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T-3 Construction LLC and Southwest Laborers District Council and Laborers Local 154. Case 16–CA–247162

July 6, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that T-3 Construction LLC, (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Southwest Laborers District Council and Laborers Local 154 (the Union) on August 23, 2019, the General Counsel issued a complaint and notice of hearing on March 2, 2020, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act.¹ The Respondent failed to file an answer.

On May 15, 2020, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on May 20, 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 Respondent filed no response. The allegations in the motion are therefore undisputed.

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 March 16, 2020, 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 March 18, 2020, advised the Respondent that unless an answer was received by March 25, 2020, 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

¹ By letter dated December 3, 2019, the Region deferred the charge to the grievance/arbitration procedures of the parties' collective-bargaining agreement. However, the Respondent failed to respond to the Union's grievance and request for arbitration. As a result, it was advised by email dated February 3, and letter dated February 11, 2020, that failure to respond would result in the issuance of a complaint and the

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

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability corporation with an office in Omaha, Nebraska, and place of business in Collinsville, Texas (the Respondent's facility), and has been engaged in the business of commercial construction.

During the past calendar year, the Respondent provided services in excess of \$50,000 in states other than the State of Nebraska.

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, Timothy Pulice has been the 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 laborers, skilled laborers, specialist laborers, industrial laborers, laborer foremen, and general foremen performing work covered by the Southwest Laborers' District Council Tri-State Agreement.

Since about March 30, 2019, the Respondent, an employer engaged in the building and construction industry, entered into a collective-bargaining agreement effective from March 1, 2019, through April 30, 2020 (the Agreement), whereby it recognized the Union as the exclusive collective-bargaining representative of the unit without regard to whether the Union's majority status had ever been established under Section 9(a) of the Act and agreed to continue the agreement in effect annually unless timely notice was given in accordance with the terms of Article 25 of the collective-bargaining agreement.

From March 1, 2019, to April 30, 2020, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.²

abandonment of deferral as a defense. The Respondent did not respond to the Region's correspondence or respond to the Union. The Region consequently issued the complaint.

² The complaint alleges that the Respondent is a construction industry employer and that it granted recognition to the Union without regard to whether the Union had established majority status. Accordingly, we find

Since about March 1, 2019, the Respondent failed to make required payments to the Union's benefit funds as set forth in the Agreement.

Since about April 9, 2019, the Respondent failed to pay unit employees the appropriate wages set forth in the Agreement.

Since about April 9, 2019, the Respondent failed to pay certain employees who performed work for the Respondent.

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

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the conduct described above, the Respondent 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. 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. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to make contractually-required payments to the Union's pension funds, we shall order the Respondent to make whole its unit employees by making all required payments that have not been made since March 1, 2019, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the contractually-required pension fund payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 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*, 183 NLRB 682 (1970),

that the relationship was entered into pursuant to Sec. 8(f) of the Act and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See, e.g., *A.S.B. Clature, Ltd.*, 313 NLRB 1012, 1012 fn. 2 (1994) (citing *Electri-Tech, Inc.*, 306 NLRB 707, 707 fn. 2 (1992)); *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010).³

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to pay unit employees contractually-required wages and failing to pay certain employees who performed work for the Respondent, we shall order it to pay employees the unpaid contractually-required wages, to pay employees it failed to pay for their work, and to make the affected employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. All amounts due employees shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed by *New Horizons*, supra, and *Kentucky River Medical Center*, supra.

Further, we shall order the Respondent to compensate the employees for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

ORDER

The National Labor Relations Board orders that the Respondent, T-3 Construction, Collinsville, Texas, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to pay unit employees contractually-required wages in accordance with the March 1, 2019–April 30, 2020 Agreement. The bargaining unit is:

All laborers, skilled laborers, specialist laborers, industrial laborers, laborer foremen, and general foremen performing work covered by the Southwest Laborers' District Council Tri-State Agreement.

(b) Failing and refusing to pay certain employees who performed work for the Respondent.

(c) Failing and refusing to make all contractually-required pension fund payments on behalf of unit employees

³ 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.

in accordance with the March 1, 2019–April 30, 2020 Agreement.

(d) 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) Pay unit employees all contractually-required wages in accordance with the March 1, 2019–April 30, 2020 Agreement, in the manner set forth in the remedy section of this decision.

(b) Compensate certain employees who performed work for the Respondent and were not paid, in the manner set forth in the remedy section of this decision.

(c) Make the affected employees whole for any loss of earning and other benefits suffered as a result of the Respondent’s unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.

(d) Compensate employees for the adverse consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay ward to the appropriate calendar year(s).

(e) Make all contractually-required payments to the Union’s benefit funds that have not been made on the employees’ behalf since March 1, 2019, in the manner set forth in the remedy section of this decision.

(f) Make unit employees whole for any expenses ensuing from the failure to make payments to the pension funds since March 1, 2019, in the manner set forth in the remedy section of this decision.

(g) Post at its facility in Collinsville, Texas, copies of the attached notice marked “Appendix.”⁴ Copies of the notice, on forms provided by the Regional Director for Region 16, 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

⁴ If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facilities reopen 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 the paper notices

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 March 1, 2019.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 16 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. July 6, 2020

John F. Ring, Chairman

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

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.”

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Southwest Laborers District Council and Laborers Local 154 (the Union) as the exclusive collective-bargaining representative of employees in the following unit by failing and refusing to pay you contractually-required wages in accordance with the March 1, 2019–April 30, 2020 collective-bargaining agreement (the Agreement). The unit is:

All laborers, skilled laborers, specialist laborers, industrial laborers, laborer foremen, and general foremen performing work covered by the Southwest Laborers' District Council Tri-State Agreement.

WE WILL NOT fail and refuse to pay employees who perform work for the company.

WE WILL NOT fail and refuse to make contractually required pension fund payments on your behalf in accordance with the March 1, 2019–April 30, 2020 Agreement.

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 pay you the contractually-required wages in accordance with the March 1, 2019–April 30, 2020 Agreement.

WE WILL pay certain employees who performed work for the company but were not paid.

WE WILL make all contractually required pension fund payments on your behalf in accordance with the March 1, 2019–April 30, 2020 Agreement.

T-3 CONSTRUCTION LLC

The Board's decision can be found at www.nlr.gov/case/16-CA-247162 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.

