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**Numark Security, Inc. and International Guards
Union of America.** Case 9–CA–38455

December 22, 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 consolidated complaint and compliance specification. Upon a charge filed by the Union on May 2, 2001, the General Counsel issued the consolidated complaint and compliance specification on September 26, 2003, against Numark Security, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the Act and setting forth the amount of legal fees and expenses owed to employee Ernie Dunn. The Respondent failed to file an answer to the complaint or to the compliance specification.

On November 21, 2003, the General Counsel filed a Motion for Default Judgment with the Board and memorandum in support. On November 24, 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. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification shall be deemed admitted if an answer is not filed within 21 days from service of the compliance specification. In addition, the complaint and compliance specification stated that if the Respondent did not file an answer to the complaint within 14 days of service, and did not file an answer to the compliance specification within 21 days of service, all the allegations in the complaint and compliance specification would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 3, 2003, notified the Respondent that unless an answer to the complaint and

compliance specification was received by November 7, 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, the Respondent has been engaged in the business of providing guard services as a contractor at the U.S. Census Bureau facility in Jeffersonville, Indiana. During the 12-month period ending December 31, 2001, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 for the United States Government. 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 International Guards Union of America is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Oscar Johnson held the position of president of the Respondent and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about April 11, 2001, the Respondent filed a lawsuit against its employee Ernie Dunn in United States District Court for the Northern District of Indiana. This lawsuit alleged that Dunn had committed multiple violations of Indiana State law.

On November 25, 2002, the Board filed separate motions to intervene in the lawsuit and to dismiss the complaint against Dunn. On January 23, 2003, the District Court granted both of the Board's motions and dismissed the Respondent's lawsuit with prejudice.

On January 27, 2003, the Respondent filed a motion with the district court seeking relief from the court's January 22 order. On March 31, 2003, the court denied the Respondent's motion and reaffirmed the court's January 22, 2003 ruling dismissing the lawsuit.

The Respondent's lawsuit and motion referred to above lacked a reasonable basis in fact and law and were retaliatory in their inception and prosecution. The Respondent engaged in this conduct because employee Dunn formed, joined, and assisted the Union and engaged in concerted activities, and because he filed charges with the Board and gave affidavit testimony in support of those charges and to discourage other 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 their rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1), (3), and (4) 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), (3), and (4) by filing a lawsuit against employee Ernie Dunn on about April 11, 2001, and by filing a motion with the district court seeking relief from the court's January 22, 2003 order, we shall order the Respondent to pay Dunn \$7,385.05 as reimbursement for legal fees and other expenses he incurred in defending and challenging these legal proceedings, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), as set forth in the compliance specification.

ORDER

The National Labor Relations Board orders that the Respondent, Numark Security, Inc., Jeffersonville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Filing legal proceedings against an employee that lack a reasonable basis in fact and law and are instituted and prosecuted in order to retaliate against the employee for forming, joining, and assisting a union, engaging in concerted activities, or filing charges with the Board and giving testimony in support of those charges.

(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) Pay Ernie Dunn \$7,385.05, plus interest as set forth in the remedy section of this decision, as reimbursement for the legal fees and other expenses he incurred defending the Respondent's lawsuit filed in the U.S. District Court for the Northern District of Indiana on about April 11, 2001, and the Respondent's motion filed with the district court on January 27, 2003.

(b) Within 14 days after service by the Region, post at its facility in Jeffersonville, Indiana, copies of the at-

tached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 9, 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 11, 2001.

(c) 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. December 22, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, 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

¹ 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 file legal proceedings against an employee that lack a reasonable basis in fact and law and are instituted and prosecuted in order to retaliate against the employee for forming, joining, and assisting a union, engaging in concerted activities, or filing charges with

the Board and giving testimony in support of those charges.

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 pay Ernie Dunn \$7,385.05, plus interest, as reimbursement for the legal fees and other expenses he incurred defending our lawsuit filed in the U.S. District Court for the Northern District of Indiana on about April 11, 2001, and our motion filed with the district court on January 27, 2003.

NUMARK SECURITY, INC.