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Qawasmi Trading Inc. d/b/a Green Way Glass & Mirror & Woodworking d/b/a Temp Tech Glass and Green Way Glass & Mirror & Woodworking and Temp-Tech Industries, Inc. and Glaziers Architectural Metal Workers Local 27. Cases 13-CA-226275 and 13-CA-228751

May 27, 2020

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 filed in Case 13-CA-226275 by the Glaziers Architectural Metal Workers Local 27 (the Union) against Temp-Tech Industries, Inc. (Respondent Temp-Tech),¹ and a charge and first amended charge in Case 13-CA-228751 filed by the Union against Green Way Glass & Mirror & Woodworking (Respondent Green Way) and Qawasmi Trading Inc. (Respondent Qawasmi Trading),² respectively, the General Counsel issued an amended consolidated complaint (the complaint) on February 6, 2019, alleging that the Respondents violated Section 8(a)(5) and (1) of the Act.

On March 8, 2019, the Regional Director for Region 13 approved a bilateral informal settlement agreement between Qawasmi Trading Inc. d/b/a Green Way Glass & Mirror & Woodworking d/b/a Temp-Tech Glass and the Union. Among other things, the settlement agreement required the Respondents to: (1) post the Notice to Employees for 60 consecutive days in places where notices to employees are customarily posted; (2) make the combined benefits funds whole for any loss of contributions or benefits, and for any expenses incurred in connection with failing to make benefits contributions since October 1, 2018, by payment to them the amount indicated therein, within 14 days of the settlement agreement's approval;³ (3) make whole a named employee for expenses incurred in connection with failing to provide healthcare coverage since October 1, 2018, by payment

¹ Charge 13-CA-226275 was filed on August 27, 2018.

² Charge 13-CA-228751 was filed on October 9, 2018, and amended on January 11, 2019.

³ The combined funds identified in the settlement agreement included the International Union of Painters and Allied Trades Industry Pension Fund, the Painters District Council No. 14 Illinois Political Committee, and the Painters and Allied Trades Labor Management Corporation Fund.

to him of the amount indicated therein, within 14 days of the settlement agreement's approval; (4) bargain with the Union and put in writing and sign any agreement reached; and (5) reinstate employees' pension and other combined benefits and reinstate the same or comparable healthcare coverage for bargaining unit employees. 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 by the Charged Part, 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 reissue the complaint previously issued on January 19, 2019, in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charge Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. 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 Parties 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 Parties/Respondents at the last addresses provided to the General Counsel.

By letter dated March 11, 2019, the Region's acting compliance officer sent the Respondents a copy of the conformed settlement agreement, with a cover letter explaining the remedial actions it was required to take in order to comply. Thereafter, by email dated April 3, 2019, the acting compliance officer notified the Respondents that they had failed to comply with any of the terms of the settlement agreement and that unless compliance was achieved within 14 days (by April 17), the Regional Director would reissue the January 19, 2019, complaint and may file a motion for default judgment with the Board based on the allegations in the complaint. The Respondents failed to respond or comply. Accordingly, pursuant to the terms of the non-compliance provisions of the settlement agreement, on April 29, 2019, the Regional Director reissued the complaint.

On February 27, 2020, the General Counsel filed a renewed motion for default judgment with the Board,⁴ requesting that the Board issue a Decision and Order against the Respondents containing findings of fact and conclusions of law based on the allegations in the reissued complaint, and that the Board provide “a full remedy for the violations found as is appropriate to remedy such violation[s].” The General Counsel also requested that the Respondents be required to “fulfill all of their undertakings in the March 8, 2019, Settlement Agreement.” On March 5, 2020, 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 Respondents filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondents have 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.⁵ 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 prior to October 5, 2018, the Respondent Temp-Tech was a corporation with an office and place of business in Chicago, Illinois and was engaged in the manufacture and the nonretail sale of glass products. Annually, Respondent Temp-Tech, in conducting the business operations described above, purchased and received at the Chicago facility goods valued in excess of \$50,000 directly from points outside the State of Illinois.

