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Trade Force, Inc. and International Brotherhood of Electrical Workers, Local Union 429, AFL-CIO.
Case 26-CA-20048-1

September 26, 2003

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On January 29, 2003, the National Labor Relations Board issued a Decision and Order¹ granting the General Counsel's motion for default judgment and finding that the Respondent had violated Section 8(a)(3) and (1) of the Act by, inter alia, refusing to hire or to consider for hire applicants Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings between August 29 and 31, 2000. However, consistent with *Jet Electric Co.*, 334 NLRB 1059 (2001), supplemental decision 338 NLRB No. 77 (2002), the Board held in abeyance a final determination of the appropriate remedy pending a hearing or amended complaint and renewed motion for default judgment addressing the limited issue of the number of openings that were available to the discriminatee applicants under *FES*, 331 NLRB 9 (2000), supplemental decision 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002).

On February 3, 2003, the Regional Director for Region 26 issued an Amendment to Complaint alleging that the Respondent hired numerous employees as journeymen electricians beginning September 1, 2000, and that those positions constituted openings for journeymen electrician positions that Respondent had available for all three of the discriminatees. The Respondent failed to file an answer.

On March 14, 2003, the General Counsel filed a renewed motion for default judgment² with the Board. On March 18, 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.

¹ 338 NLRB No. 99 (2003). The decision was issued by Chairman Battista and Members Liebman and Acosta; Member Schaumber did not participate in the decision.

² The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the amendment to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a 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 amendment to the complaint affirmatively stated that unless an answer was filed by February 18, 2003, all the allegations therein would be considered true. Further, the undisputed allegations in the renewed motion disclose that the Region, by letter dated February 21, 2003, notified the Respondent that unless an answer was received by March 3, 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,³ we grant the General Counsel's renewed Motion for Default Judgment with respect to the allegations in the amendment to the complaint.

On the entire record, the Board makes the following

FINDINGS OF FACT

Consistent with the allegations in the amendment to the complaint, which have effectively been admitted by Respondent's failure to file an answer, we find as follows:

On August 29, 2000, Seyfettin Akar, a journeyman electrician, applied for work with Respondent as a journeyman electrician.

On August 31, 2000, Michael B. Beardon, a journeyman electrician, applied for work with Respondent as a journeyman electrician.

On August 31, 2000, Ronnie N. Hastings, a journeyman electrician, applied for work with Respondent as a journeyman electrician.

On September 1, 2000, the Respondent hired three employees as journeymen electricians.

On September 5, 2000, the Respondent hired two employees as journeymen electricians.

On September 7 and 8, 2000, the Respondent hired three employees as journeymen electricians.

From about September 15, 2000 to December 31, 2000, the Respondent hired about 43 journeymen electricians.

³ The copies of the amendment to the complaint sent by certified mail to the Respondent were returned marked "Moved. Left No address" or "Unclaimed." The Respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *I.C.E. Electric, Inc.*, 339 NLRB No. 36, slip op. at 1 fn. 2 (2003), and cases cited there. Further, the copy of the February 21 letter, which was sent by regular mail and attached another copy of the complaint, was not returned. The failure of the Postal Service to return documents sent by regular mail establishes actual receipt. See *id.*

The positions filled by the Respondent by the hiring of journeymen electricians on September 1, 5, 7, and 8, 2000 and from September 15 to December 31, 2000, constituted openings for positions as journeyman electricians that the Respondent had available for discriminatees Akar, Bearden, and Hastings.

REMEDY

Having found that the Respondent had at least three openings for journeyman electricians within a short period of time after the three discriminatees applied for such positions, we find that an instatement and make-whole remedy is appropriate. Accordingly, we reaffirm the Order in the Board's earlier decision as modified to require the Respondent to offer Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings instatement to journeyman-electrician positions for which they applied, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them. We shall further order the Respondent to make Akar, Bearden, and Hastings whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful discrimination against them. Backpay shall be computed in the manner prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Trade Force, Inc., Lithonia, Georgia and Nashville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Interrogating employees about their union membership and activities.
 - (b) Telling applicants for employment that its employees are not allowed to wear union shirts or hats.
 - (c) Impliedly telling applicants for employment that they could not be employed by Respondent if they wanted to wear union shirts or hats or otherwise advertise for the Union.
 - (d) Failing to hire and/or consider for hire applicants because they assist the Union and engage in concerted activities, and to discourage employees from engaging in these activities.
 - (e) 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) Within 14 days from the date of this Order, offer Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings instatement to the journeyman-electrician positions for which they applied, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

(b) Make Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, as set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files all references to the unlawful failure to hire and to consider for hire Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings, 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.

(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 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.

(e) Within 14 days after service by the Region, post at its facility in Nashville, Tennessee, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 26, 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 August 29, 2000.

⁴ 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."

(f) 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 26, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, 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 a 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 interrogate you about your union membership and activities.

WE WILL NOT tell applicants for employment that our employees are not allowed to wear union shirts or hats.

WE WILL NOT impliedly tell applicants for employment that they could not be employed by us if they wanted to wear union shirts or hats or otherwise advertise for the Union.

WE WILL NOT fail to hire and/or consider for hire applicants because they assist the Union and engage in concerted activities, and to discourage employees from engaging in these 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, offer Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings instatement to the journeyman-electrician positions for which they applied, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would enjoyed absent the discrimination against them.

WE WILL make Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files all references to the unlawful failure to hire and to consider for hire Seyfettin Akar, Michael B. Bearden, and Ronnie N. Hastings, 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.

TRADE FORCE, INC.