Charter Electrical Experts, LLC d/b/a Charter Electric and International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO. Case 12–CA–276154

December 17, 2021

DECISION AND ORDER

BY MEMBERS KAPLAN, WILCOX, AND PROUTY

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 amended charges filed by International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO (the Union), on April 20, May 11, May 13, and July 9, 2021, the General Counsel issued a complaint and notice of hearing on July 20, 2021, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On August 30, 2021, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment and Issuance of a Decision. Thereafter, on September 16, 2021, 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.

The National Labor Relations 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 August 3, 2021, 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 August 16, 2021, advised the Respondent that unless an answer was received by August 23, 2021, 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. 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 Letter of Assent, 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. About November 22, 2018, the Association entered into a collective-bargaining agreement with the Employer that was 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.\(^\text{1}\)

6. Pursuant to the terms of the Letter of Assent and the collective-bargaining agreement described above in paragraph 5, the Respondent was bound by the terms of the collective-bargaining agreement between the Association and the Union that was effective by its terms from December 1, 2017 to November 30, 2019.

7. About October 30, 2019, the Association entered into a successor collective-bargaining agreement with the Employer that is effective by its terms from December 1, 2019, to November 30, 2021, 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.

8. Pursuant to the terms of the Letter of Assent and the collective-bargaining agreement described above in paragraph 7, 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 (the 2019–2021 collective-bargaining agreement).

9. About February 1, 2021, the Respondent notified the Union that it was terminating the 2019–2021 collective-bargaining agreement effective immediately.

10. About February 1, 2021, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit.

11. Since about February 1, 2021, the Respondent has refused to honor and has totally repudiated the 2019–2021 collective-bargaining agreement and has refused to recognize or bargain with the Union as the exclusive collective-bargaining representative of the unit.

**CONCLUSION OF LAW**

By the conduct described above in paragraphs 9 through 11, 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, in violation of Section 8(a)(5) and (1) of the Act.

The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to 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)(5) and (1) since February 1, 2021, by withdrawing recognition of the Union as the limited exclusive collective-bargaining representative of the unit employees and repudiating the terms of the 2019–2021 collective-bargaining agreement, we shall order the Respondent to recognize the Union as the limited exclusive collective-bargaining representative of the unit employees and to honor and comply with the terms and conditions of the 2019–2021 collective-bargaining agreement, and any automatic renewal or extension of it. We shall further order the Respondent to rescind any unilateral changes that it made to unit employees' terms and conditions of employment as a result of not applying the agreement. We shall also order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enf.d. 444 F.2d 502 (6th Cir. 1971), with interest as 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 make all contractually-required fringe benefit fund contributions,
if any, that were not made since about February 1, 2021, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1231, 1216 fn. 7 (1979). Further, the Respondent shall reimburse the unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf’d mem. 661 F.2d 940 (9th Cir. 1981). All payments to the unit employees shall 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.\(^2\)

We shall also order the Respondent to compensate affected 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, in accordance with *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (2016). In accordance with our decision in *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondent shall also be required to file with the Regional Director for Region 12 a copy of each backpay recipient’s corresponding W-2 form(s) reflecting the backpay award.

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) Failing or refusing to bargain collectively and in good faith with International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO (the Union), as the limited exclusive collective-bargaining representative of employees in the following unit, by withdrawing recognition of the Union, repudiating the 2019–2021 collective-bargaining agreement, and failing and refusing to continue in effect all the terms and conditions of the 2019–2021 collective-bargaining agreement and any automatic renewal or extension of it.

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.

(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) On request, bargain in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees.

(b) Honor and comply with the terms and conditions of the 2019–2021 collective-bargaining agreement, and any automatic renewal or extension of it.

(c) Rescind any and all changes to unit employees’ terms and conditions of employment that the Respondent implemented by not applying the 2019–2021 collective-bargaining agreement to unit employees.

(d) Make unit employees whole for any loss of earnings or other benefits suffered as a result of the Respondent’s failure, since about February 1, 2021, to abide by and apply the terms of the 2019–2021 collective-bargaining agreement to the unit employees, in the manner set forth in the remedy section of this decision.

(e) Make all contractually required contributions to the unit employees’ fringe-benefit funds that it failed to make since about February 1, 2021, if any, including any additional amounts due the funds, as set forth in the remedy section of this decision.

(f) Reimburse affected employees for any expenses ensuing from the Respondent’s failure to make the required payments to the funds, in the manner set forth in the remedy section of this decision.

(g) Compensate affected 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.

(h) File with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient’s corresponding W-2 forms reflecting the backpay award.

(i) 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

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\(^2\) To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent’s delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.
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.

(j) Within 14 days after service by the Region, post at its Apollo Beach, Florida facility copies of the attached notice marked “Appendix.” Copies of the notice, on forms provided by the Regional Director for 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. 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 February 1, 2021.

(k) 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 17, 2021

Marvin E. Kaplan, Member

David M. Prouty, Member

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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** fail or refuse to bargain collectively and in good faith with International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO (the Union), as the limited exclusive collective-bargaining representative of employees in the following unit by withdrawing recognition of the Union, repudiating the December 1, 2019, to November 30, 2021 collective-bargaining agreement (the 2019–2021 Agreement), and failing and refusing to continue in effect all the terms and conditions of the 2019–2021 Agreement and any automatic renewal or extension of it.

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 NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.
WE WILL, on request, bargain in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees.

WE WILL honor and comply with the terms and conditions of the 2019–2021 Agreement and any automatic renewal or extension of it.

WE WILL rescind any and all changes to our unit employees’ terms and conditions of employment that we implemented by not applying the 2019–2021 Agreement to our unit employees.

WE WILL make our unit employees whole for any loss of earnings or other benefits they may have suffered as a result of our failure, since about February 1, 2021, to abide by and apply the terms of the 2019–2021 Agreement to our unit employees.

WE WILL make all contractually required contributions to our unit employees’ fringe-benefit funds that we failed to make since about February 1, 2021, if any, including any additional amounts due the funds, and WE WILL reimburse our unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL compensate our unit employees 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 file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient’s corresponding W-2 form(s) reflecting the backpay award.

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

The Board’s decision can be found at www.nlrb.gov/case/12-CA-276154 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.