At all material times since October 5, 2018, Respondent Qawasmi Trading has been an Illinois corporation with an office and place of business in Bridgeview, Illinois (the Bridgeview facility) and has been engaged in the manufacture and nonretail sale of glass products. About October 5, 2018, Respondent Qawasmi Trading

purchased the business of Respondent Temp-Tech and since that time has continued to operate the business of Respondent Temp-Tech in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Respondent Temp-Tech. Based on its operations described above, Respondent Qawasmi Trading has continued as the employing agency and is a successor to Respondent Temp-Tech. Based on projections since about October 5, 2018, at which time Respondent Qawasmi Trading purchased the business of Respondent Temp-Tech, Respondent Qawasmi will annually purchase and receive at the Bridgeview facility goods valued in excess of \$50,000 directly from points outside the State of Illinois. At all times since October 5, 2018, Respondent Qawasmi Trading has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times since October 5, 2018, Respondent Green Way Glass has been an Illinois corporation with an office and place of business located at the Bridgeview facility and has been engaged in the manufacture and nonretail sale of glass products. About October 5, 2018, Respondent Green Way Glass purchased the business of Respondent Temp-Tech and since that time has continued to operate the business of Respondent Temp-Tech in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Respondent Temp-Tech. Based on its operations described above, Respondent Green Way Glass has continued as the employing agency and is a successor to Respondent Temp-Tech. Based on projections since about October 5, 2018, at which time Respondent Green Way Glass purchased the business of Respondent Temp-Tech, Respondent Green Way Glass will annually purchase and receive at the Bridgeview facility goods valued in excess of \$50,000 directly from points outside the State of Illinois. At all times since October 5, 2018, Respondent Green Way Glass has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Glaziers Architectural Metal Workers Local 27 (the Union) has been a labor organization within the meaning of Section 5 of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, the following individuals held the positions set forth opposite their names and were supervisors of Respondent Temp-Tech within the meaning of Section 2(11) of the Act and agents of Respondent Temp-Tech within the meaning of Section 2(13) of the Act:

⁴ The General Counsel previously filed a motion for default judgment in this case on May 3, 2019. However, he subsequently learned that Respondent Qawasmi Trading Inc. had not been properly served. As a result, the General Counsel filed a motion requesting that the motion for default judgment be withdrawn and that the case be remanded to the Region, which was granted by the Board. After service on Qawasmi Trading Inc. was properly effected, the motion for default judgment was refiled on February 27, 2020.

⁵ See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

Guy Decker – Owner

Roger Mentzer – Owner

2. At all material times, the following individuals held the positions set forth opposite their names and were supervisors of Respondent Qawasmi Trading within the meaning of Section 2(11) of the Act and agency of Respondent Qawasmi Trading within the meaning of Section 2(13) of the Act:

Hamzeh El-Qawasmi – Owner and Manager

Jamal El-Qawasmi – Owner

3. At all material times, the following individuals held the positions set forth opposite their names and were supervisors of Respondent Green Way Glass within the meaning of Section 2(11) of the Act and agents of Respondent Green Way Glass within the meaning of Section 2(13) of the Act.

Hamzeh El-Qawasmi – Owner and Manager

Jamal El-Qawasmi – Owner

4. About October 5, 2018, Respondents Qawasmi Trading and Green Way Glass, by Hamzeh El-Qawasmi, at the Bridgeview facility, told employees that the Respondents were not union and were not going to be union anymore, informed employees that it would be futile for them to select the Union as their representative, and threatened employees with discharge because of their union or protected concerted activities.

5. The following employees of Respondents Temp-Tech, Qawasmi Trading and Green Way Glass (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 productions and maintenance employees employed at the Bridgeview facility, excluding all other employees, professional employees, clerical employees, confidential employees, and guards and supervisors as defined in the Act.

6. At all material times prior to October 5, 2018, based on Section 9(a) of the Act, the Union was the exclusive collective-bargaining representative of the unit employed by Respondent Temp-Tech and during that time Temp-Tech had recognized the Charging Party as the employees' exclusive representative. This recognition was embodied in a number of collective-bargaining agreements, the most recent of which was effective from April 1, 2017, to March 31, 2018.

(a) Based on Section 9(a) of the Act, from at least April 1, 2017, to October 5, 2018, the Union was the exclusive collective-bargaining representative of Respondent Temp-Tech's unit employees.

(b) Based on these facts, at all times since about October 5, 2018, the Union has been the exclusive collective-bargaining representative of the unit employees.

(c) Based on Section 9(a) of the Act, at all times since about October 5, 2018, the Union has been the exclusive collective-bargaining representative of Respondent Qawasmi Trading's and Respondent Green Way Glass' unit employees.

