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Ultra Janitorial Systems, Inc. and Laborers International Union of North America. Case 20-CA-26894

April 11, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon a charge filed by the Union on August 24, 1995, the General Counsel of the National Labor Relations Board issued a complaint on September 29, 1995, against Ultra Janitorial Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge 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 14, 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.¹

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 Oakland, California, has been en-

¹ Although no further reminder or warning of the consequences of failing to file an answer was sent or given to the Respondent, this does not warrant denial of the motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

gaged in providing maintenance and janitorial services to the United States Department of Defense at various locations in the State of California including the Presidio of San Francisco. During the calendar year ending December 31, 1994, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 for the United States Department of Defense within the State of California. During this period the operations of the United States Department of Defense satisfied a direct Board standard for the assertion of jurisdiction. 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 Laborers International Union of North America (the Union) and Laborers International Union of North America, Local 1276 (Local 1276) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time janitors employed by the Respondent at the Presidio in San Francisco, California; excluding all guards, managers and supervisors as defined by the Act.

On October 26, 1994, Local 1276 was certified as the exclusive collective-bargaining representative of the unit. At all times since that date, based on Section 9(b) of the Act, Local 1276 has been the exclusive collective-bargaining representative of the unit, and Local 1276 has designated the Union as its agent for the purposes of collective bargaining with the Respondent concerning the unit.

About October 24 and November 15, 1994, and May 25 and June 20, 1995, Local 1276, by letters from the Union's general president, has requested that the Respondent bargain collectively with Local 1276 as the exclusive collective-bargaining representative of the unit. Since about February 25, 1995, the Respondent has failed and refused to bargain with Local 1276 as the exclusive collective-bargaining representative of the unit.

CONCLUSIONS OF LAW

By failing and refusing to bargain with Local 1276 since February 25, 1995, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with Local 1276 and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Ultra Janitorial Systems, Inc., Oakland, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Laborers International Union of North America, Local 1276 as the exclusive bargaining representative of the employees in the bargaining unit.

(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) On request, bargain with Local 1276 as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time janitors employed by the Respondent at the Presidio in San Francisco, California; excluding all guards, managers and supervisors as defined by the Act.

(b) Post at its facility in Oakland, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 20 after being signed by the Respondent's

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."

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.

(c) 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 11, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, 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 refuse to bargain with Laborers International Union of North America, Local 1276 as the exclusive representative of the employees in the bargaining unit.

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, on request, bargain with Local 1276 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time janitors employed by us at the Presidio in San Francisco, California; excluding all guards, managers and supervisors as defined by the Act.

ULTRA JANITORIAL SYSTEMS, INC.