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T-3 Group, Ltd. and International Union of Painters and Allied Trades, Local Union No. 781, AFL-CIO. Cases 30-CA-15871-1 and 30-CA-15900-1

July 18, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a default judgment¹ in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and amended charges filed by the International Union of Painters and Allied Trades, Local Union No. 781, AFL-CIO (the Union), the General Counsel issued a consolidated complaint on October 24, 2002, against T-3 Group, Ltd. (the Respondent), alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On December 10, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On December 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 Default 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.² Nevertheless, the Respondent failed to file an answer to the consolidated complaint.

¹ The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a Motion for Default Judgment.

² Although no further reminder or warning of the consequences of failing to file an answer was sent to the Respondent after service of the consolidated complaint, we find that this does not warrant denial of the General Counsel's motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Wisconsin corporation, with its office and place of business located in Milwaukee, Wisconsin, has been engaged in providing commercial and residential design and construction services.

During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its operations described above, purchased and received products and materials valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin.

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-named persons occupied 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:

Gary McHugh - President
John McHugh - Painting Division Manager
Robert Oliver - Painting Division Superintendent,
at all material times continuing
to on or about March 20, 2002.

About October 8, 2001, the Respondent, by Robert Oliver, at the Respondent's facility, interrogated an employee about union membership and activities.

On October 8, 2001, Steve Schreiner submitted an application and sought employment with the Respondent.

Since October 22, 2001, and continuing, the Respondent had a vacancy in a position for which Schreiner was qualified.

On November 27, 2001, the Respondent hired an employee to fill a vacancy in a position for which Schreiner was qualified.

At all material times since October 8, 2001, the Respondent has failed and refused to consider Schreiner for hire because of his membership in and activities in support of the Union and in order to discourage his member-

ship or activities in support of the Union or other labor organizations.³

About December 1, 2001, the Respondent modified its hiring practices in order to avoid hiring union-affiliated applicants by:

- (a) adding a written test to its standard application;
- (b) creating a 30-day active period for all employment applications; and
- (c) creating a formalized interview procedure.

About January 29, 2002, Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle submitted applications and sought employment with the Respondent.

At all material times since January 29, 2002, Respondent has failed and refused to consider for hire Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle because of their membership in and activities in support of the Union and in order to discourage employees from membership or activities in support of the Union or other labor organizations.

On March 21, 2002, the Respondent, by John McHugh, in a telephone call, threatened an employee with discharge.

On March 23, 2002, the Respondent, by John McHugh, at the Respondent's facility:

- (a) threatened employees with discharge;
- (b) interrogated employees about their union membership and activities; and
- (c) created the impression among employees that their union activities were under surveillance.

On March 23, 2002, the Respondent, by Gary McHugh, at the Respondent's facility:

- threatened employees with discharge, and
- interrogated employees about their union membership and activities.

About March 25, 2002, the Respondent rehired former employees Mike Nickel and Robert Miszewski in a discriminatory effort to dilute union support among employees.

About April 3, 2002, the Respondent modified its practices regarding mileage reimbursement and payment for travel time.

On April 11, 2002, the Respondent modified its personal day policy.

On March 23, 2002, the Respondent disciplined Paul Wilmering.

About April 1, 2002, the Respondent laid off Robert Kissel.

The Respondent disciplined Wilmering and laid off Kissel because these employees joined, supported, 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 interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by failing and refusing to consider applicants for employment because of their affiliation with the Union, modifying its hiring practices to avoid union-affiliated applicants, rehiring former employees in an effort to dilute union support, modifying terms and conditions of employment, disciplining Wilmering, and laying off Kissel, the Respondent has discriminated in regard to hire or tenure or terms or conditions of employment of employees or applicants for employment, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) of the Act. The unfair labor practices of the Respondent 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 unlawfully failed and refused to consider for hire Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle, we shall order the Respondent to place them in the position they would have been, absent discrimination, for consideration for future openings, consider them for openings in accord with nondiscriminatory criteria, and notify them, the Union, and the Regional Director in writing of future openings in positions for which they applied or substantially equivalent positions.⁴ The Respondent will be required

³ Although the allegations of the consolidated complaint allege that the Respondent had a vacancy for which discriminatee Schreiner was qualified and that the Respondent refused to consider Schreiner because of his union affiliation, the consolidated complaint does not allege a refusal-to-hire violation with respect to Schreiner.

⁴ See *FES*, 331 NLRB 9, 12-16 (2000), *supp. decision* 333 NLRB 66 (2001), *enfd.* 301 F.3d 83 (3d Cir. 2002), *supp. decision* 338 NLRB No. 77 (2002). *Mainline Contracting Corp.*, 334 NLRB 922 (2001).

to provide such notification until the Regional Director concludes that the case should be closed on compliance.⁵

If it is shown at a compliance stage of this proceeding that the Respondent, but for the failure to consider Steve Schreiner on October 22, 2001, and the failure to consider Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle on January 29, 2002, would have selected any of them for any job openings arising after the Motion for Summary Judgment was filed, or for any job openings arising before the Motion for Summary Judgment was filed that the General Counsel neither knew nor should have known had arisen, the Respondent shall hire them for any such position and make them whole for any loss of earning and other benefits suffered as a result of the discrimination against them.⁶ 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).

