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General Power Corporation and International Brotherhood of Electrical Workers, Local Union 776, AFL-CIO, CLC. Cases 11-CA-16134 and 11-CA-16433

December 12, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon charges and amended charges filed by the Union on July 25, August 12, and September 6, 1994, and February 23 and April 6, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on April 27, 1995, against General Power Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act.¹ On October 25, 1996, the Respondent withdrew the answer it filed on May 19, 1995.

On November 8, 1996, the General Counsel filed a Motion for Summary Judgment and a Memorandum in Support with the Board. On November 13, 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. Here the Motion for Summary Judgment indicates that, although the Respondent initially filed an answer to the complaint, the answer has been withdrawn. Such a withdrawal has the same

¹ About September 19 and 20, 1994, the Union and the Respondent, respectively, executed and entered into a settlement agreement in Case 11-CA-16134, approved by the Regional Director on September 30, 1994. However, by letter dated December 7, 1994, the Regional Director set aside the settlement agreement because of the Respondent's noncompliance with the settlement agreement.

effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true.²

Accordingly, in the absence of good cause being shown otherwise, 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 South Carolina corporation, with an office located in Charleston, South Carolina, has been engaged in performing electrical service and construction work at jobsites located in Charleston, South Carolina, and Fort Bragg, North Carolina. During the 12-month period preceding issuance of the complaint, a representative period, the Respondent purchased and received at its Charleston, South Carolina facility goods and materials valued in excess of \$50,000 directly from points outside the State of South Carolina. During the same period, the Respondent also purchased and received at its Fort Bragg, North Carolina facility goods and materials valued in excess of \$50,000 directly from points located outside the State of North Carolina. 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

On May 18 and 25, June 2, and a date between May 18 and June 2, 1994, the Respondent threatened employees that the business would close if the employees engaged in union activities.

On May 18, 1994, the Respondent threatened its employees with discharge if they engaged in union activities.

On May 18 and 25 and June 2, 1994, the Respondent threatened its employees with a loss of jobs because of their union activities.

On January 4, 1995, the Respondent interrogated applicants for employment concerning their union activities.

On December 9, 1994, the Respondent refused to furnish employees with applications for employment because of their union activities.

On June 2, 1994, the Respondent granted a wage increase to Vernon Taylor, George Williams, and Sean Taylor. On June 17, 1994, the Respondent discharged and thereafter failed and refused to reinstate Vernon Taylor. On the dates set forth below, the Respondent

² See *Maislin Transport*, 274 NLRB 529 (1985).

failed and refused, and continues to fail and refuse, to consider for hire or to hire the following employees:

Allen Benton	August 23, 1994
David Smith	August 23, 1994
Thomas Flood	August 23, 1994
Kenneth Culpepper	August 23, 1994
Joel D. Yon Jr.	November 22, 1994
Samuel Grimsley	December 9, 1994
Stephen Fox	December 9, 1994
Eric Meyer	December 9, 1994
William Clark	January 11, 1995
Donald Carven	January 11, 1995
Dennis Easterling	January 11, 1995
Myron Gleaton	January 11, 1995
James Michie	January 11, 1995
Doug Michie Jr.	January 11, 1995
Roy Phillips	January 11, 1995
John Rouse Jr.	January 11, 1995

The Respondent engaged in the foregoing conduct because the named employees joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its 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. In addition, by granting a wage increase, discharging, and failing and refusing to reinstate its employees, failing and refusing to consider for hire or to hire employees, the Respondent has also been discriminating in regard to the hire or tenure or terms and conditions of employment of employees 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.³ Specifically, having found that the Respondent has violated Section 8(a)(3) by discharging and failing to reinstate

³Nothing in our Order shall require the Respondent to rescind the wage increase granted to employees on June 2, 1994.

