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Charter Electrical Experts, LLC d/b/a Charter Electric and International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO. Case 12–CA–258405

December 22, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that Charter Electrical Experts, LLC d/b/a Charter Electric (the Respondent) has failed to file an answer to the complaint. Upon a charge and an amended charge filed by International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO (the Union), on March 25 and June 12, 2020, respectively, the General Counsel issued a complaint and notice of hearing on September 4, 2020, against the Respondent, alleging that it has violated Section 8(a)(3), (5), and (1) of the Act. The Respondent failed to file an answer.

On October 13, 2020, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on October 15, 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 a response; however, on November 10, 2020, the response was rejected pursuant to Section 102.5 of the Board’s Rules and Regulations, on the grounds that the Respondent failed to file a certificate of service showing that it served its response on all parties.¹ The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by September 20, 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 October 1, 2020,

¹ Observing that the Respondent proceeded pro se, both the Region and the Executive Secretary’s Office offered assistance with this process.

advised the Respondent that unless an answer was received by October 8, 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 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 and place of business in Apollo Beach, Florida (the Respondent’s facility), and has been engaged in the business of providing electrical contracting services to residential and commercial customers.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its operations, purchased and received at its Apollo Beach, Florida facility, goods valued in excess of \$50,000 directly from points outside the State of Florida, and from other enterprises located within the State of Florida, each of which other enterprises received those goods directly from points outside the State of Florida.

At all material times, Florida West Coast Chapter, National Electrical Contractors Association, Inc. (the Association) has been an organization composed of various employers engaged in the business of providing electrical services, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with International Brotherhood of Electrical Workers, AFL–CIO and its local unions, including the Union.

At all material times, the Respondent has been an employer-member of the Association and has authorized the Association to represent it in negotiating and administering collective-bargaining agreements with the Union.

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

1. At all material times, Scott Akins has been the owner/manager 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.

2. 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 of the Respondent's employees performing work within the jurisdiction of the Union, including journeyman wiremen, journeyman technicians, journeyman wireman foremen, journeyman wireman general foremen, apprentice wiremen, welders, and cable splicers.

3. On or about February 1, 2019, the Respondent, an employer engaged in the building and construction industry, signed a Letter of Assent whereby it agreed to be bound by current and future "inside" collective-bargaining agreements between the Union and the Association.

4. By entering into the agreement described above, the Respondent 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.

5. On or about November 22, 2018, the Association entered into a collective-bargaining agreement with the Union that is effective by its terms from December 1, 2017, to November 30, 2019, recognizing 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.²

6. Pursuant to the terms of the Letter of Assent and the collective-bargaining agreement, the Respondent is bound by the terms of the collective-bargaining agreement between the Association and the Union that is effective by its terms from December 1, 2019, to November 30, 2021.

7. Since about February 1, 2019, and at all material times, the Respondent has been a member of the Association and thereby agreed to recognize the Union and be bound by the agreements described above.

8. About February 8, 2020, the Respondent discharged its employee Robert McCahan.

9. The Respondent engaged in this conduct because Robert McCahan was a member of the Union and was entitled to the wages and benefits afforded to him by the

December 1, 2019 to November 30, 2021 collective-bargaining agreement.

10. Since about February 1, 2019, the Respondent has failed to continue in effect all terms and conditions of the collective-bargaining agreements between the Association and the Union by failing to pay all bargaining unit employees the contractual wages and benefits and failing to honor the terms of use of the work referral procedure as a source for the referral of applicants for employment.³

11. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, and the Respondent engaged in the conduct described above without the Union's consent.

12. About February 10 through February 12, 2020, the Respondent bypassed the Union and dealt directly with employees in the unit by soliciting employees to enter into individual employment agreements without the wages and benefits set forth in the December 1, 2019 to November 30, 2021 collective-bargaining agreement, and instead proposed to employees in the unit that they be compensated on a commission-only basis and accept other terms and conditions of employment.

CONCLUSIONS OF LAW

By the conduct described above in paragraphs 8 and 9, the Respondent has been discriminating in regard to the hire or tenure or terms or 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.