In addition, having found that the Respondent violated Section 8(a)(3) and (1) by changing its hiring policies, we shall order the Respondent to rescind the changes. Further, having found that the Respondent unlawfully changed its practices regarding mileage reimbursement, personal days, and payment for travel time we shall order the Respondent to rescind these changes and to make whole any employees who suffered a financial loss attributable to the changes, with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent has violated Section 8(a)(3) and (1) by laying off Robert Kissel, we shall order the Respondent to offer him 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.*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

The Respondent shall also be required to expunge from its files any and all references to the unlawful failure to consider for hire Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle, the layoff of Robert Kissel, and the discipline of Paul Wilmering, and to notify the employees in writing that this has been done and that the unlawful conduct will not be used against them in any way.

⁵ See *Walker Stainless, Inc.*, 334 NLRB 1260 (2001).

⁶ See *Mainline Contracting Corp.*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, T-3 Group, Ltd., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union activities, membership, or sympathies.

(b) Creating the impression among its employees that their union activities are under surveillance.

(c) Threatening employees with discharge in order to discourage union or other protected concerted activities.

(d) Failing and refusing to consider applicants for employment because of their union affiliation.

(e) Discriminatorily modifying its hiring practices in order to avoid union-affiliated applicants.

(f) Rehiring former employees in a discriminatory effort to dilute union support among employees.

(g) Modifying its practices regarding mileage reimbursement, payment for travel time, and personal days because of its employees' union or other protected concerted activities, or to discourage employees from engaging in these activities.

(h) Disciplining or otherwise discriminating against employees because of their union or other protected concerted activities, or to discourage employees from engaging in these activities.

(i) Laying off or otherwise discriminating against employees because of their union or other protected concerted activities, or to discourage employees from engaging in these activities.

(j) 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) Place Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle in the position they would have been in absent discrimination, for consideration for future openings, consider them for the openings in accord with nondiscriminatory criteria, and notify them, International Union of Painters and Allied Trades, Local Union No. 781, AFL-CIO, and the Regional Director for Region 30 of future openings in positions for which the discriminatees applied or substantially equivalent positions. If it is shown at a compliance stage of this proceeding that the Respondent, but for the failure to consider Steve Schreiner on October 22, 2001, and the failure to consider Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle on January 29, 2002, would have selected any of them for any job openings

arising after this Motion for Summary Judgment, or for any job openings arising before this Motion for Summary Judgment that the General Counsel neither knew nor should have known had arisen, the Respondent shall hire them for any such position and make them whole for any losses, with interest, in the manner set forth in the remedy section of this decision.

(b) Within 14 days from the date of this Order, notify Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle, in writing that any future job applications will be considered in a nondiscriminatory way.

(c) Within 14 days from the date of this Order, rescind the modifications made to its hiring practices on December 1, 2001; the modifications made to its practices regarding mileage reimbursement and payment for travel time on April 3, 2002; and the modification made to its practice regarding personal days on April 11, 2002.

(d) Make whole any employee who suffered a financial loss attributable to the Respondent's modifications of its practices regarding mileage reimbursement, payment for travel time, and personal days, in the manner set forth in the remedy section of this decision.

(e) Within 14 days from the date of this Order, offer Robert Kissel full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(f) Make whole Robert Kissel for any loss of earnings and other benefits suffered as a result of his unlawful layoff, with interest, in the manner set forth in the remedy section of this decision.

(g) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful failure to consider for hire Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle, the layoff of Robert Kissel, and the discipline of Paul Wilmering, 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.

(h) 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.

(i) Within 14 days after service by the Region, post at its facility in Milwaukee, Wisconsin, copies of the at-

tached notice marked "Appendix".⁷ Copies of the notice, on forms provided by the Regional Director for Region 30, 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 October 8, 2001.

(j) 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. July 18, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS
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.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

⁷ 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."

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 coercively interrogate employees concerning their union activities, membership, or sympathies.

WE WILL NOT create an impression that our employees' union activities are under surveillance.

WE WILL NOT threaten employees with discharge because of their union or other protected concerted activities, or to discourage such activities.

WE WILL NOT fail or refuse to consider for employment qualified applicants because of their union affiliation.

WE WILL NOT modify our hiring practices to avoid union-affiliated applicants.

WE WILL NOT rehire former employees in a discriminatory effort to dilute union support among employees.

WE WILL NOT modify terms and conditions of employment because of our employees' union or other protected concerted activities, or to discourage such activities.

WE WILL NOT discipline employees because of their union or other protected concerted activities, or to discourage such activities.

WE WILL NOT lay off employees because of their union or other protected concerted activities, or to discourage such 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 the Board's Order, consider for hire Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle in posi-

tions for which they applied, or if such positions no longer exist, to substantially equivalent positions.

WE WILL, within 14 days from the date of the Board's Order, notify Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle, in writing that any future job applications will be considered in a nondiscriminatory way.

WE WILL, within 14 days from the date of the Board's Order, rescind the modifications made to our hiring practices on December 1, 2001, the modifications made to our practices regarding mileage reimbursement and payment for travel time on April 3, 2002, and the modification made to our practices regarding personal days on April 11, 2002.

WE WILL make whole any employee who suffered a financial loss attributable to the modifications made to our practices regarding mileage reimbursement, payment for travel time, and personal days, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer Robert Kissel full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make whole Robert Kissel for any loss of earnings and other benefits suffered as a result of his unlawful layoff, with interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the failure to consider for hire Steve Schreiner, Ronald Ray, Warner Raml, Ken Hamilton, Daryl Gottfried, Steve Falkowski, Darrell Barker, and Patrick Angle, the layoff of Robert Kissel, and the discipline of Paul Wilmering, 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.

T-3 GROUP, LTD.