement constitute a full make-whole remedy, we leave to compliance a determination of the proper amount due to Donovan and Dean.

land, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to close the company or facility or operate under a different name if the employees select the Union as their bargaining representative.

(b) Interrogating employees about how they are going to vote in an upcoming representation election.

(c) Promising employees benefits if they do not vote for the Union.

(d) Threatening employees that it would be futile to select the Union as their bargaining representative.

(e) Reducing the work hours of employees because they support the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

(f) 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 Michael Donovan and Christopher Dean whole, to the extent it has not already done so, for any loss of earnings and other benefits suffered as a result of the unlawful reduction in their work hours, in the manner set forth in the remedy section of this decision.

(b) Compensate Michael Donovan and Christopher Dean, to the extent it has not already done so, for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 1, 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 for each employee.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful reduction in the work hours of Michael Donovan and Christopher Dean, and within 3 days thereafter, notify Donovan and Dean in writing that this has been done and that the reduction in their work hours will not be used against them in any way.

(d) 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 electronic copies of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Tolland, Connecticut facility copies of the attached

notice marked "Appendix."<sup>7</sup> 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 other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps 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 June 15, 2018.

(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. November 15, 2019

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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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

<sup>7</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."

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 to close the company or facility or operate under a different name if you select the Union as your bargaining representative.

WE WILL NOT interrogate you about how you are going to vote in an upcoming representation election.

WE WILL NOT promise you benefits if you do not vote for the Union.

WE WILL NOT threaten you that it would be futile to select the Union as your bargaining representative.

WE WILL NOT reduce your work hours because you support the Union or engage in concerted activities, or to discourage you from engaging in these activities.

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 Michael Donovan and Christopher Dean whole, to the extent that we have not already done so, for any loss of earnings and other benefits suffered as a result of our unlawful reduction in their work hours, plus interest.

WE WILL, to the extent that we have not already done so, compensate Michael Donovan and Christopher Dean for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 1, 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 for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful reduction in the work hours of Michael Donovan and Christopher Dean, and WE WILL, within 3 days thereafter, notify them that this has been done and that our reduction in their work hours will not be used against them in any way.

TRI-CITY FIRE PROTECTION SERVICES,  
LLC

The Board's decision can be found at <https://www.nlr.gov/case/01-CA-222718> 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.