By the conduct described above in paragraphs 10, 11, and 12, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and 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.

² Under Sec. 8(f) of the Act, a construction industry employer may grant recognition to a union, without regard to the establishment of its majority status. See *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988). We find 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 collective-bargaining agreements. See, e.g., *A.S.B. Clouture, Ltd.*, 313 NLRB 1012, 1012 fn. 2 (1994), citing *Electri-Tech, Inc.*, 306 NLRB 707, 707 fn. 2 (1992), enf. mem. 979 F.2d 851 (6th Cir. 1992), and *John Deklewa & Sons*, supra.

³ The complaint alleges a failure to continue in effect all terms and conditions of the collective-bargaining agreements since about February

1, 2019, more than 6 months before the filing of the charge. However, the 6-month limitations period in Sec. 10(b) of the Act is an affirmative defense that is waived if not timely raised. See, e.g., *Newspaper & Mail Deliverers (New York Post)*, 337 NLRB 608, 609 (2002) (citing *Public Service Co.*, 312 NLRB 459, 461 (1993)). As the Respondent has failed to file an answer to the complaint or a response to the notice to show cause and has failed to raise a 10(b) affirmative defense, we find the violations as alleged and shall issue an appropriate remedial order. See, e.g., *Malik Roofing Corp.*, 338 NLRB 930, 931 fn. 3 (2003); *J. F. Morris Co.*, 292 NLRB 869, 870 fn. 2 (1989), enf. mem. 881 F.2d 1076 (6th Cir. 1989).

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 violated Section 8(a)(3) and (1) of the Act by discharging Robert McCahan because he was a member of the Union and entitled to the wages and benefits afforded to him by the terms of the collective-bargaining agreement effective December 1, 2019, to November 30, 2021, thereby discouraging membership in a labor organization, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, we shall order the Respondent to compensate Robert McCahan for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 12, 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. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate McCahan for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. The Respondent shall also be required to remove from its files all references to McCahan's unlawful discharge and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

In addition, having found that the Respondent unlawfully failed and refused to continue in effect all terms and conditions of the 2017–2019 and 2019–2021 collective-bargaining agreements by failing to pay all bargaining unit employees the contractual wages and benefits and by failing to honor the terms of use of the work referral procedure as a source for the referral of applicants for

employment, we shall order the Respondent, before implementing any changes in wages, hours, and conditions of employment of unit employees, to notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of unit employees. We shall also order the Respondent to rescind the unilateral changes and make employees whole for the loss of wages and benefits attributable to its unlawful conduct. The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Additionally, we shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving lump-sum backpay awards in accordance with *AdvoServ of New Jersey, Inc.*, supra, and to file a report with the Regional Director for Region 12 allocating the backpay awards to the appropriate calendar years for each employee.

Having also found that the Respondent violated Section 8(a)(5) and (1) by bypassing the Union and dealing directly with employees by soliciting employees to enter into individual employment agreements without the wages and benefits set forth in the collective-bargaining agreement effective December 1, 2019, to November 30, 2021, and instead proposing to unit employees that they be compensated on a commission-only basis and accept other terms and conditions of employment, we shall order the Respondent to rescind any unlawful unilateral changes resulting from this conduct. We shall order the Respondent to make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful direct dealings and any resulting unilateral changes, such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. We shall also order the Respondent to compensate affected unit employees for any adverse tax consequences of receiving lump-sum backpay awards, and to file a report with the Regional Director for Region 12 allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Charter Electrical Experts, LLC d/b/a Charter Electric, Apollo Beach, Florida, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they are members of International Brotherhood of Electrical Workers, Local Union 915,

AFL–CIO (the Union) and are entitled to wages and benefits afforded to them by the terms of the collective-bargaining agreement between the Union and Florida West Coast Chapter, National Electrical Contractors Association, Inc. (the Association), to which the Respondent is bound.

