

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**United Union of Security Guards (Knight Protective Services) and Devera L. Bailey.** Case 5–CB–9510

October 31, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS  
SCHAUMBER 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 complaint. Upon a charge filed by DeVera L. Bailey (the Charging Party) on May 12, 2003, the General Counsel issued the complaint on July 28, 2003, against United Union of Security Guards (the Union or Respondent), alleging that it has violated Section 8(b)(1)(A) of the Act. The Respondent failed to file an answer.

On September 12, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On September 22, 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 complaint affirmatively stated that unless an answer was filed by August 11, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 27, 2003, notified the Respondent that unless an answer was received by September 5, 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

FINDINGS OF FACT

I. JURISDICTION

At all material times, Knight Protective Services, a Maryland corporation, with an office and place of busi-

ness in Capitol Heights, Maryland, has been engaged in the business of providing security services for governmental agencies and businesses. During the 12-month period preceding the issuance of the complaint, Knight Protective Services, in conducting its business operations described above, performed services valued in excess of \$50,000 in states outside the State of Maryland. We find that Knight Protective Services is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About November 18, 2002, by letter, the Respondent advised its member, DeVera L. Bailey, that it was filing formal charges against her, which would include fining her, because she filed an unfair labor practice charge with the National Labor Relations Board and allegedly passed out union membership cards for another union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been restraining and coercing the Charging Party in the exercise of her rights under Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) 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, we shall order the Respondent to rescind any charges filed against Bailey because she filed an unfair labor practice charge with the Board, and to also rescind any fines imposed on her for this reason or because she passed out membership cards for another union.<sup>1</sup> In addition, we shall order the Respondent to refund the full amount of any such fines paid by Bailey, with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall further order the Respondent to remove from its files any reference to the charges against Bailey for filing an unfair labor practice charge and the fines imposed on her for this reason or for passing out membership cards for another union, and to notify her in writing that this has

<sup>1</sup> Although we shall require the Respondent to rescind any fines imposed on Bailey for supporting another union, we shall not require the Respondent to rescind any underlying charges filed against her for this reason. See *Molders Local 125 (Blackhawk Tanning Co.)*, 178 NLRB 208 (1969), enf'd. 442 F.2d 92 (7th Cir. 1971) (union may not lawfully fine, but may lawfully expel, a member for filing a decertification petition).

been done and that the foregoing charges and fines will not be used against her in any way.<sup>2</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, United Union of Security Guards, Baltimore, Maryland, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Advising members that it is filing formal charges against them, which will include fining them, because they filed unfair labor practice charges with the National Labor Relations Board and passed out union membership cards for another union.

(b) In any like or related manner 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, rescind any charges filed against DeVera L. Bailey because she filed an unfair labor practice charge and any fines imposed on Bailey for this reason or because she passed out membership cards for another union.

(b) Refund, with interest, any fines paid by Bailey that were imposed because she filed an unfair labor practice charge or passed out membership cards for another union.

(c) Within 14 days from the date of this Order, remove from its files any reference to the charges against Bailey for filing an unfair labor practice charge and the fines imposed on her for this reason or for passing out membership cards for another union, and within 3 days thereafter notify her in writing that this has been done and that the foregoing charges and fines will not be used against her 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 records, including an electronic copy of such records if stored in electronic

<sup>2</sup> Member Walsh concurs in the grant of affirmative relief based on the particular wording of the relevant complaint allegation. In cases involving unlawful threats of future union discipline, the Board typically limits the remedy to a cease-and-desist order. E.g., *Teamsters Local 896 (Anheuser-Busch)*, 339 NLRB No. 91 (2003) (respondent unlawfully threatened that members “could” be “open to internal charges”); *Chicago Truck Drivers (Unit Distribution)*, 305 NLRB 1028, 1029 (1991) (respondent unlawfully threatened that nonmembers “will be subject to charges, trial, and fines”). By contrast, in this case, according to the uncontested complaint allegation, the respondent advised the Charging Party that it “was filing formal charges against her, which would include fining her.” (Emphasis added.) In these circumstances, Member Walsh finds that the Respondent’s conduct went beyond threatening to take future action against the Charging Party and, accordingly, more comprehensive relief is appropriate.

form, necessary to analyze the amount of its liability under the terms of this Order.

(e) Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice marked “Appendix.”<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, 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 and members 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.

(f) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by Knight Protective Services, if willing, at all places where notices to employees are customarily posted.

(g) 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., October 31, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

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.

<sup>3</sup> 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.”

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT advise our members that we are filing formal charges against them, which would include fining them, because they filed unfair labor practice charges with the National Labor Relations Board and passed out union membership cards for another union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, rescind any charges filed against DeVera L. Bai-

ley because she filed an unfair labor practice charge and any fines imposed on Bailey for this reason or because she passed out membership cards for another union.

WE WILL refund, with interest, any fines paid by Bailey that were imposed because she filed an unfair labor practice charge or passed out membership cards for another union.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the charges against Bailey for filing an unfair labor practice charge and the fines imposed on her for this reason or for passing out membership cards for another union, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the foregoing charges and fines will not be used against her in any way.

UNITED UNION OF SECURITY GUARDS