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**Cornerstone Affiliates, Inc. d/b/a RMK Construction and Southern California Conference of Carpenters.** Case 21-CA-31019

May 12, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and an amended charge filed by the Union on November 20, 1995, and July 5, 1996, respectively, the General Counsel of the National Labor Relations Board issued a complaint on July 12, 1996, against Cornerstone Affiliates, Inc. d/b/a RMK Construction, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. On September 19, 1996, the Respondent filed an answer to the complaint.

Thereafter, on December 11, 1996, the Regional Director for Region 21 approved an informal settlement agreement executed by the parties. However, by letter dated January 21, 1997, the Regional Director withdrew approval of the settlement on the ground that the Respondent had failed to comply with its terms. Thereafter, on February 5, 1997, the Regional Director issued an amended complaint realleging the allegations contained in the original complaint.

Although properly served copies of the charge, amended charge, and amended complaint, the Respondent failed to file an answer to the amended complaint. Accordingly, on April 22, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On April 23, 1997, 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.

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 amended complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the amended complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 2, 1997, notified the Respondent that unless an answer were received by April 9, 1997, a Motion for Summary Judgment would be filed. Neverthe-

less, the Respondent failed to file an answer to the amended complaint.

Although the Respondent did file an answer to the July 12, 1996 complaint, that answer was subsequently withdrawn by the explicit terms of the settlement agreement,<sup>1</sup> and was not thereby revived by the Regional Director's letter withdrawing approval of the settlement agreement. Thus, the Respondent's answer to the original complaint does not remain extant, and does not preclude summary judgment.<sup>2</sup>

Accordingly, 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 California corporation, with its principal offices located at 120A South San Antonio Avenue, Ontario, California, has been engaged in the business of nonretail metal stud framing and drywall installation in the construction industry. During the 12-month period ending July 12, 1996, the Respondent, in conducting its operations described above, provided services valued in excess of \$50,000 directly to customers, including Cal Pac Construction, Inc., located within the State of California, each of which customers, in turn, within the same time period, purchased and received at its California locations goods valued in excess of \$50,000 directly from points outside the State of California.

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 5, 1995, the Respondent discharged employee Dave Brake. The discharge was rescinded the next day, November 6, 1995. However, about November 9, 1995, the Respondent laid off Brake for 1 day, and about November 14, 1995, again discharged Brake.

The Respondent engaged in the conduct described above because Brake joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

<sup>1</sup> NLRB Form 4775, the settlement form used here, expressly provides that approval of the agreement by the Regional Director "shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response."

<sup>2</sup> See *Signage Systems*, 312 NLRB 1115 (1993); *Orange Data, Inc.*, 274 NLRB 1018 (1985); and *Ofalco Properties*, 281 NLRB 84 (1986).

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire, or tenure, or terms, or 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) by laying off and discharging Dave Brake, we shall order the Respondent to offer Brake 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 remove from its files any and all references to the unlawful layoff and discharges, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Cornerstone Affiliates, Inc. d/b/a RMK Construction, Ontario, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off, discharging, or otherwise discriminating against employees because of their union or concerted 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) Within 14 days from the date of this Order, offer Dave Brake 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 Dave Brake 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.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful lay-off and discharges, and within 3 days thereafter notify Dave Brake in writing that this has been done and that the layoff and discharges 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 Ontario, California, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, 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.

(f) 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. May 12, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>3</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 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representative of their on choosing
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities

WE WILL NOT lay off, discharge, or otherwise discriminate against employees because they engage in union or concerted 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 Dave Brake 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 Dave Brake whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

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

CORNERSTONE AFFILIATES, INC. D/B/A  
RMK CONSTRUCTION