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**Valley Electric Service and International Brotherhood of Electrical Workers, Local Union #968, AFL-CIO, CLC and International Brotherhood of Electrical Workers, Local Union #972, AFL-CIO, CLC.** Cases 6-CA-27438, 6-CA-27451, 6-CA-27468, 6-CA-27579 (1-2), 6-CA-27580-1, 6-CA-27604, and 6-CA-27748

March 29, 1996

#### DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

Upon charges filed by International Brotherhood of Electrical Workers, Local Union #968, AFL-CIO, CLC (Local 968) on July 31, August 4 and 14, September 25, and October 2, 1995, and by International Brotherhood of Electrical Workers, Local Union #972, AFL-CIO, CLC (Local 972) on December 6, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on January 25, 1996, against Valley Electric Service, 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 March 4, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On March 6, 1996, 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 February 12, 1996, notified the Respondent that unless an answer were received by the third day following the Respondent's receipt of the letter or unless an extension of time

for filing had been granted, 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 has been owned by Brett Francisco, a sole proprietorship doing business as Valley Electric Service. At all material times, the Respondent, with an office and place of business in Parkersburg, West Virginia, and an office at a Big Bear store at the Gihon Plaza in South Parkersburg (the Respondent's jobsite), has been engaged as an electrical contractor in the construction industry doing commercial construction. During the 12-month period ending May 31, 1995, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 for enterprises located outside the State of West Virginia. 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 15, 1995, the Respondent required employees to remove union insignia from their clothing.

About August 21, 1995, the Respondent informed employees that it would not employ them because of their union activities.

The Respondent refused to hire William Armstrong, John Hannah, R. Keith Lehew, Richard Little, and Stephen Ward about June 29, 1995; refused to hire Alan Hall about July 7, 1995; and refused to hire Kenneth Probasco and Kenneth Van Meter about August 21, 1995. About August 21, 1995, the Respondent terminated the employment of Steven Crum and Vance Rothwill.

From about August 21 to about September 15, 1995, certain employees of the Respondent represented by Local 968 ceased work concertedly and engaged in a strike. This strike was caused by the refusals to hire and the terminations described above.

About September 15, 1995, James F. Guinn Jr., John Hannah, and Richard Little, employees who had engaged in the strike, made an unconditional offer to return to their former positions. Since about September 18, 1995, the Respondent has failed and refused to reinstate these employees to their former positions.

About September 14, 1995, the Respondent refused to hire Phillip Arnold.

The Respondent refused to hire, terminated, and refused to reinstate the employees named above because they assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

#### CONCLUSIONS OF LAW

1. By requiring employees to remove their union insignia from their clothing and informing employees that it would not employ them because of their union activities, 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.

2. By refusing to hire, terminating, and/or refusing to reinstate William Armstrong, R. Keith Lehew, Richard Little, Stephen Ward, Alan Hall, Kenneth Probasco, Kenneth Van Meter, Steven Crum, Vance Rothwill, James F. Guinn Jr., John Hannah, and Phillip Arnold, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions 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 (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 refusing to hire, terminating, and/or refusing to reinstate William Armstrong, R. Keith Lehew, Richard Little, Stephen Ward, Alan Hall, Kenneth Probasco, Kenneth Van Meter, Steven Crum, Vance Rothwill, James F. Guinn Jr., John Hannah, and Phillip Arnold, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs, or employment in the positions for which they would have been hired absent the unlawful discrimination against them, 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. 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 expunge from its files any and all references to the un-

lawful employment actions, and to notify the discriminatees in writing that this has been done.

#### ORDER

The National Labor Relations Board orders that the Respondent, Valley Electric Service, Parkersburg, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Requiring employees to remove their union insignia from their clothing.

(b) Informing employees that it would not employ them because of their union activities.

(c) Refusing to hire, terminating, and/or refusing to reinstate employees because they assisted the International Brotherhood of Electrical Workers, Local Union #968, AFL-CIO, CLC and International Brotherhood of Electrical Workers, Local Union #972, AFL-CIO, CLC, or engaged in concerted activities or to discourage employees from engaging in these activities.

(d) 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 William Armstrong, R. Keith Lehew, Richard Little, Stephen Ward, Alan Hall, Kenneth Probasco, Kenneth Van Meter, Steven Crum, Vance Rothwill, James F. Guinn Jr., John Hannah, and Phillip Arnold immediate and full reinstatement to their former jobs, or employment in the positions for which they would have been hired absent the unlawful discrimination against them, 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, with interest, for any loss of earnings and other benefits resulting from the discrimination against them, in the manner set forth in the remedy section of this Decision.

(b) Expunge from its files any and all references to the unlawful employment actions and notify the discriminatees in writing that this has been done.

(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 Parkersburg, West Virginia, and its jobsite in South Parkersburg, West Virginia, copies of the attached notice marked "Appendix."<sup>1</sup>

<sup>1</sup> 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

Copies of the notice, on forms provided by the Regional Director for Region 6, 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. March 29, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 require employees to remove their union insignia from their clothing.

WE WILL NOT inform employees that we would not employ them because of their union activities.

WE WILL NOT refuse to hire, terminate, and/or refuse to reinstate employees because they assisted the International Brotherhood of Electrical Workers, Local Union #968, AFL-CIO, CLC and International Brotherhood of Electrical Workers, Local Union #972, AFL-CIO, CLC, or engaged 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 William Armstrong, R. Keith Lehew, Richard Little, Stephen Ward, Alan Hall, Kenneth Probasco, Kenneth Van Meter, Steven Crum, Vance Rothwill, James F. Guinn Jr., John Hannah, and Phillip Arnold immediate and full reinstatement to their former jobs, or employment in the positions for which they would have been hired absent the unlawful discrimination against them, 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, with interest, for any loss of earnings and other benefits resulting from the discrimination against them.

WE WILL expunge from our files any and all references to the unlawful employment actions and notify the discriminatees in writing that this has been done.

VALLEY ELECTRIC SERVICE