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Nickie J. Esztergalyos d/b/a Esztergalyos Enterprises, Inc. and Quality First and New England Regional Council of Carpenters, Local 24, United Brotherhood of Carpenters & Joiners of America. Case 34-CA-9718

May 13, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND BARTLETT

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge, filed by the Union on June 4, 2001, and amended charges, filed by the Union on September 20, October 23, and November 20, 2001, the General Counsel issued the complaint on November 28, 2001, against Nickie J. Esztergalyos d/b/a Esztergalyos Enterprises, Inc. and Quality First, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.¹

On February 11, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On February 13, 2002, 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

¹ The Regional Office for Region 34 served the Respondent with the first charge at a Connecticut worksite, where the Respondent was engaged, at that time, as a subcontractor doing carpentry work. The Region then made extensive efforts to serve the Respondent with the amended charges and the complaint both at the Respondent's last known addresses and at addresses provided by a search service. The envelopes containing those documents were returned as undeliverable until the Region served the Respondent, by certified mail, with the complaint and third amended charge at a motel in Kissimmee, Florida. A front desk clerk at the motel provided the Region with an affidavit verifying that she had signed the receipt and given the envelope to Nickie J. Esztergalyos. Further, the Region sent an envelope containing the complaint and third amended charge to the motel by first class mail, and that envelope was not returned. We find service sufficient. In any event, the Respondent's failure or refusal to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *National Automatic Sprinklers*, 307 NLRB 481, 482 fn. 1 (1992); accord: *Summit Mechanical Contractors*, 316 NLRB 699 fn. 2 (1995).

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 letter dated December 17, 2001, notified the Respondent that unless an answer was received by December 28, 2001, a Motion for Summary Judgment would be filed.²

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, with an office and place of business in Steamboat Springs, Colorado, has been engaged as a carpentry contractor in the building and construction industry. During the 12-month period ending October 31, 2001, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 in States other than the State of Colorado, and provided services valued in excess of \$50,000 to Wildflower Construction, Inc., an enterprise directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Nickie J. Esztergalyos has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about May 4, 2001, the Respondent, by Esztergalyos, interrogated employees about their union membership, sympathies, and activities at the Archstone Project in Stamford, Connecticut, where the Respondent was working as a carpentry subcontractor.

On about May 7, 2001, the Respondent discharged its employee Jeffrey Wolcheski because he had joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By interrogating employees about their union activities and by discharging an employee because of his union and other concerted activities and to discourage employees from engaging in these activities, the Respondent has engaged in unfair labor practices affecting commerce within

² Although the Regional Office sent the letter to the Respondent at its Colorado address and its address at the Florida motel, by both certified and regular mail, the envelopes were returned to the Region as undeliverable. Nevertheless, we find service sufficient. Service is accomplished when documents are deposited in the mail to a Respondent's last known address. See *National Automatic Sprinklers*, id. Further, as stated, the Respondent's failure to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. Id.

the meaning of Section 8(a)(1) and Section 8(a)(3) 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)(3) and (1) of the Act by discharging Jeffrey Wolcheski, we shall order the Respondent to offer Wolcheski 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. 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).³ The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify Wolcheski in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Nickie J. Esztergalyos d/b/a Esztergalyos Enterprises, Inc. and Quality First, Steamboat Springs, Colorado and/or Kissimmee, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership, sympathies and activities.

(b) Discharging employees because they join and assist the Union and engage in concerted activities, and to discourage employees from engaging in these 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) Within 14 days from the date of this Order, offer Jeffrey Wolcheski immediate and 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 and privileges previously enjoyed.

³ In the complaint, the General Counsel seeks an order requiring the Respondent "to reimburse any discriminatee entitled to a monetary award in this case for any extra federal and/or state income taxes that would or may result from the lump sum payment of the award." This aspect of the General Counsel's proposed Order would involve a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1985), *enfd.* 762 F.2d 990 (2d Cir. 1985). In light of this, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB 811 fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order here.

(b) Make Wolcheski 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 termination of Wolcheski, 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, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, 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, post at its facility in Steamboat Springs, Colorado copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 34, 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 May 4, 2001.

(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. May 13, 2002

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Chairman

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴ 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."

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 had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their membership, sympathies, and activities with New England Regional Council of Carpenters, Local 24, United Brotherhood of Carpenters & Joiners of America.

WE WILL NOT discharge employees either because they join and assist the Union and engage in concerted activities, or to discourage employees from engaging in these 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 WILL, within 14 days from the date of this Order, offer Jeffrey Wolcheski immediate and 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 and privileges previously enjoyed.

WE WILL make Jeffrey Wolcheski 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 this Order, remove from our files any and all references to the unlawful termination of Jeffrey Wolcheski, 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.

NICKIE J. ESZTERGALYOS D/B/A ESZTERGALYOS
ENTERPRISES, INC. AND QUALITY FIRST