7. About July 17, 2018, the Union and Respondent Temp-Tech reached complete agreement on the unit's terms and conditions of employment to be incorporated into a collective-bargaining agreement.

(a) Since about August 1, 2018, the Union has requested that Temp-Tech execute a written collective-bargaining agreement containing the terms and conditions of employment that Temp-Tech and the Union agreed to.

(b) Since about August 20, 2018, Respondent Temp-Tech has failed and refused orally and in writing to execute such an agreement.

8. On about October 5, 2018, Respondents Qawasmi Trading and Green Way Glass ceased making pension contributions on behalf of unit employees and cancelled employees' health insurance in about November 2018.

(a) The subjects set forth above relate to wages, hours, and other terms and conditions of employment and are mandatory subjects for purposes of collective bargaining.

(b) Respondents Qawasmi Trading and Green Way Glass engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with them with respect to this conduct.

9. About October 8, 2018, the Union, by its business agent Steve Mabus, orally requested that Respondents Qawasmi Trading and Green Way Glass recognize the Union as the exclusive collective-bargaining representative of the unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

(a) About October 17, 2018, the Union, by letter, requested that Respondents Qawasmi Trading and Green Way Glass recognize the Union as the exclusive collective-bargaining representative of the unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

(b) Since about October 8, 2018, Respondents Qawasmi Trading and Green Way Glass have failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSIONS OF LAW

By the conduct described above in paragraph 4, Respondents Qawasmi Trading and Green Way Glass have

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.

By the conduct described in paragraph 7, Respondent Temp-Tech has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

By the conduct described above in paragraphs 8 and 9, Respondents Qawasmī Trading and Green Way Glass have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees in violation of Section 8(a)(5) and (1) of the Act.

The unfair labor practices of Respondents Temp-Tech, Green Way Glass and Qawasmī Trading, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents Temp-Tech, Qawasmī Trading, and Green Way Glass have engaged in certain unfair labor practices, and in accordance with the General Counsel's request for a "full remedy" for the violations found, we shall order them to take certain affirmative actions designed to effectuate the policies of the Act, as requested by the General Counsel.⁶

Specifically, having found that the Respondents Qawasmī Trading and Green Way Glass violated Section 8(a)(1) of the Act by telling employees that they were not union and were not going to be union anymore; informing employees that it would be futile for them to select

⁶ As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could "issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations." In his motion for default judgment, the General Counsel requests that the Board "[i]ssue a Decision and Order against [the Respondents] containing findings of fact and conclusions of law based on, and in accordance with, the allegations of the Consolidated Complaint, and provide a full remedy for the unfair labor practices alleged." In addition, the General Counsel requests that that the Board issue an order "requiring [the Respondents] to fulfill all of their undertakings in the March 8, 2019, Settlement Agreement."

We note that in settlement breach cases, the Board will either grant a full remedy on the complaint allegations or enforce the unmet provisions of the settlement, but will not provide both remedies. Here, although the General Counsel's motion is not clear as to which relief it is requesting, we construe its language and particularly its request for a remedy in addition to the settlement provisions as requesting full remedies for the violations found, rather than seeking compliance with the settlement agreement, and we shall order those remedies. See *Thermico, Inc.*, 364 NLRB No. 135, slip op. at 3 fn. 4 (2016); *L.J. Logistics, Inc.*, 339 NLRB 729, 730-731 (2003). Further, because it is unclear whether the amounts set forth in the settlement agreement constitute a full make-whole remedy, we leave to compliance a determination of the amount due the unit employees and the Union.

the Union as their representative; and threatening employees with discharge because of their union or protected concerted activities, we shall order the Respondents to cease and desist from such conduct and to post a remedial notice.

Having further found that Respondent Temp-Tech violated Section 8(a)(5) and (1) by failing and refusing to execute a collective-bargaining agreement containing the terms and conditions of employment agreed to by Temp-Tech and the Union, we shall order Respondents Qawasmī Trading and Green Way Glass to execute such an agreement.

Having found that Respondents Qawasmī Trading and Green Way Glass violated Section 8(a)(5) and (1) since about August 20, 2018, by failing and refusing to recognize the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, benefits, and other terms and conditions of employment, we shall order the Respondents to recognize the Union and abide by the collective-bargaining agreement as set forth above.

