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Roman Electric, Inc. and Local 25, International Brotherhood of Electrical Workers, AFL-CIO.
Cases 29-CA-19620-2, 29-CA-19620-3, 29-CA-19620-4, 29-CA-19620-5, 29-CA-19661-1, and 29-CA-19661-2

May 31, 1996

BY MEMBERS BROWNING, COHEN, AND FOX

DECISION AND ORDER

Upon charges filed by the Union on November 20 and December 7, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (the complaint) on February 15, 1996, against Roman Electric, 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 April 30, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On May 2, 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 March 14, 1996, notified the Respondent that unless an answer were received by March 22, 1996, 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 a New York corporation with its principal office and place of business located at 48 March Street, Selden, New York, where it is engaged in the contracting and performance of commercial and residential wiring and related services. During the past calendar year, a representative period, the Respondent received gross revenues in excess of \$500,000 and purchased and received at its Selden, New York facility goods valued in excess of \$50,000 directly from enterprises located inside the State of New York, each of which, in turn, purchased the goods directly from firms located outside the State of New York. 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 November 8, 1995, the Respondent interrogated employee Humberto Acosta about his membership in, sympathies for, and activities on behalf of the Union.

About November 21, 1995, the Respondent threatened Acosta with physical harm and interrogated him regarding his membership in, sympathies for, and activities on behalf of the Union.

From about November 7 until 15, 1995, the Respondent imposed more onerous and arduous working conditions on Acosta by isolating him from other employees. During the same period and from about November 21 until November 27, 1995, the Respondent denied Acosta overtime. About November 15, 1995, the Respondent temporarily laid off Acosta. About November 27, 1995, the Respondent discharged Acosta, and, since that date, has failed and refused to reinstate or to offer to reinstate Acosta to his former position of employment. The Respondent engaged in these actions because Acosta assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By interrogating and threatening Acosta, 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 taking the other actions against Acosta as described above, 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)(1) and (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) of the Act by denying Humberto Acosta overtime, laying him off, discharging him, and failing and refusing to reinstate him, we shall order the Respondent 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. 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 unlawful layoff and discharge, and to notify Acosta in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Roman Electric, Inc., Selden, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with physical harm or interrogating employees about their membership in, sympathies for, or activities on behalf of Local 25, International Brotherhood of Electrical Workers, AFL-CIO.

(b) Imposing more onerous or arduous working conditions on employees by isolating them from other employees or by denying them overtime, or temporarily laying off, discharging, or failing or refusing to reinstate or to offer to reinstate employees, because they assist the Union or engage in protected 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) Within 14 days from the date of this Order, offer Humberto Acosta 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.

(b) Make Humberto Acosta 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.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful lay-off and discharge of Humberto Acosta and within 3 days thereafter notify him in writing that this has been done and that these actions will not be used against him in any way.

(d) Preserve and, within 14 days of a 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) Within 14 days after service by the Region, post at its facility in Selden, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 20, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

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."

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 31, 1996

Margaret A. Browning, Member

Charles I. Cohen, 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 threaten employees with physical harm or interrogate them about their membership in, sympathies for, or activities on behalf of Local 25, International Brotherhood of Electrical Workers, AFL-CIO.

WE WILL NOT impose more onerous or arduous working conditions on employees by isolating them from other employees or by denying them overtime, or temporarily lay off, discharge, or fail or refuse to reinstate or to offer to reinstate employees, because they assist the Union or engage in protected 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, within 14 days from the date of the Board's Order, offer Humberto Acosta 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.

WE WILL make Humberto Acosta whole for any loss of earnings and other benefits resulting from the denial of overtime to him, his layoff, discharge, and our failure to reinstate him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Humberto Acosta and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

ROMAN ELECTRIC, INC.