

United States Court of Appeals For the First Circuit

No. 20-1806

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

BEVILACQUA ASPHALT CORPORATION

Respondent

JUDGMENT

Entered: October 9, 2020
Pursuant to 1st Cir. R. 27.0(d)

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Bevilacqua Asphalt Corporation, its officers, agents, successors, and assigns, enforcing its order dated June 3, 2020, in Case No. 01-CA-245510, reported at 369 NLRB No. 96. Respondent has failed to file an answer within the time provided by Fed. R. App. P. 15(b)(2). Upon consideration of the forgoing, it is hereby:

ORDERED AND ADJUDGED by the Court that the Respondent, Bevilacqua Asphalt Corporation, its officers, agents, successors, and assigns, shall abide by said Order. (See Attached Order)

By the Court:

Maria R. Hamilton, Clerk

cc:

David Habenstreit
James P. Allen
Steve Bevilacqua
Cyndi Sauter
Michael Simone
National Labor Relations Board

NATIONAL LABOR RELATIONS BOARD

v.

BEVILACQUA ASPHALT CORP.

ORDER

Bevilacqua Asphalt Corp., Uxbridge, Massachusetts, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified and set forth in full below.

1. Cease and desist from
 - (a) Barring former employees from its plant because they engaged in union activities, including activities in furtherance of an organizing drive at the Respondent's facility, and to discourage employees from engaging in these activities.
 - (b) 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) Grant its former employee Daniel Hedquist, as an employee of one of its customers, access to its property on the same basis that it grants access to employees of other customers, and notify its customer, Daniel Hedquist's employer, of this in writing.
 - (b) Post at its facility in Uxbridge, Massachusetts, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by

¹ 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

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. 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 July 25, 2019.

- (c) Mail a signed copy of the official notice to the Respondent's former employee, Daniel Hedquist, and to his current employer who is the Respondent's customer; and to all current and former truckdrivers employed by the Respondent at any time since July 25, 2019.
- (d) 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.

notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN 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 bar former employees from our plant because they engaged in union activities, including activities in furtherance of an organizing drive at our facility among our employee drivers.

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 grant our former employee Daniel Hedquist, as an employee of one of our customers, access to our property on the same basis that we grant access to employees of other customers and WE WILL notify our customer, Daniel Hedquist's employer, of this in writing.

BEVILACQUA ASPHALT CORP.

The Board's decision can be found at www.nlr.gov/case/01-CA-245510 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.



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Bevilacqua Asphalt Corp. and International Brotherhood of Teamsters Local 251, AFL-CIO. Case 01-CA-245510

March 4, 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 Bevilacqua Asphalt Corp. (the Respondent) has failed to file an answer to the complaint. Upon a charge and amended charges filed by International Brotherhood of Teamsters Local 251, AFL-CIO (the Union) on July 25, October 9 and 22, 2019, respectively, the General Counsel issued a complaint and notice of hearing on October 28, 2019, against the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On December 26, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on January 3, 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 November 8, 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 December 12, 2019, advised the Respondent that unless an answer was received by December 18, 2019, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer. Moreover, the General Counsel’s motion discloses that on a conference call on December 20, 2019, the Respondent’s counsel stated that the Respondent will not file an answer in this matter.

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

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office located at 1045 Quaker Highway, Uxbridge, Massachusetts (office) and a plant and quarry located at 586 Quaker Highway, Uxbridge, Massachusetts (plant), the office and the plant collectively referred to as the Uxbridge facility, has been engaged in the business of asphalt manufacturing and related sales.

Annually, the Respondent, in conducting its operations described above, purchases and receives at its Uxbridge facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts.

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:

Steven Bevilacqua	-	President and Owner
Nicholas Bevilacqua	-	Quality Control
Roland Noury	-	Plant Operator

The following events occurred, giving rise to these proceedings

1. From about mid-May through December 2016, the Respondent’s employee Daniel Hedquist engaged in union activities, including activities in furtherance of an organizing drive at the Respondent’s facility among the Respondent’s employee drivers.

2. About July 25, 2019, the Respondent, by Steven Bevilacqua, barred former driver employee Daniel Hedquist from the Respondent’s plant.

3. The Respondent engaged in the conduct described above in paragraph 2 because Daniel Hedquist engaged in the conduct described above in paragraph 1, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the conduct described above, 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, and has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices 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.¹

ORDER

The National Labor Relations Board orders that the Respondent, Bevilacqua Asphalt Corp., Uxbridge, Massachusetts, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Barring former employees from its plant because they engaged in union activities, including activities in furtherance of an organizing drive at the Respondent's facility, and to discourage employees from engaging in these activities.

(b) 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 facility in Uxbridge, Massachusetts, copies of the attached notice marked "Appendix."² 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. 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 July 25, 2019.

(b) 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. March 4, 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
- Choose not to engage in any of these protected activities.

WE WILL NOT bar former employees from our plant because they engaged in union activities, including activities in furtherance of an organizing drive at our facility among our employee drivers.

