

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

California County Patrol and Brian Caplan. Case 21-CA-32646

August 14, 1998

DECISION AND ORDER

By Members Fox, Liebman, and Brame

Upon a charge filed by Brian Caplan, an individual, on March 26, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on June 16, 1998, against California County Patrol, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On July 24, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On July 27, 1998, 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 letters dated July 1 and July 10, 1998, notified the Respondent and its Trustee, respectively, that unless an answer were received by July 17, 1998, 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 Acting General Counsel's Motion for Summary Judgment.¹

On the entire record, the makes the following

¹ Although the motion indicates that the Respondent filed a voluntary petition under Chapter 7 of the Bankruptcy Code on April 27, 1998, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to process an unfair labor practice case to its final disposition. See *Phoenix Co.*, 274 NLRB 995 (1985), and cases cited therein.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation, contracted with the State of California, Military Department, to provide security services for the Armed Forces Reserve Center in Los Alamitos, California. During the 12-month period ending March 31, 1998, a representative period, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 for other enterprises located within the State of California, each of which other enterprises, during the same period of time, sold and shipped from its California locations goods valued in excess of \$50,000 directly to 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 International Union, United Plant Guard Workers of America, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About October 1997, the Respondent granted Brian Caplan a leave of absence. Since about February 1998, the Respondent has refused to reinstate employee Caplan to his former position of employment or any other position for which he is qualified. The Respondent refused to do so because Caplan supported the Union and engaged in concerted activities, to discourage employees from engaging in these activities, and because Caplan was issued a subpoena to testify at an unfair labor practice hearing before the Board in Cases 21-CA-31936, et al.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating against employees in regard to the hire or tenure or terms and conditions of employment, thereby discouraging membership in a labor organization, has also been discriminating against employees for filing charges or giving testimony under the Act, and has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3), (4), and (1) 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)(1), (3), and (4) by refusing to reinstate Brian Caplan, 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, with interest. 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 refusal to reinstate, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, California County Patrol, Los Alamitos, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to reinstate employees or otherwise discriminating against employees because they engage in union or other protected concerted activities or because they file charges or give testimony under the Act.

(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 Brian Caplan 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 Brian Caplan 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, expunge from its files any and all references to the unlawful refusal to reinstate Brian Caplan, and, within 3 days thereafter, notify him in writing that this has been done and that the refusal to reinstate 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 Los Alamitos, California, copies of the attached notice marked "Appendix."² Copies of the no-

tice, 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 February 1, 1998.

(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. August 14, 1998

Sarah M. Fox, Member

Wilma B. Liebman, Member

J. Robert Brame III, 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 fail and refuse to reinstate employees or otherwise discriminate against employees because they engage in union or other protected concerted activities or because they file charges or give testimony under the Act.

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 Brian Caplan full reinstatement to his former

² 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."

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 Brian Caplan 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, expunge from our files any and all references to our unlawful refusal to reinstate Brian Caplan, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that WE WILL NOT use the refusal to reinstate against him in any way.

CALIFORNIA COUNTY PATROL