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Secoma Glass & Aluminum Co. and Glaziers, Architectural Metal and Glassworkers, Local 188, Affiliated with International Union of Painters and Allied Trades, District Council #5, AFL-CIO.
Case 19-CA-28244

July 21, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the amended complaint. Upon a charge and an amended charge filed by the Union on October 2, and October 29, 2002, the General Counsel issued an amended complaint on March 4, 2003, against Secoma Glass & Aluminum Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On April 14, 2003, the General Counsel filed a Motion for Summary Judgment with the Board.¹ On April 16, 2003, 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 amended complaint affirmatively notes 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 disclose that the Region, by letter dated March 24, 2003, notified the Respondent that unless an answer were received by March 31, 2003, a Motion for Default 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 Default Judgment.

On the entire record, the Board makes the following

¹ We grant the General Counsel's subsequent motion to restyle the caption of this motion as a Motion for Default Judgment.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Washington corporation, with an office and place of business in Federal Way, Washington, has been engaged in the business of glass installation and removal. During the 12-month period preceding issuance of the amended complaint, a representative period, the Respondent, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its facilities within the State of Washington, goods and materials valued in excess of \$50,000 directly from sources outside the State of Washington, or from suppliers within the State of Washington, which in turn obtained such goods and materials from sources outside the State of Washington.

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, Gerald W. Jackson held the position of Respondent's president, and has been a supervisor within the meaning of Section 2(11) of the Act and an agent acting on behalf of the Respondent within the meaning of Section 2(13) of the Act.

The employees of the Respondent, as described in the collective-bargaining agreement between the Respondent and the Union, effective by its terms from July 1, 1999 through June 30, 2004 (the contract), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is the contract, described above. At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the unit.

About August 26, 2002, the Union requested that the Respondent furnish the Union with a list of all employees who had worked for the Respondent since August 1, 2002 (employee information).² About October 14, 2002, the Union requested that the Respondent furnish the Un-

² The August 26, 2002 letter requesting this information stated: "A grievance has been filed against Secoma Glass. The issue of this grievance is the use of glaziers by Secoma who are not members of Glaziers Local #188. Please supply Glaziers and Glassworkers Local #188 with a complete list of employees who have worked for Secoma Glass from August 1st, 2002, for any length of time."

ion with information showing any and all payments the Respondent had made to the trust funds, as required by the contract, from January 1, 2001 through September 30, 2002 (payment information).³ About October 4, October 18, and October 28, 2002, the Union requested that the Respondent furnish the Union with information about the business status of the Respondent and alleged related companies, Phoenix Glass and THL Construction (business information).⁴

The employee information, payment information, and business information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about August 26, 2002, the Respondent has failed and refused to furnish the Union with the employee information; since about October 14, 2002, the Respondent has failed and refused to furnish the Union with the payment information; and since October 4, 2002, the Respondent has failed and refused to furnish the Union with all of the business information.

Since about April 2, 2002, the Respondent has repudiated the contract by, among other things, failing to make trust fund, Labor Management Cooperation Fund, Market Recovery, Rebound, and vacation pay payments, and by failing to transmit dues deducted from employee paychecks to the Union, as required by the contract.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain with the exclusive collective-bargaining representative of the employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) 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

³ The October 14, 2002 letter requesting this information stated: "Recently a grievance was filed against Secoma Glass & Aluminum for failure to pay benefits and vacation pay as per the Collective-Bargaining Agreement. Glaziers Local #188 requests information from Secoma Glass & Aluminum of any and all payments made to trusts from January 1, 2001 through September 30, 2002."

⁴ The October 4, 2002 letter requesting this information stated: "The operations of Seacoma [sic] Glass (Seacoma) and Phoenix Glass (Phoenix) and/or THL Construction (THL) have given me reason to question whether THL and/or Phoenix may be operating as an alter ego or disguised continuance of Seacoma or as an integrated enterprise with Seacoma. Thus, I am requesting you supply me with the following information ASAP as to Seacoma, Phoenix and THL." Attached to this letter was an 18-page document containing 79 questions about the three allegedly related businesses. The October 18 letter repeated this request for information. The October 28 letter made an added request for business information, in the form of several additional questions about the three allegedly related businesses.

desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to provide relevant and necessary information requested by the Union on August 26, and October 4, 14, 18, and 28, 2002, with respect to employee information, payment information, and business information, we shall order the Respondent to provide the Union with the requested information. In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to make trust fund, Labor Management Cooperation Fund, Market Recovery, and Rebound payments, as required by the contract, we shall order the Respondent to make all contractually-required payments or contributions to the funds that have not been made since April 2, 2002, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).⁵ The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the fund payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing to make vacation pay payments to the employees, as required by the contract, we shall order the Respondent to make unit employees whole by paying them the vacation pay that has not been paid since April 2, 2002. All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 302 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit dues deducted from employee paychecks to the Union, as required by the contract, we shall order the Respondent to remit all dues that have been withheld from the Union since April 2, 2002, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Secoma Glass & Aluminum Co., Federal Way, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

⁵ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(a) Refusing to bargain collectively with Glaziers, Architectural Metal and Glassworkers, Local 188, affiliated with International Union of Painters and Allied Trades, District Council #5, AFL-CIO, by refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit. The appropriate unit is the employees of the Respondent, as described in the collective-bargaining agreement between the Respondent and the Union, effective by its terms from July 1, 1999 through June 30, 2004.

(b) Repudiating the parties' 1999-2004 collective-bargaining agreement by, among other things, failing to make trust fund, Labor Management Cooperation Fund, Market Recovery, Rebound, and vacation pay payments, and by failing and refusing to transmit dues deducted from employee paychecks to the Union, as required by the contract.

(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) Honor and comply with the terms and conditions of the parties' 1999-2004 collective-bargaining agreement.

(b) Furnish the Union with the information it requested on August 26, 2002, regarding a list of all employees who had worked for the Respondent since August 1, 2002; on October 14, 2002, regarding all payments made by the Respondent to the trust funds from January 1, 2001 through September 30, 2002, as required by the parties' 1999-2004 collective-bargaining agreement; and on October 4, 18, and 28, 2002, regarding the business status of the Respondent and its alleged related companies, Phoenix Glass and THL Construction.

(c) Pay into the appropriate funds and accounts all trust fund, Labor Management Cooperation Fund, Market Recovery, and Rebound payments that it failed to make since April 2, 2002, under the terms of the parties' 1999-2004 collective-bargaining agreement, and reimburse the unit employees for any expenses resulting from its failure to make the required payments, with interest, in the manner set forth in the remedy section of this decision.

(d) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's repudiation of the contract, including paying them the vacation pay due them since April 2, 2002, under the parties' 1999-2004 collective-bargaining agreement, with interest, in the manner set forth in the remedy section of this decision.

(e) Remit to the Union all dues deducted from employee paychecks since April 2, 2002, as required by the

parties' 1999-2004 collective-bargaining agreement, with interest, in the manner set forth in the remedy section of this decision.

(f) 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.

(g) Within 14 days after service by the Region, post at its facility in Federal Way, Washington, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Acting Regional Director for Region 19, 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 April 2, 2002.

(h) Within 21 days after service by the Region, file with the Acting 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 21, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁶ 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 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

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 refuse to bargain collectively with Glaziers, Architectural Metal and Glassworkers, Local 188, affiliated with International Union of Painters and Allied Trades, District Council #5, AFL-CIO, by refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit. The appropriate unit is our employees, [of the Respondent] as described in the collective-bargaining agreement between us, [the Respondent] and the Union, effective by its terms from July 1, 1999 through June 30, 2004.

WE WILL NOT repudiate our 1999–2004 collective-bargaining agreement by, among other things, failing to make trust fund, Labor Management Cooperation Fund, Market Recovery, Rebound, and vacation pay payments, and by failing and refusing to transmit dues deducted

from employee paychecks to the Union, as required by the contract.

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 honor and comply with the terms and conditions of our 1999–2004 collective-bargaining agreement.

WE WILL furnish the Union with the information it requested on August 26, 2002, regarding a list of all employees who had worked for us since August 1, 2002; on October 14, 2002, regarding all payments made by us to the trust funds from January 1, 2001 through September 30, 2002, as required by our 1999–2004 collective-bargaining agreement; on October 4, 18, and 28, 2002, regarding the business status of our company and our alleged related companies, Phoenix Glass and THL Construction.

WE WILL pay into the appropriate funds and accounts all trust fund, Labor Management Cooperation Fund, Market Recovery, and Rebound payments that we failed to make since April 2, 2002, under the terms of our 1999–2004 collective-bargaining agreement, with interest.

WE WILL make whole our unit employees for any loss of earnings and other benefits they may have suffered as a result of our repudiation of the contract including paying them the vacation pay due them since April 2, 2002 under our 1999–2004 collective-bargaining agreement, with interest.

WE WILL remit to the Union all dues deducted from employee paychecks since April 2, 2002, as required by our 1999–2004 collective-bargaining agreement, with interest.

SECOMA GLASS & ALUMINUM CO.