Vernon Taylor, we shall order the Respondent to offer him 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. Furthermore, having found that the Respondent has also violated Section 8(a)(3) by refusing to consider for hire or to hire Allen Benton, David Smith, Thomas Flood, Kenneth Culpepper, Joel D. Yon Jr., Stephen Fox, Samuel Grimsley, Eric Meyer, William Clark, Donald Carven, Dennis Easterling, Myron Gleaton, James Michie, Doug Michie Jr., Roy Phillips, and John Rouse Jr., we shall order the Respondent to offer them employment to positions that they would have had, but for the unlawful discrimination against them, and to make them whole for any loss of earning 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 unlawful discharge of or refusals to consider for hire or to hire the discriminatees, and to notify them in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, General Power Corporation, Charleston, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that the business would close if the employees engaged in union activities.

(b) Threatening employees with discharge if they engage in union activities.

(c) Threatening employees with a loss of jobs because of their union activities.

(d) Interrogating applicants for employment concerning their union activities.

(e) Refusing to furnish employees with applications for employment because of their union activities.

(f) Granting wage increases, discharging employees, or failing or refusing to reinstate them, or failing or refusing to consider for hire or to hire employees, because the employees join, support, or assist the Union, or engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(g) 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 Vernon Taylor full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position.

(b) Within 14 days from the date of this Order, offer Allen Benton, David Smith, Thomas Flood, Kenneth Culpepper, Joel D. Yon Jr., Stephen Fox, Samuel Grimsley, Eric Meyer, William Clark, Donald Carven, Dennis Easterling, Myron Gleaton, James Michie, Doug Michie Jr., Roy Phillips, and John Rouse Jr., employment to positions that they would have had, but for the unlawful discrimination against them.

(c) Make whole Vernon Taylor, Allen Benton, David Smith, Thomas Flood, Kenneth Culpepper, Joel D. Yon Jr., Stephen Fox, Samuel Grimsley, Eric Meyer, William Clark, Donald Carven, Dennis Easterling, Myron Gleaton, James Michie, Doug Michie Jr., Roy Phillips, and John Rouse Jr., with interest, 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.

(d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharge and the unlawful refusals to consider for hire or to hire the foregoing individuals, and within 3 days thereafter, notify them that this has been done and that the unlawful conduct will not be used against them in any way.

(e) 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.

(f) Within 14 days after service by the Region, post at its facility in Charleston, South Carolina, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 11, 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

⁴If 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."

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 July 25, 1994.

(g) 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 attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 12, 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 threaten employees that the business would close if the employees engaged in activities on behalf of International Brotherhood of Electrical Workers, Local Union 776, AFL-CIO, CLC.

WE WILL NOT threaten employees with discharge if they engage in union activities.

WE WILL NOT threaten employees with a loss of jobs because of their union activities.

WE WILL NOT interrogate applicants for employment concerning their union activities.

WE WILL NOT refuse to furnish employees with applications for employment because of their union activities.

WE WILL NOT grant wage increases, discharge employees or fail or refuse to reinstate them, or fail or refuse to consider for hire or to hire employees, because the employees join, support, or assist the Union, or engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or in order to discourage employees from engaging in

such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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 Vernon Taylor full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position.

WE WILL, within 14 days from the date of the Board's Order, offer Allen Benton, David Smith, Thomas Flood, Kenneth Culpepper, Joel D. Yon Jr., Stephen Fox, Samuel Grimsley, Eric Meyer, William Clark, Donald Carven, Dennis Easterling, Myron Gleaton, James Michie, Doug Michie Jr., Roy Phillips, and John Rouse Jr., employment to positions that they would have had, but for the unlawful discrimination against them.

WE WILL make whole Vernon Taylor, Allen Benton, David Smith, Thomas Flood, Kenneth Culpepper, Joel D. Yon Jr., Stephen Fox, Samuel Grimsley, Eric Meyer, William Clark, Donald Carven, Dennis Easterling, Myron Gleaton, James Michie, Doug Michie Jr., Roy Phillips, and John Rouse Jr., with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of this Order, remove from our files any and all references to the unlawful discharge and the unlawful refusals to consider for hire or to hire the foregoing individuals and, within 3 days thereafter, notify them that this has been done and that our unlawful conduct will not be used against them in any way.

GENERAL POWER CORPORATION