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**Pro Painters, Inc. and Painters and Allied Trades  
District Council No. 51.** Case 5–CA–27491

December 16, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on December 18, 1997, the General Counsel of the National Labor Relations Board issued a complaint on October 30, 1998, against Pro Painters, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Subsequently, on November 11, 1998, the Respondent filed an answer admitting in part and denying in part the allegations in the complaint. On August 26, 1999, the General Counsel, the Respondent, and the Union entered into a settlement agreement disposing of all complaint allegations by providing that the Respondent withdraw its answer.<sup>1</sup>

On October 25, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On October 27, 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. Here, although the Respondent initially filed an answer, the Respondent subsequently agreed to withdraw its answer pursuant to the terms of the settlement agreement between the parties. Such a withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.<sup>2</sup>

Accordingly, based on the Respondent's withdrawal of its answer to the complaint pursuant to the settlement agreement, and 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

<sup>1</sup> By the terms of this settlement agreement, the Respondent agreed not to oppose this Motion for Summary Judgment.

<sup>2</sup> See *Maslin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Virginia Beach, Virginia, has been engaged in the business of residential painting and related operations. During the calendar year preceding the issuance of the complaint, the Respondent, in conducting its business operations, purchased and received goods and services valued in excess of \$50,000 which were furnished to the Respondent at its Virginia Beach, Virginia facility directly from points outside the State of Virginia. 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 or about December 9, 1997, the Respondent, by its president, Pete Siegrist, at its Virginia Beach, Virginia office, told a job applicant that he did not hire union employees.

Since on or about August 10, 1997, until on or about May 19, 1998, the Respondent refused to hire applicants Jan Barr and John St. John. The Respondent engaged in this conduct because the named employee-applicants formed, joined, and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. By refusing to hire the individuals named above, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) of the Act. The foregoing unfair labor practices affect commerce within the meaning of 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.<sup>3</sup>

<sup>3</sup> In the Motion for Summary Judgment, the General Counsel requests that the Board's remedy reflect the fact that discriminatees Jan Barr and John St. John have declined offers of reinstatement; that Barr has been made whole by the Respondent's payment to her of \$1600; and that the backpay owed to John St. John, if any, is by the terms of the settlement agreement contingent on the final disposition of a compliance-specification case, *Ferguson Electric, Inc.*, Case 3–CA–19630, currently pending before the Board. The settlement agreement states

## ORDER

The National Labor Relations Board orders that the Respondent, Pro Painters, Inc., Virginia Beach, Virginia, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Telling job applicants that it does not hire union employees.

(b) Refusing to hire job applicants because the applicants formed, joined, and/or assisted the Union and engaged in concerted activities.

(c) 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) Make John St. John whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay, if any, will be determined in accordance with the terms of the parties' August 26, 1999 settlement agreement.

(b) 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.

(c) Within 14 days after service by the Region, post at its facility in Virginia Beach, Virginia, copies of the attached notice marked "Appendix."<sup>4</sup> 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

that the parties "agree to be governed by the result in *Ferguson*. In the event, however, that the Respondent or the NLRB *reasonably believes* the *Ferguson* result is materially distinguishable, because based on facts unique to *Ferguson*, the party so contending reserves the right to a backpay proceeding in the instant case." (Emphasis in original.)

<sup>4</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."

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 9, 1997.

(d) 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. December 16, 1999

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Sarah M. Fox, Member

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Wilma B. Liebman, Member

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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 tell job applicants that we do not hire union employees.

WE WILL NOT refuse to hire job applicants because the applicants formed, joined, and/or assisted the Union and engaged in 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 have made offers of reinstatement to applicants Jan Barr and John St. John, which were declined; we have made Jan Barr whole for backpay owed to her by a payment of \$1600; and WE WILL make John St. John whole for backpay owed to him, if any, by a payment to be determined at a later date.

PRO PAINTERS, INC.