(b) Failing and refusing to pay its unit employees contractual wages and benefits, honor the terms of use of the work referral procedure as a source for the referral of applicants for employment, or otherwise continue in effect all terms and conditions of employment of the unit employees contained in the collective bargaining agreements between the Union and the Association, to which the Respondent is bound, that was in effect December 1, 2017, to November 30, 2019, and is in effect from December 1, 2019, to November 30, 2021, without the Union’s consent.

(c) Bypassing the Union and dealing directly with employees by soliciting employees to enter into individual employment agreements.

(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) Within 14 days from the date of this Order, offer Robert McCahan full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Robert McCahan whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Compensate Robert McCahan for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 12, 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.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Robert McCahan, and within 3 days thereafter, notify McCahan in writing that this has been done and that the discharge will not be used against him in any way.

⁴ The General Counsel requested that, in addition to the records customarily required, the Board also order the Respondent to submit a copy of the W-2 forms reflecting backpay to the discriminatee and other individuals entitled to backpay. However, the General Counsel did not offer a basis for this request. Accordingly, we leave determination of what documents are required to establish payment of the backpay to the compliance stage of this proceeding.

(e) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the limited exclusive collective-bargaining representative of employees in the following bargaining unit during the term of the collective bargaining agreement, and any automatic extensions thereof:

All of the Respondent’s employees performing work within the jurisdiction of the Union, including journeyman wiremen, journeyman technicians, journeyman wireman foremen, journeyman wireman general foremen, apprentice wiremen, welders, and cable splicers.

(f) Rescind the changes in terms and conditions of employment of its unit employees that were unilaterally implemented about February 1, 2019.

(g) Make whole the unit employees for any loss of earnings and other benefits suffered as a result of the unlawful unilateral changes in the unit employees’ terms and conditions of employment made about February 1, 2019, in the manner set forth in the remedy section of this decision.

(h) Compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 12, 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.

(i) Make whole the unit employees for any loss of earnings and other benefits suffered as a result of its dealing directly with employees in the manner set forth in the remedy section of this decision.

(j) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.⁴

(k) Post at its Apollo Beach, Florida facility copies of the attached notice marked “Appendix.”⁵ Copies of the notice, on forms provided by the Regional Director for

⁵ 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

Region 12, 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 February 1, 2019.

(l) Within 21 days after service by the Region, file with the Regional Director for Region 12 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. December 22, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

Lauren McFerran 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.

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

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 discharge or otherwise discriminate against any of you because you are members of International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO (the Union) and are entitled to wages and benefits afforded you by the terms of the collective-bargaining agreement in effect from December 1, 2019, to November 30, 2021.

WE WILL NOT fail or refuse to pay our unit employees contractual wages and benefits, honor the terms of use of the work referral procedure as a source for the referral of applicants for employment, or otherwise continue in effect all terms and conditions of employment of our unit employees contained in the collective bargaining agreements that are in effect December 1, 2017, to November 30, 2019, and from December 1, 2019, to November 30, 2021, without the Union’s consent.

WE WILL NOT bypass the Union and deal directly with you by soliciting you to enter into individual employment agreements.

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, within 14 days from the date of the Board’s Order, offer Robert McCahan full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Robert McCahan whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, and WE WILL make him whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Robert McCahan for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 12, 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.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Robert McCahan, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the limited exclusive collective-bargaining representative of our employees in the following bargaining unit during the term of the collective bargaining agreement, and any automatic extensions thereof:

All of our employees performing work within the jurisdiction of the Union, including journeyman wiremen, journeyman technicians, journeyman wireman foremen, journeyman wireman general foremen, apprentice wiremen, welders, and cable splicers.

WE WILL rescind the changes in your terms and conditions of employment that were unilaterally implemented on about February 1, 2019.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of the unlawful unilateral changes in your terms and conditions of employment made on about February 1, 2019, plus interest.

WE WILL compensate you for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 12, 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.

WE WILL make whole the unit employees for any loss of earnings and other benefits suffered as a result of dealing directly with employees, plus interest.

CHARTER ELECTRICAL EXPERTS, LLC
D/B/A CHARTER ELECTRIC

The Board's decision can be found at www.nlr.gov/case/12-CA-258405 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.

