

Triple H Fire Protection, Inc. and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Sprinkler Fitters, Local #536, AFL-CIO and Michael W. Ford, and Craig Horseman. Cases 5-CA-26578, 5-CA-26710, 5-CA-26648, and 5-CA-26649.

August 27, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HURTGEN

Upon charges filed by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Sprinkler Fitters Local #536, AFL-CIO (the Union) on September 30, 1996, and December 5, 1996, and by employees Michael W. Ford and Craig Horseman on November 5, 1996, the General Counsel of the National Labor Relations Board issued a consolidated complaint on February 11, 1997, against Triple H Fire Protection, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. Thereafter, on March 20, 1997, the General Counsel issued an amended consolidated complaint alleging additional violations of Section 8(a)(3) and (1). Copies of the charges and both the original and amended consolidated complaints were properly served on the Respondent. The Respondent did not file an answer to the original or the amended complaint within the 14-day time period set forth in Section 102.20 of the Board's Rules and Regulations.¹

On August 11, 1997, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. The General Counsel requests that all the allegations of the amended consolidated complaint be deemed admitted to be true, that the Respondent be found to have violated Sections 8(a)(3) and (1) of the Act without taking evidence in support of the amended consolidated complaint, and that the Board issue a decision and appropriate remedial Order.

On August 12, 1997, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response.

¹ Sec. 102.20 of the Rules and Regulations states in full:

The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegations in the complaint not specifically denied or explained in the answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board unless good cause is shown.

Ruling on Motion for Summary Judgment

The amended consolidated complaint alleges that the Respondent violated Section 8(a)(1) by: (1) giving employees the impression of surveillance of employees' union activities; (2) implying that any attempts made by employees to seek union representation would be futile; (3) threatening employees that there would be no wage increases and no future benefits if they selected the Union as their collective-bargaining representative; (4) threatening to close the business if the employees selected the Union; (5) telling employees that the Respondent would not negotiate with the Union; (6) threatening employees by telling them that the Respondent would shut down its business before it would let a union in; and (7) coercing employees by telling them that the Respondent would prolong negotiations thereby creating the impression among employees that it would be futile to select the Union as their bargaining representative. The amended consolidated complaint also alleged that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Kim Warehime, Michael Ford, and Craig Horseman, and failed and refused to consider Rick Kraeuter and Dan Courtney for employment, because of their protected concerted activities and to discourage employees from engaging in union or other concerted activities.

On July 8, 1997, the General Counsel sent a letter to the Respondent advising that it had not filed an answer to the amended consolidated complaint and that unless it filed an answer by July 22, 1997, the General Counsel would file a Motion for Summary Judgment with the Board. Although the Respondent did not file an answer, it did reply to the General Counsel's July 8 letter by letter dated July 20, 1997, in which the Respondent's owner and vice president, Anthony Horseman, stated that he denied "any and all accusations in the letter you sent to me about our phone conversation on July 3, 1997."²

We find that the Respondent's letter does not constitute a proper answer under Section 102.20 because it fails to meet the substance of the complaint allegations and therefore is legally insufficient under the Board's rules.³ The letter does not address any of the facts alleged

² In her July 8 letter to the Respondent, counsel for the General Counsel also recounted the substance of a telephone conversation with the Respondent's owner, Tony Horseman, in which Horseman purportedly informed her that he had ceased operating the Respondent in May 1997 because he was not "backpaying anyone." In his handwritten reply, Horseman stated:

I Anthony J. Horseman deny any and all accusations in the letter you sent to me about our phone conversation on July 3, 1997. I closed Triple H Fire Protection because the company wasn't making a profit, and it was a big hassle. *Not* for the reasons you stated in your letter to me [sic]. [Emphasis in original.]

