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Siena-Meadco, LLC d/b/a United Memorial Gardens and United Steelworkers of America AFL-CIO, CLC. Case 7-CA-45738

September 9, 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. Based on a charge and amended charge filed by United Steelworkers of America, AFL-CIO, CLC, on December 17, 2002, and February 26, 2003, respectively, the General Counsel issued a complaint on February 27, 2003, against Siena-Meadco, LLC d/b/a United Memorial Gardens, 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 7, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On April 10, 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 March 13, 2003, all the allegations in the complaint would be considered true. Further, the undisputed allegations in the motion disclose that the Region, by letter dated March 14, 2003, notified the Respondent that unless an answer was received by March 27, 2003, a motion for default judgment would be filed. Nevertheless, the Respondent did not file an answer to the complaint.

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 corporation, with an office and place of business at 4800 Curtis Road in Plymouth, Michigan, has been engaged in the business of operating cemeteries. During the calendar year ending December 31, 2002, the Respondent, in conducting its business operations, had gross revenue in excess of \$500,000 and purchased and received products, goods, and materials valued in excess of \$5000 from points located outside the State of Michigan. 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 individuals held the positions set forth opposite their names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Rich Busch	Owner
Matt Kappers	Chief Operating Officer
Larry Grimm	Operations Manager
Gerald Grandsen	Superintendent

On August 20, 2002, a Board election was conducted among the employees in the following appropriate unit in Case 7-RC-22307, in which a majority of the unit employees cast votes designating the Union as their exclusive collective-bargaining representative:

All full-time and regular part-time crew coordinators, maintenance employees and grounds workers employed by the Respondent at its facility located at 4800 Curtis Road, Plymouth, Michigan; but excluding all office clerical employees, superintendents, managers, salespersons, confidential employees, professional employees, and guards and supervisors as defined in the Act.

On October 8, 2002, the Union was certified as the exclusive collective-bargaining representative of the unit.

Since about August 20, 2002, the Union, based on Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the Unit.

For the weeks including the holidays of November 28 and December 25, 2002, and January 1, 2003, contrary to its previous practice, the Respondent failed to include holiday hours in its calculation of employees' hours worked and to pay overtime accordingly.

This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

The Respondent engaged in the above conduct without having afforded the Union notice and a meaningful opportunity to negotiate and bargain about the unilateral change and its effects on the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of the unit, 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 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)(5) and (1) by unilaterally failing, contrary to its past practice, to include holiday hours in the calculation of employee hours worked, and to pay overtime accordingly, for the weeks including the holidays of November 28 and December 25, 2002, and January 1, 2003, we shall order the Respondent to rescind this unilateral change and make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, Siena-Meadco, LLC d/b/a United Memorial Gardens, Plymouth, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Steelworkers of America, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the unit set forth below, by unilaterally failing, contrary to its past practice, to include holiday hours in the calculation of employee hours worked, and to pay overtime accordingly. The appropriate unit is:

All full-time and regular part-time crew coordinators, maintenance employees and grounds workers employed by the Respondent at its facility located at 4800 Curtis Road, Plymouth, Michigan; but excluding all office clerical employees, superintendents, managers, salespersons, confidential employees, professional employees, and guards and supervisors as defined in the Act.

(b) 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) Rescind the unilateral change in its practice of including holiday hours in the calculation of employee hours worked and paying overtime accordingly.

(b) Make employees whole, with interest, for any loss of earnings or other benefits they suffered as a result of Respondent's failure to continue this practice for the weeks including the holidays of November 28 and December 25, 2002, and January 1, 2003, as set forth in the remedy section of this decision.

(c) 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.

(d) Within 14 days after service by the Region, post at its facility in Plymouth, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, 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 cus-

¹ The General Counsel requests that we also issue an affirmative bargaining order requiring the Respondent to bargain in good faith with the Union, on request. However, the complaint does not allege that the Respondent has generally failed or refused to recognize or bargain in good faith with the Union following its certification, and there is no indication that the Respondent's unilateral change affected the parties' negotiations. Accordingly, we find that a general affirmative bargaining order is inappropriate. For the same reason, we will not extend the certification year. See *Cortland Transit*, 324 NLRB 372 (1997).

² 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."

tomarily 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 November 28, 2002.

(e) 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. September 9, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) 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 fail and refuse to bargain with United Steelworkers of America, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the unit set forth below, by unilaterally failing, contrary to our past practice, to include holiday hours in the calculation of employee hours worked, and to pay overtime accordingly. The unit is:

All full-time and regular part-time crew coordinators, maintenance employees and grounds workers employed by us at our facility located at 4800 Curtis Road, Plymouth, Michigan; but excluding all office clerical employees, superintendents, managers, salespersons, confidential employees, professional employees, and guards and supervisors as defined in the Act.

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 rescind the unilateral change in our practice of including holiday hours in the calculation of employee hours worked and paying overtime accordingly.

WE WILL make the unit employees whole, with interest, for any loss of earnings and other benefits suffered as a result of our failure to continue this practice for the weeks including the holidays of November 28 and December 25, 2002, and January 1, 2003.

SIENA-MEADCO, LLC D/B/A UNITED MEMORIAL GARDENS