¹ In addition to the customary notice posting remedies, the General Counsel requests the additional remedy that the Respondent mail a copy of the notice to all full-time and regular part-time truck drivers currently employed or formerly employed by the Respondent at any time since December 1, 2016. We deny this request because the General Counsel has not shown that this additional measure is needed to remedy the effects of the Respondent's unfair labor practices. See *Environmental Contractors, Inc.*, 366 NLRB No. 41, slip op. at 4 fn. 6 (2018); *On Target*

Security, Inc., 362 NLRB No. 31, slip op. at 2 (2015); *First Legal Support Services, LLC*, 342 NLRB 350, 350 fn. 6 (2004).

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."

BEVILACQUA ASPHALT CORP.

3

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

BEVILACQUA ASPHALT CORP.

The Board's decision can be found at www.nlr.gov/case/01-CA-245510 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.



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Bevilacqua Asphalt Corp. and International Brotherhood of Teamsters Local 251, AFL–CIO. Case 01–CA–245510

June 3, 2020

ORDER GRANTING MOTION TO MODIFY AND GRANTING IN PART AND DENYING IN PART MOTION FOR RECONSIDERATION

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On March 4, 2020, the National Labor Relations Board issued a Decision and Order in this no-answer default judgment proceeding.¹ The Board found that Bevilacqua Asphalt Corp. (the Respondent) violated Section 8(a)(1) and (3) of the Act by barring former driver employee Daniel Hedquist from its plant about July 25, 2019, because of Hedquist’s prior union activities from about mid-May through December 2016, when he was employed by the Respondent, including activities in furtherance of an organizing drive at the Respondent’s facility.

To remedy this violation, the Board ordered the Respondent to cease and desist from “[b]arring former employees from its plant because they engaged in union activities, including activities in furtherance of an organizing drive at the Respondent’s facility, and to discourage employees from engaging in these activities” and from “[i]n 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.” The Board additionally provided its customary notice-posting remedy, ordering the Respondent to post a notice at its Uxbridge, Massachusetts facility informing employees that it would cease and desist from these activities. However, the Board denied the General Counsel’s request that the Board order the Respondent to mail a copy of the notice to all full-time and regular part-time truckdrivers currently employed or formerly employed by the Respondent at any time since December 1, 2016, on the basis that the General Counsel had not shown that this additional measure was needed to remedy the effects of the Respondent’s unfair labor practices.

On March 30, 2020, the General Counsel filed with the Board a Motion to Modify the Board’s March 4, 2020 Order and Motion to Reconsider its Denial of Mailing

Notices. The General Counsel submits that the Board’s Order did not specifically refer to discriminatee Hedquist, nor provide for the notice to be provided to Hedquist or to Hedquist’s employer, who was the Respondent’s customer.² Accordingly, the General Counsel requests that the Board modify its Order and notice by adding an affirmative paragraph stating that the Respondent will grant its former employee Daniel Hedquist, as an employee of one of its customers, access to its property on the same basis that it grants access to employees of other customers and that it will notify its customer, Daniel Hedquist’s employer, of this in writing.

The General Counsel also moves the Board to reconsider its denial of the General Counsel’s request that the Board order the Respondent to mail a copy of the notice to all full-time and regular part-time truckdrivers currently employed or formerly employed by the Respondent at any time since December 1, 2016. The General Counsel contends that a notice-mailing remedy is necessary because the Respondent operates a quarry and asphalt manufacturing plant in which some employees, particularly drivers, do not regularly enter the Respondent’s office where the notice would be posted. Thus, the General Counsel requests in his motion that the Board require the Respondent to mail a copy of the notice to its current and formerly employed employees since December 1, 2016. The General Counsel further argues that mailing the notice to Hedquist and his employer is necessary to put them on notice that Hedquist will no longer be unlawfully banned from the Respondent’s property and that restricting his work assignments is no longer necessary.

Having reconsidered the Board’s Decision and Order in light of the General Counsel’s motions, we find that the motion to modify should be granted and that the motion for reconsideration should be granted in part and denied in part, as discussed below.

1. We find merit in the General Counsel’s motion to modify the Board’s Order and notice by adding an affirmative paragraph stating that the Respondent will grant Hedquist, as an employee of one of its customers, access to its property on the same basis that it grants access to employees of other customers and that it will notify Hedquist’s employer of this in writing. Including this affirmative paragraph and notifying Hedquist’s employer is necessary to remedy the possible adverse impact the Respondent’s unlawful conduct could have on Hedquist’s current employment, to the extent that Hedquist’s employer may have restricted Hedquist’s assignments in response to the Respondent’s conduct. Accordingly, in the

Hedquist from its facility when he was attempting to enter the facility on behalf of one of the Respondent’s customers, by whom he was employed.

¹ 369 NLRB No. 39.