³ See *Breeden Painting Co.*, 314 NLRB 870 (1994); *Parisian Manicure Mfg. Co.*, 258 NLRB 203 (1981); *United Super*, 256 NLRB 1186 (1981); and *Lloyd's Laundry & Dry Cleaning*, 250 NLRB 1369 (1980). Cf. *M. J. McNally, Inc.*, 302 NLRB 120 (1991) (employer's pro se answer sufficient because it specifically denied the paragraph of the

in the amended consolidated complaint and, in particular, the Respondent's alleged discharges and other restraint and coercion in connection with the Union's organizing campaign. Rather, the letter, read broadly, discusses matters not alleged by the amended consolidated complaint, specifically, the reasons for the purported closure of the Respondent's business. Thus, this case differs from those in which the Board has found that a respondent's pro se letter, which did not respond to each and every allegation of the complaint, was nevertheless an adequate answer because it effectively denied the substance of the complaint.⁴ We therefore grant the General Counsel's Motion for Summary Judgment with respect to the complaint allegations set forth above.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Maryland corporation, with an office and place of business in Baltimore, Maryland, has been engaged in the installation and repair of fire protection systems where it annually purchased and received goods valued in excess of \$50,000 directly from points outside the State of Maryland. 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 September 20, 1996, the Respondent's owner and vice president, Anthony James Horseman, gave the impression that the employees' union activity was under

complaint that contained the operative facts of the unfair labor practices alleged.

In addition, the letter is deficient as an answer in that it was not served on the parties as required under Sec. 102.21 of the Rules and Regulations.

⁴ See, e.g., *Central States Xpress, Inc.*, 324 NLRB 442 (1997) (Board accepted as an answer to the complaint a pro se respondent's detailed postcharge statement of position which specifically addressed the allegations in the charge and which the respondent characterized as its answer to the complaint). Indeed, contrary to our dissenting colleague, it is questionable whether the leniency shown to pro se respondents should apply to the Respondent, which was represented by an attorney from March 20, 1997, when the amended consolidated complaint was issued, until June 19, 1997. We need not address that issue, however, because even interpreted as our dissenting colleague urges, the Respondent's statement does not constitute a proper answer under Sec. 102.20 since it does not specifically deny any of the complaint allegations. See, e.g., *Parisian Manicure Mfg. Co.*, 258 NLRB 203 (1981) (respondent's apparently pro se answer, "We deny the allegations stated in the notice you sent us. Please set the date for the hearing" not sufficient); *Pipeline Construction Workers Local 692 (Fulghum Construction Corp.)*, 248 NLRB 1315 (1980) (respondent union's apparently pro se statement "After investigating this matter, we do not find any basis for a charge as per Section 8(b), Subsections 1(A) and (2) of the National Labor Relations Act" legally inadequate); *American Gem Sprinkler Co.*, 316 NLRB 102 (1995) (respondent's apparently pro se answer stating it does not "agree with the Union's position" too vague).

surveillance and implied that any attempts to seek union representation would be futile. Further, during October 1996 Anthony Horseman and Thomas Horseman, also an owner and vice president of the Respondent, threatened employees that there would be no wage increases or future benefits if the employees selected the Union as their representative; threatened to close the business if the employees selected the Union; and told employees the Respondent would not negotiate with the Union. Also during 1996, Anthony Horseman told employees that he would shut down the Respondent before he would let a union in and coerced employees by telling them that he would prolong negotiations thereby creating the impression among employees that it would be futile to select the Union as their bargaining representative. We find that, by the conduct described above, the Respondent has interfered with, restrained, or coerced employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

Moreover, on September 25, 1996, the Respondent discharged employee Kim Warehime and refused to consider Rick Kraeuter and Dan Courtney for employment and, on November 5, 1996, the Respondent discharged employees Michael Ford and Craig Horseman. We find that the Respondent took these actions in retaliation for the employees' and applicants' union activity and to discourage others from engaging in union or other protected concerted activity, in violation of Section 8(a)(3) and (1) of the Act.

