

Milligan Electric Company, Inc. and International Brotherhood of Electrical Workers Local Union No. 479. Case 16-CA-17049

September 13, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge filed by the Union on October 31, 1994, the General Counsel of the National Labor Relations Board issued a complaint on July 18, 1995, against Milligan Electric Company, 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 charge and complaint, the Respondent failed to file an answer.

On August 18, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On August 22, 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 August 2, 1995, notified the Respondent that unless an answer were received by August 12, 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

At all material times the Respondent, a Florida corporation, with its principal place of business located at 900 U.S. Highway 90 West, Crestview, Florida, has been engaged as an electrical contractor in the construction industry. During the past 12 months, the Respondent, in conducting its business operations, per-

formed services valued in excess of \$50,000 in States other than the State of Texas.¹ 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 22, 1994, Walter Woods personally appeared at the Respondent's West Orange, Texas facility and completed an employment application. About the same day and at all times thereafter, Respondent refused to hire Walter Woods. The Respondent engaged in this conduct because Woods formed, joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to hire or tenure or terms and conditions of employment of 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 (1) 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 failing to hire Woods, we shall order the Respondent to offer him immediate employment. We shall also order the Respondent to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, to 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).

ORDER

The National Labor Relations Board orders that the Respondent, Milligan Electric Company, Inc., Crestview, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire applicants because they form, join, or assist International Brotherhood of Electrical Workers Local Union No. 479, or any other labor or-

¹ At the material time, the Respondent also had a facility in West Orange, Texas, the site of the alleged violation.

MILLIGAN ELECTRIC CO.

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

(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) Offer Walter E. Woods immediate employment and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

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

(c) Post at its facility in Crestview, Florida, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 16, 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 Re-

²If 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."

spondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

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 refuse to hire applicants because they form, join, or assist International Brotherhood of Electrical Workers Local Union No. 479, or any other labor organization, 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 Walter E. Woods immediate employment and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

MILLIGAN ELECTRIC COMPANY, INC.