² According to the General Counsel’s Motion for Default Judgment and the amended charges in this proceeding, the Respondent barred

unusual circumstances of this case, we grant the General Counsel's motion to include this affirmative paragraph in the Order and notice, and to direct the Respondent to mail a copy of the notice to Hedquist's employer.

2. We also find merit in the General Counsel's motion to reconsider our decision to deny the General Counsel's initial request that the notice be mailed to all full-time and regular part-time truckdrivers currently employed or formerly employed by the Respondent at any time since December 1, 2016. However, contrary to the General Counsel's request in its motion that that the notice be mailed to the Respondent's current and former employees employed by the Respondent since December 1, 2016, we shall order the Respondent to mail the notice to discriminatee Hedquist and to current and former truckdrivers employed by the Respondent since July 25, 2019. We find that requiring the Respondent to mail the notice to discriminatee Hedquist is necessary to inform Hedquist that he will no longer be unlawfully banned from the Respondent's property. As a former employee, Hedquist presumably will not have access to the Respondent's offices where the notice would be posted. Thus, notice-mailing is necessary to ensure that Hedquist is informed of the Board's Order. "The Board provides for the mailing of individual notices when posting will not adequately inform the employees of the violations that have occurred and their rights under the Act." *Bill's Electric*, 350 NLRB 292, 297 (2007); see also *Abramson, LLC*, 345 NLRB 171, 171 fn. 3 (2005) (ordering notice mailing where unit employees work on individual construction sites across a two-state region); *Technology Service Solutions*, 334 NLRB 116, 117 (2001) (ordering notice mailing where affected employees work out of their homes or vehicles and do not report to work at any one location). Accordingly, we grant the General Counsel's motion for reconsideration in this regard and will direct the Respondent to mail the notice to Hedquist.

We further grant the General Counsel's motion to the extent that we will order the Respondent to mail the notice to current and former truckdrivers, based on the General Counsel's assertion that drivers do not regularly visit the Respondent's offices where notices would be posted. Although the General Counsel requests in his motion for reconsideration that we order notice-mailing to all current and former employees, the General Counsel has not specified any other job classifications that do not regularly enter the Respondent's offices, and thus we find that the General Counsel has not shown that providing notice-mailing to employees other than truckdrivers is necessary to remedy the effects of the Respondent's unfair labor

practices.³ See, e.g., *Environmental Contractors, Inc.*, 366 NLRB No. 41, slip op. at 4 fn. 6 (2018); *On Target Security, Inc.*, 362 NLRB No. 31, slip op. at 2 (2015); *First Legal Support Services, LLC*, 342 NLRB 350, 350 fn. 6 (2004).

We also limit the notice-mailing remedy for the Respondent's former truckdrivers, other than Hedquist, to those employed by the Respondent since July 25, 2019—which, as the date of the Respondent's unfair labor practice in this proceeding, is our customary starting date for the period defining the recipients of a remedial notice. See, e.g., *Aerotek, Inc.*, 365 NLRB No.2, slip op. at 5 fn. 30 (2016). The General Counsel's proffered reason for requesting notice-mailing to drivers employed since December 1, 2016, is that Hedquist—who was last employed by the Respondent in December 2016—must receive notification that he will no longer be unlawfully banned from the Respondent's property. Accordingly, given that we are ordering the Respondent to mail the notice to Hedquist specifically, we find that mailing the notice to the other former truckdrivers employed by the Respondent from December 1, 2016 to July 25, 2019, is not necessary to remedy the effects of the Respondent's unlawful conduct.

3. Finally, due to the Coronavirus Disease 2019 (COVID-19) pandemic, we have modified the Order in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020).

ORDER

The General Counsel's motions to modify and for reconsideration are granted to the extent indicated above. Accordingly, the National Labor Relations Board affirms its original Order as modified below, and orders that the Respondent, Bevilacqua Asphalt Corp., Uxbridge, Massachusetts, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified and set forth in full below.

1. Cease and desist from

(a) Barring former employees from its plant because they engaged in union activities, including activities in furtherance of an organizing drive at the Respondent's facility, and to discourage employees from engaging in these activities.

(b) 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.

³ In this regard, we also note that in his motion for default judgment, the General Counsel sought a notice-mailing remedy only for current and former truckdrivers, rather than all current and former employees.

BEVILACQUA ASPHALT CORP.

(a) Grant its former employee Daniel Hedquist, as an employee of one of its customers, access to its property on the same basis that it grants access to employees of other customers, and notify its customer, Daniel Hedquist’s employer, of this in writing.

(b) Post at its facility in Uxbridge, Massachusetts, copies of the attached notice marked “Appendix.”⁴ 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. 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 July 25, 2019.

(c) Mail a signed copy of the official notice to the Respondent’s former employee, Daniel Hedquist, and to his current employer who is the Respondent’s customer; and to all current and former truckdrivers employed by the Respondent at any time since July 25, 2019.

(d) 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. June 3, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

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

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
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BEVILACQUA ASPHALT CORP.

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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.”

