VFH

263 NLRB No. 155

D--9220
Butler, PA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RAYMOND E. VIRGILI
d/b/a RAYMOND E. VIRGILI
PAINTING CONTRACTOR
AND/OR RAYMOND E. VIRGILI
d/b/a RAYMOND E. VIRGILI
PAINTING CONTRACTOR,
DEBTOR IN POSSESSION

and

Case 6--CA--15034

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA, LOCAL UNION
NO. 34

DECISION AND ORDER

Upon a charge filed on October 26, 1981, and amended on December 22, 1981, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 34, herein called the Union, and duly served on Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 6, issued a complaint and notice of hearing on December 31, 1981, and amendments to the complaint on January 14 and June 10, 1982,

against Respondent,[1] alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, the complaint, the amendments to the complaint, and the notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On June 28, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on June 30, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

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[1] The second amendment to the complaint, dated June 10, 1982, amended the caption by adding as Respondent Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor, Debtor in Possession.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof, ''all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, according to the uncontroverted allegations of the Motion for Summary Judgment, the Regional Attorney for Region 6, by letter dated June 15, 1982, notified Respondent of its obligation to file an answer and further advised Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed. As noted above, Respondent has failed to file an answer to the complaint and has failed to file a response to the Notice To Show Cause.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to

be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is, and has been at all times material herein, a sole proprietorship with an office and place of business located in Butler, Pennsylvania, where it has been engaged as a painting contractor in the residential, commercial, and industrial painting business. During the 12-month period ending September 30, 1981, Respondent, in the course and conduct of its operations, derived gross revenues in excess of $500,000. During the same 12-month period, Respondent purchased and received at its Butler, Pennsylvania, facility products, goods, and materials valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. Further, during the same 12-month period, Respondent provided services valued in excess of $50,000 for Trumbull Corporation, an enterprise within the Commonwealth of Pennsylvania, which is directly engaged in interstate commerce.

Since on or about March 24, 1982, Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor, Debtor in Possession, has been duly designated by the United States Bankruptcy Court for the Western District of Pennsylvania as the debtor in possession with full authority to continue operation and exercise all powers

necessary to the administration of the business of Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 34, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

On or about October 16, 1981, Respondent discharged Charles Matuke, its employee. Respondent engaged in the aforesaid conduct because Matuke joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Accordingly, we find that, by the aforesaid conduct, Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and that Respondent thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

We have found that Respondent has discriminated against Charles Matuke, its employee, by discharging him on or about October 16, 1981. Accordingly, we shall order that he be offered immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed. We also shall order that Respondent make Matuke whole for any loss of pay he may have suffered because of the discrimination against him, to be computed in the manner prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950), with interest as set forth in Florida Steel

Corporation, 231 NLRB 651 (1977).[2] We also shall order that Respondent expunge from its files any reference to the unlawful discharge of Matuke on or about October 16, 1981, and notify him in writing that this has been done and that evidence of Respondent's unlawful conduct will not be used as a basis for future personnel actions againt him.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor and/or Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor, Debtor in Possession, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 34, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the acts described in section III, above, Respondent has discriminated in regard to hire and tenure of employment of its employees, thereby discouraging membership in or activities on behalf of a labor organization, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

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[2] See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor and/or Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor, Debtor in Possession, Butler, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging its employees, or otherwise discriminating against them, because they joined, supported, or assisted International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 34, or any other labor organization, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer employee Charles Matuke immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any losses he may have suffered, by reason of the discrimination against him, as set forth in the section of this Decision entitled ''The Remedy.''

(b) Expunge from its files any references to the unlawful discharge of employee Charles Matuke on or about October 16, 1981, and notify him in writing that this has been done and that evidence of Respondent's unlawful conduct will not be used as a basis for future personnel actions against him.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Butler, Pennsylvania, facility copies of the attached notice marked ''Appendix.''[3] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places,

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[3] In the event that 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.''

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. September 17, 1982

John R. Van de Water, Chairman

John H. Fanning, Member

Robert P. Hunter, 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

WE WILL NOT discharge employees, or otherwise discriminate against them, because they join, support, or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 34, or any other labor organization, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer to Charles Matuke immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of pay he may have suffered by reason of our discrimination against him, with interest.

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WE WILL expunge from our files any reference to the unlawful discharge of Charles Matuke on or about October 16, 1981, and WE WILL notify him that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel actions against him.

RAYMOND E. VIRGILI d/b/a RAYMOND E. VIRGILI PAINTING CONTRACTOR AND/OR RAYMOND E. VIRGILI d/b/a RAYMOND E. VIRGILI PAINTING CONTRACTOR, DEBTOR IN POSSESSION

(Employer)

Dated ---------- By ----------

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, William S. Moorehead Federal Office Building, Room 1501, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 412--644--2969.