

Rick Gellert d/b/a Henry's Refrigeration, Heating & Air and Sheet Metal Workers' International Association Local Union No. 265. Case 13-CA-39304-1

July 14, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge and an amended charge filed by Sheet Metal Workers' International Association Local Union No. 265 (the Union) on April 19, and June 8, 2001, the General Counsel issued the complaint on June 29, 2001, against the Respondent, Rick Gellert d/b/a Henry's Refrigeration, Heating & Air, alleging that it has violated Section 8(a)(1) of the Act, including by discharging employee Ben Boston because he discussed wages with other employees.

Thereafter, on October 1, 2001, the Respondent entered into a settlement agreement which was approved by the Acting Regional Director for Region 13 on October 3, 2001. The settlement agreement provided that the Respondent would post a notice to employees regarding the complaint allegations and make Ben Boston whole by paying him \$3000 in backpay plus matching FICA contributions, less withholding for Federal and State taxes as required by law, "as liquidated damages."¹

Under the terms of the settlement, the backpay would be paid in three \$1000 payments, due on November 11 and December 13, 2001, and January 3, 2002. The settlement agreement further provided as follows:

In consideration of the Board's granting the time-payment schedule set forth in paragraph 2 above, the Charged Party and its officers, agents, successors and assigns further agree that in the event of any non-compliance by failure to make required payments on the dates specified in paragraph 2 above or to cure any such failure within 14 days of the specified payment date, the balance of the total amount specified in paragraph 1 above plus interest on the principal amount shall become immediately due and payable as liquidated damages. Respondent, its officers, agents, successors and assigns agree that after 14 days notice from the Regional Director of the National Labor Relations Board of such non-payment and failure to cure, on mo-

¹ The settlement also provided that in return for payment by the Respondent of 100 percent of the backpay due, the Union waived the payment of any interest that may have accrued.

tion for summary judgment by the General Counsel, Respondent's Answer to the instant Complaint shall be considered withdrawn. Thereupon, the Board may issue an Order requiring the Respondent to show cause only with regard to the non-compliance with the settlement agreement why said Motion for the General Counsel should not be granted. The Board may, without necessity of trial, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations, adverse to Respondent on all issues raised by the pleadings. The Board may then issue an Order providing for the payment of \$3,600.00 in liquidated damages less payments already made as a full remedy as specified in the Complaint. The parties further agree that a Board Order and U.S. Court of Appeals Judgment may be entered hereon ex parte.

Since entering into the settlement agreement, the Respondent has failed to make any of the required payments. By letter dated November 8, 2001, the Region's compliance officer requested the Respondent to comply with the terms of the settlement agreement by remitting the payment to employee Boston that had been due on November 3, 2001. The letter further stated that if the payment was not received within 14 days of the date of the facsimile, it would be recommended that the Region immediately institute proceedings to obtain the full remedy of \$3600.

By letter dated December 13, 2001, the compliance officer again requested the Respondent to comply with the settlement agreement by remitting payment to Boston. The letter further stated that if the Respondent failed to cure its default within 14 days of the date of the letter, proceedings would be instituted under the terms of the settlement to collect the debt owed.

No payment having been received from the Respondent, on February 12, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On February 14, 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

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the settlement agreement by failing to remit any of the backpay payments. Consequently, pursuant to the provisions of the settlement agreement set

forth above, we find that the allegations of the complaint are true.²

Accordingly, 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 sole proprietorship, with an office and place of business in Addison, Illinois, has been engaged in the business of HVAC/R mechanical contracting. During the calendar year ending December 31, 2000, a representative period, the Respondent, in conducting the operations described above, has purchased and received at its facility goods, products, and materials valued in excess of \$50,000 from points directly outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find 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 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:

| | |
|---------------|----------------|
| Rick Gellert | Owner |
| Jeff Spriegel | Vice President |

About mid-April 2001, the Respondent, by Rick Gellert, at the Respondent's facility, threatened its employees with plant closure if they selected the Union as their bargaining representative.

On about May 9, 2001, the Respondent, by Rick Gellert, at the Respondent's facility, promised its employees better fringe benefits if the employees rejected the Union as their bargaining representative and threatened its employees with plant closure if they selected the Union as their bargaining representative.

On about March 12, 2001, the Respondent, by Rick Gellert, at the Respondent's facility, orally and in writing promulgated and since then has maintained the following rule:

Any employee caught discussing their hourly wage whether on prevailing or regular work is cause for immediate termination.

Also on about March 12, 2001, the Respondent, by Rick Gellert, at the Respondent's facility, (1) threatened employees with a lawsuit for engaging in protected concerted activity, including discussing wages; (2) posted a letter to employees threatening them with a lawsuit for engaging in protected concerted activity, including discussing wages; (3) threatened its employees with discharge for discussing wages; and (4) discharged its employee Ben Boston.

The Respondent discharged employee Boston because he violated the rule promulgated on March 12, 2001, prohibiting employees from discussing their wages, and also to discourage employees from engaging in concerted activities, including the discussion of wages.

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, in violation of Section 8(a)(1) 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)(1) by discharging Ben Boston, we shall order the Respondent to make him whole for any loss of earnings and other benefits suffered as a result of his discharge by paying him the liquidated damages amount set forth in the noncompliance clause of the settlement agreement, i.e., \$3600. The standard Board remedies for the violations found here would also require the Respondent to offer Boston reinstatement, remove his discharge from its files, pay him additional backpay covering the period subsequent to the effective date of the settlement agreement, post a notice to employees concerning the violations, and cease and desist from the unlawful conduct. We decline, however, to afford those additional remedies here, in light of the language of the settlement agreement. As set forth above, the settlement agreement provided that, in the event of noncompliance by the Respondent, the Board may issue an order "providing for the payment of \$3600.00 in liquidated damages less payments already made as a *full* remedy as specified in the Complaint." [Emphasis added.] Thus, we conclude that the Respondent is obligated only to pay the \$3600 in liquidated damages to Boston.

² *JAE Consulting & Development*, 326 NLRB No. 40 (1998) (not reported in Board volumes); *U-Bee, Ltd.*, 315 NLRB 667 (1994).

ORDER

The National Labor Relations Board orders that the Respondent, Rick Gellert d/b/a Henry's Refrigeration, Heating & Air, Addison, Illinois, its officers, agents, successors, and assigns, shall

Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Ben Boston whole for loss of earnings and other benefits suffered as a result of his unlawful dis-

charge by paying him \$3600, in accordance with the terms of the settlement agreement.

(b) 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.