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Ennis Francis Houses Association and Hercukles Ginyard. Case 2-CA-26844

September 11, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Charging Party on September 20, 1993, the General Counsel of the National Labor Relations Board issued a complaint on March 19, 1997, against Ennis Francis Houses Association, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act.¹ Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 11, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On August 14, 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 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 April 9, 1997, notified the Respondent that unless an answer were received by April 25, 1997, 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

¹On December 3, 1993, the Regional Director deferred the charge under *Collyer Insulated Wire*, 192 NLRB 837 (1971), because the Regional Office had been notified by the Respondent that it was willing to arbitrate the dispute underlying the charge. Thereafter, the Regional Director found that the Respondent was unwilling to arbitrate the underlying dispute and, moreover, the most recent collective-bargaining agreement between the Union and the Respondent had expired. In view of the foregoing, the Regional Director issued the complaint.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a partnership with an office and place of business in New York, New York, has been engaged in the management and operation of a residential apartment complex at 2070 Seventh Avenue, New York, New York (the facility). Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$500,000 and purchases and receives at its New York, New York facility products, goods, and materials valued in excess of \$5000 which goods originate 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, Local 32B-32J, SEIU, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About September 13, 1993, the Respondent laid off its employee, Hercukles Ginyard, and since that date has failed and refused to reinstate, or offer to reinstate, Ginyard to his former position of employment. The Respondent took those actions because Ginyard joined the Union and engaged in the concerted activity of filing a grievance.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or conditions of employment of the 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 failing to reinstate Hercukles Ginyard, we shall order the Respondent to offer the discriminatee 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 failure to recall, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Ennis Francis Houses Association, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off and failing to reinstate employees because they supported or joined the Union or any other labor organization or engaged in 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 Hercukles Ginyard 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 Hercukles Ginyard whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, as 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 layoff of Hercukles Ginyard and, within 3 days thereafter, notify him in writing that this has been done and that the layoff 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 New York, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 2, 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

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."

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 September 20, 1993.

(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. September 11, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected 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 Hercukles Ginyard 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 Hercukles Ginyard whole for any loss of earnings and other benefits resulting from his layoff, 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 layoff of Hercukles Ginyard and WE

WILL, within 3 days thereafter, notify him in writing that this has been done and that the layoff will not be used against him in any way.

ENNIS FRANCIS HOUSES ASSOCIATION