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R&M Power, Inc. and International Brotherhood of Electrical Workers, Local Union No. 26, AFL-CIO. Cases 5-CA-23908, 5-CA-23947, and 5-CA-24589

April 25, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

Upon charges filed by the Union on September 17, and October 4, 1993, and on July 21, 1994, the General Counsel of the National Labor Relations Board issued complaints on October 28, 1993 (Case 5-CA-23908), November 18, 1993 (Case 5-CA-23947), and September 2, 1994 (Case 5-CA-24589), against R&M Power, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act.¹ On September 7, 1994, the General Counsel issued an order consolidating these cases. Although properly served copies of the charges and complaints, the Respondent failed to file any answers.

On March 31, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On the same day, 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, each 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 March 16, 1995, notified the Respondent that unless answers were received by March 23, 1995, a Motion for Summary Judgment would be filed.

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

¹ On March 30, 1995, the Regional Director granted the Charging Party's request that the charge in Case 5-CA-24589 be withdrawn insofar as it alleged a violation with respect to Charles Graham.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Maryland corporation with an office and place of business in Laurel, Maryland, has been engaged as an electrical contractor in the construction industry doing commercial installation and service. Annually, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 to customers located outside the State of Maryland. 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

About September 14, 1993, the Respondent threatened employees with discharge if they talked with the Union, had anything to do with the Union, or handed out union material to other employees; threatened employees that the Respondent would terminate them, close its business, and "open up down the street under a new name," if the employees voted the Union to represent them; and laid off its employee Thomas Davis, at a time earlier than he would have been normally laid off, because he assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Since about May 4, 1994, the Respondent has refused to consider for hire and/or hire applicants Tom Barber, Larry LaBonte, John Legan, David Rohr, and Mazen Shakra because they assisted the Union and engaged in concerted activities, and to discourage applicants and other employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and 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, 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 Thomas Davis and by refusing to consider for hire and/or refusing to hire Tom Barber, Larry LaBonte, John Legan, David Rohr, and Mazen Shakra, the Respondent has also been discriminating in regard to hire or tenure of terms or conditions of employment of its employees to discourage 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 Thomas Davis at a time earlier than he would have been normally laid off, we shall order it to offer him immediate and 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.² 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).

Furthermore, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to consider for hire and/or refusing to hire applicants Tom Barber, Larry LaBonte, John Legan, David Rohr, and Mazen Shakra, we shall order the Respondent to offer them immediate employment that they would have had, but for the unlawful discrimination against them, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, to be computed in the manner set forth above.

ORDER

The National Labor Relations Board orders that the Respondent, R&M Power, Inc., Laurel, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge if they talk with the Union or have anything to do with the Union or hand out union material to other employees.

(b) Threatening employees that it will terminate them, close its business, and "open up down the street under a new name," if the employees vote the Union to represent them.

(c) Laying off employees, at a time earlier than they would normally be laid off, because they assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

(d) Refusing to consider for hire and/or refusing to hire applicants for employment because they assist the Union or engage in concerted activities, or to discour-

²Because the complaint alleges only that Davis was laid off *earlier than he would normally have been laid off*, we shall leave to compliance when Davis would have been laid off, absent the discrimination against him.

age applicants or other employees from engaging in these activities.

(e) 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 Thomas Davis immediate and 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, in the manner set forth in the remedy section of this decision.

(b) Offer applicants Tom Barber, Larry LaBonte, John Legan, David Rohr, and Mazen Shakra immediate employment in the same positions that they would have had, but for its unlawful discrimination against them or, if those positions no longer exist, in substantially equivalent positions, 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 this decision.

(c) Remove from its file any reference to the unlawful layoff and the unlawful refusals to hire, and notify the employees in writing that this has been done and that the unlawful conduct will not be used against them in any way.

(d) 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.

(e) Post at its facility in Laurel, Maryland, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 5, 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.

³If 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."

(f) 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. April 25, 1995

James M. Stephens, Member

Margaret A. Browning, Member

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

WE WILL NOT threaten employees with discharge if they talk with the International Brotherhood of Electrical Workers, Local No. 26, AFL-CIO or have anything to do with the Union or hand out union material to other employees.

WE WILL NOT threaten employees that we will terminate them, close our business, and "open up down the street under a new name," if our employees vote the Union to represent them.

WE WILL NOT lay off our employees at a time earlier than they would normally be laid off because they assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT refuse to consider for hire and/or refuse to hire applicants for employment because they assist the Union, engage in concerted activities, or to discourage applicants or other 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 Thomas Davis immediate and 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, with interest.

WE WILL offer applicants Tom Barber, Larry LaBonte, John Legan, David Rohr, and Mazen Shakra immediate employment in the same positions that they would have had, but for our unlawful discrimination against them or, if those positions no longer exist, in substantially equivalent positions, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL remove from our files any reference to the unlawful layoff and the unlawful refusals to hire, and WE WILL notify the employees in writing that this has been done and that the unlawful conduct will not be used against them in any way.

R&M POWER, INC.