CONCLUSION OF LAW

By the conduct described above, the Respondent has violated Section 8(a)(3) and (1), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY⁵

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 discharged employees Kim Warehime, Michael Ford, and Craig Horseman, we shall order the Respondent to offer them full reinstatement to their former positions without prejudice to their rights and privileges or, if any such positions do not exist, to substantially equivalent positions, dismissing if necessary any employee hired to fill said positions and to make them whole for any loss of earnings and other benefits they may have suffered, computed on a quarterly basis, less any net interim earnings, as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB

⁵ Anthony Horseman has asserted to the General Counsel that the Respondent is no longer operating, but he has failed to provide documentation to substantiate this assertion. We shall leave to compliance the resolution of this issue and its effect on the Order.

1173 (1987). We shall also order the Respondent to consider Rick Kraeuter and Dan Courtney for hire in the position for which they applied and to provide backpay to those whom it would have hired but for its unlawful conduct. See *Ultrasystems Western Constructors*, 316 NLRB 1243 (1995). In addition, we shall also order the Respondent to remove from its records all references to the unlawful terminations of Kim Warehime, Michael Ford, and Craig Horseman and notify them in writing that this has been done.

The General Counsel further contends, as alleged in the amended consolidated complaint, that the unfair labor practices are so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair rerun election⁶ by the use of traditional remedies is slight, and that therefore a bargaining order is warranted under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Although we agree that the violations of Section 8(a)(3) and (1) here are serious in nature, the amended consolidated complaint does not allege sufficient facts to enable the Board to evaluate the appropriateness of the bargaining order under the circumstances of this case. For example, the amended consolidated complaint does not allege the size of the unit, the majority status of the Union, or the extent of dissemination, if any, of the violations among the employees not directly affected by them. Accordingly, consistent with prior Board decisions, we deny the General Counsel's Motion for Summary Judgment insofar as it alleges that a bargaining order is appropriate.⁷ We shall remand the case for a hearing before an administrative law judge on the issue of whether a bargaining order is an appropriate remedy under the circumstances of this case.⁸

ORDER

The National Labor Relations Board orders that the Respondent, Triple H Fire Protection, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

⁶ An election was conducted November 7, 1996, among a unit of the Respondent's sprinkler fitters. The complaint alleges that the election resulted in "an inconclusive outcome," and that, "The Tally of Ballots resulted in a count of 4 challenged ballots to employees [sic], all of whom were discharged prior to the election."

⁷ See, e.g., *Imperial Floral Distributors*, 319 NLRB 147 (1995); *FJN Mfg.*, 305 NLRB 656 (1991); *Bravo Mechanical*, 300 NLRB 1019 (1990); *Control & Electrical System Specialists*, 299 NLRB 642 (1990); *Protection Sprinkler Systems*, 295 NLRB 1072 (1989); *Binney's Casting Co.*, 285 NLRB 1095 (1987); and *Michigan Expediting Service*, 282 NLRB 219 (1986).

⁸ Nothing contained herein requires a hearing if, in the event of an amendment to the complaint, the Respondent fails to answer, thereby admitting evidence that would permit the Board to resolve the bargaining order issue. In such circumstances the General Counsel may renew the Motion for Summary Judgment with respect to the appropriate remedy. See *Imperial Floral Distributors*, supra at 147, fn. 5.

(a) Discharging or otherwise discriminating against its employees because of their membership in or activities on behalf of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Sprinkler Fitters Local #536, AFL-CIO, or any other union or because they engaged in other protected concerted activity.

(b) Refusing to consider any applicants for employment because of their membership in or support for a union.

(c) Creating among its employees the impression that their union activities are under surveillance.

(d) Implying that any attempts its employees make to seek union representation would be futile.

(e) Threatening to close or shut down the business if employees select the Union as their collective-bargaining representative.

(f) Threatening employees that there would be no wage increases or future benefits if they select the Union as their collective-bargaining representative.

(g) Telling employees that the Respondent would not bargain or would prolong negotiations, thus creating the impression that it would be futile to select the Union as their collective-bargaining representative.