Finally, having found that Respondents Qawasmī Trading and Green Way Glass violated Section 8(a)(5) and (1) by unilaterally changing the terms and conditions of employment of their unit employees, including by ceasing pension fund contributions on behalf of unit employees since about October 5, 2018, and cancelling their health insurance since about November 2018, we shall order the Respondents to rescind the changes and retroactively restore the status quo. In addition, we shall order the Respondents, jointly and severally, to make the contractually-required pension fund contributions that have not been made since October 5, 2018, including any additional amounts due the pension funds on behalf of the unit employees and in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondents, jointly and severally, shall also reimburse unit employees for any expenses ensuing from their failure to make the required pension fund contributions and for their failure to maintain health insurance for their employees, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, and *Kentucky River Medical Center*, supra.⁷

⁷ To the extent that an employee has made personal contributions to the pension fund that were accepted by the fund in lieu of the Respondents' delinquent contributions during the period of delinquency, the Respondents will reimburse the employees, but the amount of such reimbursement will constitute a setoff to the amount the Respondents otherwise owe the fund.

ORDER

The National Labor Relations Board orders that the Respondents Temp-Tech Industries, Inc., Qawasmi Trading Inc., and Green Way Glass & Mirror & Woodworking, Bridgeview, Illinois, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercing employees by telling them that the Respondents were not union and were not going to be union anymore.

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

(c) Threatening employees with discharge because of their union or protected concerted activities.

(d) Failing and refusing to recognize and bargain collectively and in good faith with the Glaziers Architectural Metal Workers Local 27 as the exclusive collective-bargaining representative of employees in the unit. The unit is:

All full-time and regular part-time productions and maintenance employees employed at the Bridgeview facility, excluding all other employees, professional employees, clerical employees, confidential employees, and guards and supervisors as defined in the Act.

(e) Failing and refusing to recognize and bargain collectively with the Union by refusing to execute a collective-bargaining agreement containing the terms and conditions of employment of unit employees that Temp-Tech and the Union agreed to.

(f) Unilaterally changing the terms and conditions of employment of the unit employees by cancelling employees' health insurance and failing and refusing to make pension fund contributions on their behalf.

(g) 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) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the appropriate bargaining unit concerning their terms and conditions of employment by executing a collective-bargaining agreement containing the terms and conditions of employment of unit employees that Temp-Tech and the Union agreed to.

(b) Rescind the unilateral changes to the terms and conditions of employment of the unit employees, restore the employees' health insurance, and make all required contributions to the pension fund that have not been made since October 5, 2018, in the manner set forth in the remedy section of this decision.

(c) Make unit employees whole for any expenses ensuing from Respondents' cancellation of employees' health insurance in November 2018, and their failure to make contributions to the pension fund since October 5, 2018, in the manner set forth in the remedy section of this decision.

(d) Post at its Bridgeview, Illinois facility copies of the attached notice marked "Appendix."⁸ 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. 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.

(f) 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. May 27, 2020

John F. Ring,

Chairman

⁸ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

Marvin E. Kaplan, 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 coerce you by telling you that we were not union and were not going to be union anymore.

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

WE WILL NOT threaten you with discharge because of your union or protected concerted activities.

WE WILL NOT fail and refuse to recognize and bargain collectively and in good faith with the Union by refusing to execute a collective-bargaining agreement containing your terms and conditions of employment that Temp-Tech and the Union agreed to.

WE WILL NOT fail and refuse to recognize and bargain collectively with the Union as the exclusive collective-

bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time productions and maintenance employees employed at the Bridgeview facility, excluding all other employees, professional employees, clerical employees, confidential employees, and guards and supervisors as defined in the Act.

WE WILL NOT unilaterally change your terms and conditions of employment by cancelling your health insurance and failing and refusing to make contributions to the pension fund on your behalf.

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 recognize and bargain with the Union as the exclusive representative of our employees in the above-described unit by executing a collective-bargaining agreement containing the terms and conditions of employment that Temp-Tech and the Union agreed to.

WE WILL rescind the unilateral changes to your terms and conditions of employment by restoring your health insurance and making all required contributions to the pension fund that we have failed to make since October 5, 2018.

WE WILL make you whole, plus interest, for any losses caused by our failure to maintain your health insurance and to make contributions to the pension fund since October 5, 2018.

The Board's decision can be found at www.nlrb.gov/case/13-CA-226275 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.

