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Freeland Manufacturing Company and Local No. 157, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO. Case 7-CA-43192

March 30, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND WALSH

Upon a charge filed by the Union on July 10, 2000, a first amended charge filed on July 14, 2000, and a second amended charge filed on September 26, 2000, the General Counsel of the National Labor Relations Board issued a complaint on September 27, 2000, against Freeland Manufacturing Company, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. On November 2, 2000, the Respondent filed an answer to the complaint. On February 1, 2001, the Respondent withdrew its answer to the complaint.

On February 12, 2001, the Acting General Counsel filed a Motion for Default Judgment with the Board. On February 15, 2001, 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 Default 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.

By letter to the Region dated February 1, 2001, the Respondent withdrew its answer to the complaint stating that it had ceased operations on January 26, 2001, and laid off its remaining employees, that a creditor had a secured interest in all of its assets, and that it was "willing to take an unfavorable judgment—the results of which are moot." 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 true.¹

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in light of the withdrawal of the Respondent's answer to the complaint, we grant the Acting General Counsel's Motion for Default Judgment.²

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 Detroit, Michigan, has been engaged in the business of steel fabrication. During the calendar year ending December 31, 1999, the Respondent, in conducting its normal business operations, purchased and received at its Detroit facility goods valued in excess of \$50,000 from other enterprises located within the State of Michigan, each of which other enterprises had received these goods directly from points outside the State of Michigan. 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

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Charles Hall	Owner
Michael Nouné	Controller
Robert Calcaterra	General Manager
Donald Fulton	Foreman
Ocie Brown	Assistant Foreman
Carter Southard	Assistant Foreman

On or about February 11, 2000, the Respondent, by its agents Charlie Hall and Robert Calcaterra, suspended its employee Benny Jenkins.

On or about June 13, 2000, the Respondent, by its agents Charlie Hall and Robert Calcaterra, terminated its employee Benny Jenkins because it believed he had made reference to filing charges with the Board.

The Respondent engaged in the conduct described above because Benny Jenkins assisted the Union and engaged in activities on its behalf and to discourage other employees from engaging in these and other concerted activities.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or conditions of employment of its employees,

² Neither the fact that the Respondent has allegedly ceased operations, nor its alleged lack of assets or financial resources to pay a back-pay award constitutes a basis for denying the Motion for Default Judgment. See *Beaumont Glass Co.*, 316 NLRB 35 (1995).

thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

2. Further, by terminating its employee Benny Jenkins because it believed he had made reference to filing charges with the Board, the Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

3. The unfair labor practices of the Respondent, described above, 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. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by suspending Benny Jenkins and violated Section 8(a)(4), (3), and (1) by later terminating Benny Jenkins, we shall order the Respondent to offer him immediate reinstatement to his former job, or if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges previously enjoyed. Further, the Respondent shall make Benny Jenkins 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 suspension and termination of Benny Jenkins, and to notify him in writing that this has been done.

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Freeland Manufacturing Company, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending employees for assisting the Union or engaging in activities on behalf of the Union.

(b) Terminating or otherwise discriminating against employees for assisting the Union, or for making references to filing charges with the National Labor Relations Board.

(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) Within 14 days from the date of this Order, offer Benny Jenkins 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 Benny Jenkins 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, remove from its files any and all references to the unlawful suspension and termination of Benny Jenkins, and within 3 days thereafter notify him in writing that this has been done, and that the unlawful conduct 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, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"³ to the Union and to all current and former unit employees employed at any time since February 11, 2000.

(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. March 30, 2001

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
MAILED 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 suspend you for assisting the Union, or engaging in activities on behalf of the Union.

WE WILL NOT terminate or otherwise discriminate against you for assisting the Union, or for making refer-

ence to filing charges with the National Labor Relations Board.

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 Benny Jenkins 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 Benny Jenkins 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, remove from our files any and all references to the unlawful suspension and termination of Benny Jenkins, and WE WILL, within 3 days thereafter notify him in writing that this has been done, and that the unlawful conduct will not be used against him in any way.

FREELAND MANUFACTURING COMPANY