(h) 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 Kim Warehime, Michael Ford, and Craig Horseman full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and any other rights and privileges previously enjoyed.

(b) Make Kim Warehime, Michael Ford, and Craig Horseman whole 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.

(c) Within 14 days from the date of this Order, offer employment to Rick Kraeuter and Dan Courtney if they would have been employed but for the Respondent's unlawful refusal to consider them for hire in the positions for which they applied or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if they had not been discriminated against by the Respondent.

(d) Make Rick Kraeuter and Dan Courtney whole for any losses they may have suffered by reason of the Respondent's refusal to consider them for hire in the manner described in the remedy section of this decision.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Kim Warehime, Michael Ford, and Craig Horseman, and

within 3 days thereafter notify the employees in writing that this has been done and that the discharges, suspensions and discipline will not be used against them in any way.

(f) 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 back-pay due under the terms of this Order.

(g) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix A."⁹ Copies of the notice, on forms provided by the Regional Director for Region 5, 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 September 20, 1995.

(h) 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.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for the purpose of holding a hearing before an administrative law judge or other appropriate action with respect to the remedies sought.

MEMBER HURTGEN, dissenting.

I would deny the General Counsel's Motion for Summary Judgment. As of the time of the answer (discussed below), the Respondent was not represented by counsel. Accordingly, I would not wish to be overly technical in determining whether an answer was sufficient, and I would resolve reasonable doubts in favor of the pro se Respondent.

In the instant case, the Respondent (on July 20) denied "any and all accusations" contained in a letter sent by the General Counsel on July 8. I recognize that the General Counsel's July 8 letter contained a reference to a cessation of company operations, a matter not alleged in the complaint. Thus, the Respondent's denial of July 20

could be read as simply denying any suggestion that the closing was unlawfully motivated. However, the General Counsel's July 8 letter also contained an extensive reference to the complaint in the instant case. Thus, the Respondent's denial could also be read as denying the allegations of that complaint.

As discussed above, I would not resolve ambiguities against a pro se respondent. This is particularly so where, as here, to do so will result in a finding of illegality without an opportunity to defend. Finally, the cases cited by the majority are inopposite. In only one of them does the Board say that the respondent was pro se. In that case (*American Gem Sprinkler Co.*, 316 NLRB 102 (1995)), the Board noted that respondent had counsel on other matters, and the Board did not pass on whether greater leniency should be shown to respondent.

Based on the above, I would deny the Motion for Summary Judgment.

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 discharge or otherwise discriminate against our employees because of their membership in or activities on behalf of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Sprinkler Fitters Local #536, AFL-CIO, or any other union or because they engaged in other protected concerted activity.

WE WILL NOT refuse to hire or consider for hire any applicants for employment because of their membership in or support for a union.

WE WILL NOT create the impression that our employees' union activities are under surveillance.

WE WILL NOT imply that any attempts our employees make to seek union representation would be futile.

WE WILL NOT threaten to close or shut down the business if employees select the Union as their collective-bargaining representative.

⁹ 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."

WE WILL NOT threaten employees that there would be no wage increases or future benefits if they select the Union as their collective-bargaining representative.

WE WILL NOT tell employees that we would not bargain or would prolong negotiations, thus creating the impression that it would be futile to select the Union as their collective-bargaining representative.

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 Kim Warehime, Michael Ford, and Craig Horseman full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and any other rights and privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, offer Rick Kraeuter and Dan Courtney employment in the jobs for which they applied, if they would have been employed but for our unlawful refusal to con-

sider them for hire or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if they had not been discriminated against by us.

WE WILL make Kim Warehime, Michael Ford, Craig Horseman, Rick Kraeuter, and Dan Courtney whole for any losses they may have suffered by reason of the our discrimination against them, 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 discharges of Kim Warehime, Michael Ford, and Craig Horseman, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that this unlawful conduct will not be used against them in any way.

TRIPLE H. FIRE PROTECTION, INC.