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Bolivar Glass & Window Company and Glaziers, Architectural Metal & Glass Workers Local Union #1786, affiliated with International Brotherhood of Painters & Allied Trades, AFL-CIO. Case 17-CA-20065

November 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by Glaziers, Architectural Metal & Glass Workers, Local Union #1786, affiliated with International Brotherhood of Painters & Allied Trades, AFL-CIO (the Union) on March 5, 1999, the General Counsel of the National Labor Relations Board issued a complaint on July 19, 1999, against Bolivar Glass & Window Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 25, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On October 26, 1999, 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 September 2 and September 28, 1999, notified the Respondent that unless an answer was received by September 14 and October 12, 1999, respectively, a Motion for Summary Judgment would be filed.¹

¹ The letters were sent by certified mail. The General Counsel's Motion for Summary Judgment indicates that on September 27 and October 20, 1999, respectively, the certified letters were returned to the Regional Office marked "unclaimed." The Respondent's failure or refusal to accept certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). In addition, the Region's September 28, 1999 letter was also sent by regular mail. The failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by

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 corporation, with an office and place of business in Bolivar, Missouri, has been engaged in the construction industry, in the business of commercial glass work. During the 12-month period ending March 1, 1999, the Respondent, in conducting its business operations, purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Missouri. During the 12-month period ending March 1, 1999, the Respondent in conducting its business operations, purchased and received at its facility goods valued in excess of \$50,000 from other enterprises located within the State of Missouri, each of which other enterprises had received these goods directly from points outside the State of Missouri. 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, Glaziers, Architectural Metal & Glass Workers International Union #1786, a/w International Brotherhood of Painters and Allied Trades, AFL-CIO (the Union) and the International Brotherhood of Painters and Allied Trades, District Council #3, are each labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

All of the Respondent's employees employed as journeymen and apprentices engaging in glazing, glass placement, beveling, silvering, cutting of glass, edging and auto glass replacement, equipment operators, shop men as all those terms and jurisdiction are more specifically described in Section 6, Sub-Section D of the Constitution of the International Brotherhood of Painters & Allied Trades, AFL-CIO, and which has been defined as coming within the jurisdiction of the trades mentioned herein by the Building and Construction Trades Department of the American Federation of Labor and CIO, and which may be from time to time so defined and awarded, but excluding all estimators, office, clerical, professional, guards, and supervisors as defined in the Labor Relations Act, as amended, and all other employees.

the Respondent. *J&W Drywall Co.*, 308 NLRB 517, 518 (1992); *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

About November 19, 1998, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union for the period from November 19, 1998 to September 22, 2000, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9(a) of the Act. About November 19, 1998, the Respondent granted recognition to District Council #3 as the exclusive collective-bargaining representative of the Unit, with respect to work performed by the Respondent within the jurisdiction of District Council #3, by entering into a Memorandum of Understanding with District Council #3 for the period from November 19, 1998 to September 30, 1999, without regard to whether the majority status of District Council #3 has ever been established under the provisions of Section 9(a) of the Act.

For the period of November 19, 1998 to September 22, 2000, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit. For the period of November 19, 1998 to September 30, 1999, based on Section 9(a) of the Act, District Council #3 has been the limited exclusive collective-bargaining representative of the unit for work performed by the Respondent within the jurisdiction of the District Council.

Since on or about December 1998, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit by refusing to adhere to and by repudiating the 1998–2000 collective-bargaining agreement with the Union. Since on or about December 1998, the Respondent has failed and refused to recognize and bargain with the District Council #3 as the exclusive collective-bargaining representative of the unit with respect to work performed by the Respondent within the jurisdiction of District Council #3, by refusing to adhere to and by repudiating the 1998–1999 Memorandum of Understanding with District Council #3.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the with the Union and District Council #3 as the limited exclusive collective-bargaining representatives of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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)

and (5) of the Act, we shall order the Respondent to honor and abide by the 1998–2000 agreement and the 1998–1999 agreement, with the Glaziers, Architectural Metal & Glass Workers International Union #1786, a/w International Brotherhood of Painters and Allied Trades, AFL–CIO, and the International Brotherhood of Painters and Allied Trades, District Council #3, as the limited exclusive bargaining representatives of the unit employees, to make whole its employees for any loss of wages and other benefits they may have suffered as a result of the Respondent’s failure to do so since about December 1998, and to reimburse them for any expenses ensuing from the Respondent’s failure to make the contractually-required contributions to the fringe benefit funds, in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).² In addition, the Respondent shall make all contractually required contributions to the fringe benefit funds it has failed to make since about December 1998, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Bolivar Glass & Window Company, Bolivar, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to abide by the terms of the 1998–2000 agreement with the Glaziers, Architectural Metal & Glass Workers International Union #1786, a/w International Brotherhood of Painters and Allied Trades, AFL–CIO and the 1998–1999 agreement with the International Brotherhood of Painters and Allied Trades, District Council #3.

(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) Honor and abide by the terms of the 1998–2000 and the 1998–1999 agreements described above with the Union and District Council #3, as the limited exclusive collective-bargaining representatives of the unit employees, and any automatic renewal or extension of them.

(b) Make whole the unit employees for any loss of wages and other benefits they may have suffered as a

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer’s delinquent contributions during the period of the delinquency, the Respondent will reimburse the employees, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

result of its unlawful refusal to abide by the 1998–2000 and 1998–1999 agreements since about December 1998, and reimburse them for any expenses ensuing from its failure to make the contractually required contributions to the fringe benefit funds, with interest, as set forth in the remedy section of this decision.

(c) Make all contractually-required contributions to the fringe benefit funds that it has failed to make since about December 1998, as set forth in the remedy section of this decision.

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

(e) Within 14 days after service by the Region, post at its facility in Bolivar, Missouri, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 17, 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 December 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.

³ 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.”

Dated, Washington, D.C. November 30, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, 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 abide by the terms of the 1998–2000 agreement with the Glaziers, Architectural Metal & Glass Workers International Union #1786, a/w International Brotherhood of Painters and Allied Trades, AFL–CIO and the 1998–1999 agreement with the International Brotherhood of Painters and Allied Trades District Council #3.

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 honor and abide by the terms of the 1998–2000 agreement with the Union and the 1998–1999 agreement with District Council #3, described above, as the limited exclusive collective-bargaining representatives of our unit employees, and any automatic renewal or extension of them.

WE WILL make whole our unit employees for any loss of wages and other benefits they may have suffered as a result of our unlawful refusal to abide by the collective-bargaining agreements since about December 1998, and reimburse them for any expenses ensuing from our failure to make the contractually-required contributions to the fringe benefit funds, with interest.

WE WILL make all contractually-required contributions to the fringe benefit funds that we have failed to make since about December 1998.

BOLIVAR GLASS & WINDOW COMPANY