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Eagle Pipeline Contractors, Inc. and Larry E. Adams and Richard L. Peck Jr. Cases 18-CA-12799 and 18-CA-12804

July 26, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge and amended charge filed by Larry E. Adams on August 27, 1993, and October 7, 1993, in Case 18-CA-12799 and a charge and amended charge filed by Richard L. Peck, Jr. in Case 18-CA-12804 on August 31, 1993, and October 12, 1993, the General Counsel of the National Labor Relations Board issued a consolidated complaint on May 11, 1995, against Eagle Pipeline Contractors, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On June 26, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On June 28, 1995, 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 Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the 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 notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 6, 1995, notified the Respondent that unless an answer were received by June 16, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Grand Rapids, Minnesota, has been engaged in the maintenance and repair of pipelines. During the calendar year ending December 31, 1994, the Respondent performed services valued in excess of \$50,000 in States other than the State of Minnesota, purchased and received at its facilities within the State of Minnesota goods valued in excess of \$50,000 directly from points outside the State of Minnesota, and performed services valued in excess of \$50,000 within the State of Minnesota for Lakehead Pipeline Company. Lakehead Pipeline Company is a corporation engaged in the nonretail pipeline transportation of oil, and annually derives revenues in excess of \$50,000 for the interstate transportation of oil directly across state lines. 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 Building and Construction Laborers Local No. 1097, Laborers' International Union of North America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About August 25, 1993, the Respondent told employees that they had been laid off because they complained to the Union that the Respondent was refusing to pay them as required by its contract with the Union, that their layoffs were actually discharges, and that they were being discharged because they complained to the Union that the Respondent was refusing to pay them as required by its contract with the Union.

About August 24, 1993, the Respondent laid off its employees Larry E. Adams and Richard L. Peck Jr. About September 10, 1993, the Respondent laid off its employee Larry E. Adams and thereafter refused to reinstate, and thereby discharged, him. The Respondent engaged in this conduct because Peck and Adams formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By laying off, refusing to reinstate, or discharging the employees, the Respondent has also been discriminating in regard to the hire or tenure or terms or condi-

tions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by laying off, refusing to recall, or discharging employees we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful layoffs or discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Eagle Pipeline Contractors, Inc., Grand Rapids, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they had been laid off because they complained to the Building and Construction Laborers Local No. 1097, Laborers' International Union of North America, AFL-CIO that the Respondent was refusing to pay them as required by its contract with the Union, that their layoffs were actually discharges, and that they were being discharged because they complained to the Union that the Respondent was refusing to pay them as required by its contract with the Union.

(b) Laying off employees and/or thereafter refusing to reinstate them, and thereby discharging them because employees form, join, or assist the Union, or engage in concerted activities, or to discourage employees from engaging in these activities.

(c) 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) Offer Larry E. Adams and Richard L. Peck, Jr. immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful layoffs or discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on 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 facility in Grand Rapids, Minnesota, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 26, 1995

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ 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."

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT tell employees that their layoffs are actually discharges and that they are being laid off or discharged because they complained to the Building and Construction Laborers Local No. 1097, Laborers' International Union of North America, AFL-CIO that we were refusing to pay them as required by our contract with the Union.

WE WILL NOT lay off employees and/or thereafter refuse to reinstate them, and thereby discharge them because employees form, join, or assist the Union, or

engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Larry E. Adams and Richard L. Peck, Jr. immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL notify each of them in writing that we have removed from our files any reference to his unlawful layoff or discharge and that the discharge will not be used against him in any way.

EAGLE PIPELINE CONTRACTORS, INC.