

**Trade Force, Inc. and International Brotherhood of
Electrical Workers, Local Union 429, AFL–CIO.**
Case 26–CA–20048–1

January 29, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND ACOSTA

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union on December 20 and 29, 2000, and April 23 and 27, 2001, the General Counsel issued the complaint on May 30, 2001, against Trade Force, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On August 29, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On August 31, 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 Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides 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 states 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 August 1 and 3, 2001, with enclosed copies of the complaint, notified the Respondent that unless an answer was received by August 10, 2001, a Motion for Summary Judgment would be filed.

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 insofar as the complaint alleges that the Respondent has committed violations of Section 8(a)(1) and (3) of the Act. Several of those alleged violations are the unlawful refusals to hire and/or consider for hire three job applicants. Thus, the complaint alleges and, by its failure to file an answer, the Respondent has admitted, that since two different dates in August 2000, the Respondent "has failed to hire and/or consider for hire" three named applicants because they

"assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities." We find that the undisputed complaint allegations are sufficient to establish these violations warranting a cease-and-desist order under the standard set forth in *FES*, 331 NLRB 9 (2000).

Nevertheless, in accord with *Jet Electric Co.*, 334 NLRB 1059 (2001), we find that the complaint allegations are insufficient to enable us to determine the appropriate remedy for these violations. Under *FES*, in order to justify an affirmative backpay and reinstatement remedy, the General Counsel must show during the unfair labor practice proceeding that there were openings for the applicants. *Id.* at 14. "Proof of the availability of openings cannot be deferred to the compliance stage of the proceeding." *Id.* Here, the complaint fails to allege how many openings the Respondent had available. Accordingly, we shall hold in abeyance a final determination of the appropriate affirmative remedy for the Respondent's refusal-to-hire or consider-for-hire violations pending a remand of this case for a hearing before an administrative law judge on the limited issue of the number of openings that were available to the discriminatee applicants.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Georgia corporation, with its corporate offices in Lithonia, Georgia, and an office and place of business in Nashville, Tennessee (the Respondent's Nashville facility), has been engaged in the business of supplying electricians and helpers to electrical contractors in the building and construction industry. During the calendar year ending December 31, 2000, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in States other than the State of Georgia. 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 International Brotherhood

¹ Whether, or the extent to which, an affirmative remedy for the refusal-to-consider violations is warranted will depend on whether the evidence demonstrates that openings were available warranting the more comprehensive remedy of an reinstatement order for the refusal-to-hire violations. *Budget Heating & Cooling*, 332 NLRB No. 132 fn. 3 (2000) (not published in Board volumes).

Nothing contained in this decision requires a hearing if, in the event that the General Counsel amends the complaint, the Respondent fails to answer, thereby admitting evidence that would permit the Board to resolve the remedial reinstatement and backpay issue. In those circumstances, the General Counsel may renew the Motion for Summary Judgment with respect to this specific affirmative remedy. See *Jet Electric Co.*, supra at 1059 fn. 2.

of Electrical Workers, Local Union 429, AFL–CIO, 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 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:

Wayne Reynolds	General Manager
Misty Johnson	Comanager and Account Executive
David Martin	Comanager

On August 29, 2000, the Respondent, by General Manager Reynolds at the Respondent's Nashville facility, interrogated an employee about the employee's union membership and activities.

On August 31, 2000, the Respondent, by General Manager Reynolds at the Respondent's Nashville facility, told employee applicants that its employees were not allowed to wear union shirts or hats, and impliedly told employee applicants that they could not be employed by the Respondent if they wanted to wear union shirts or hats or otherwise advertise for the Union.

On August 31, 2000, the Respondent, by Comanager Misty Johnson, and on September 5, 2000, by Comanager David Martin, at the Respondent's Nashville facility, interrogated employees about the employees' union membership and activities.

Since about August 29, 2000, the Respondent has failed to hire and/or consider for hire Seyfettin Akar.

Since about August 31, 2000, the Respondent has failed to hire and/or consider for hire Michael B. Bearden and Ronnie N. Hastings.

The Respondent failed to hire and/or consider for hire Akar, Bearden, and Hastings because they 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 interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) of the Act. The Respondent's 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. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by failing to hire or to consider for hire Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings, we shall order the Respondent to remove from its files all references to the unlawful refusal to hire or consider for hire and to notify the discriminatees in writing that this has been done, and that the unlawful conduct will not be used against them in any way.²

ORDER

The National Labor Relations Board orders that the Respondent, Trade Force, Inc., Lithonia, Georgia, and Nashville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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

(b) Telling applicants for employment that its employees are not allowed to wear union shirts or hats.

(c) Impliedly telling applicants for employment that they could not be employed by the Respondent if they wanted to wear union shirts or hats or otherwise advertise for the Union.

(d) Failing to hire and/or consider for hire applicants because they assist the Union and engage in concerted activities, and to discourage employees from engaging in these activities.

(e) 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, remove from its files all references to the unlawful failure to hire and to consider for hire Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(b) Within 14 days after service by the Region, post at its facility in Nashville, Tennessee, copies of the attached notice marked "Appendix."³ Copies of the notice, on

² As stated above, we shall hold in abeyance the determination of any further appropriate affirmative remedy for the Respondent's refusal-to-hire or refusal-to-consider violations.

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 Judge"

forms provided by the Regional Director for Region 26, 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 August 29, 2000.

(c) 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 the issue of how many job openings were available at times relevant to the discriminatees' applications for work is remanded to the Regional Director for appropriate action consistent with this Decision and Order.

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 Federal labor law and has ordered us to post and obey this notice.

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 union membership and activities.

WE WILL NOT tell applicants for employment that our employees are not allowed to wear union shirts or hats.

WE WILL NOT impliedly tell applicants for employment that they could not be employed by us if they want to wear union shirts or hats or otherwise advertise for the Union.

WE WILL NOT fail to hire and/or consider for hire applicants because they assist the Union and engage in concerted activities, and 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, remove from our files all references to the unlawful failure to hire and to consider for hire Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

TRADE FORCE, INC.