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**Tapiko Electrical Company, LLC and International Brotherhood of Electrical Workers, Local Union No. 575, AFL-CIO.** Cases 9-CA-40524 and 9-CA-40597

February 23, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER  
AND MEISBURG

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 charges filed on September 8 and October 5, 2003, and an amended charge filed on October 27, 2003, the General Counsel issued the consolidated complaint on October 31, 2003, against Tapiko Electrical Company, LLC, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On January 20, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On January 23, 2004, 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 consolidated complaint affirmatively stated that unless an answer was filed within 14 days from service thereof, all the allegations therein would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 16, 2003, notified the Respondent that unless an answer was received by December 22, 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,<sup>1</sup> we grant the General Counsel's Motion For Default Judgment.

<sup>1</sup> The consolidated complaint was sent by certified mail to the Respondent's last known business address, but was returned to the Regional Office as "undeliverable" due to "no such number/street."

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic limited liability company, with an office and place of business in Chillicothe, Ohio, has been engaged as an electrical contractor in the construction industry doing commercial construction.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, performed services valued in excess of \$50,000 for customers located within the State of Ohio, which customers, in turn, purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Ohio.

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 Brotherhood of Electrical Workers, Local Union No. 575, AFL-CIO, 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 respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Pat Bosstic	Owner/Manager
Lisa Bosstic	Owner/Manager

The Respondent, by Pat Bosstic or Lisa Bosstic:

(a) About July 23, 2003, at the Tim Horton jobsite, coercively interrogated an employee concerning his union activities and suggested to the employee that the employee quit his employment with the Respondent.

(b) About July 30, 2003, at the Tim Horton jobsite, told an employee that if he was trying to organize for the Union he should leave.

About August 27, 2003, the Respondent, by Lisa Bosstic, at the Walgreen jobsite, coercively interrogated an employee concerning the union activities of another employee and told the employee that the Respondent

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Thereafter, the consolidated complaint was re-sent by regular mail to the address listed for the Respondent's named statutory agent for service and the believed address of the Respondent's alleged owner/managers. It is well established that a 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 therein. Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt. *Id.*

wanted the other employee off the job because the employee was trying to organize the Respondent.

About August 24, 2003, the Respondent demoted its employee Jeramiah Young and reduced his hourly wage rate.

About August 29, 2003, the Respondent discharged its employee Jeramiah Young.

Since about September 4, 2003, the Respondent has refused to consider for hire and refused to hire applicant William Cole.

The Respondent has engaged in the conduct described above because the named employee and applicant joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by demoting employee Jeramiah Young, reducing his hourly wage rate, and discharging him, and by refusing to consider for hire and to hire applicant William Cole, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of employees and applicants, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) 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 violated Section 8(a)(3) and (1) by demoting Jeramiah Young, reducing his hourly wage rate, and discharging him, we shall order the Respondent to offer Young full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(3) and (1) by refusing to consider for hire and to hire William Cole, we shall order the Respondent

to offer him reinstatement to the position for which he applied or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he would have enjoyed absent the discrimination against him, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, the Respondent shall also be required to remove from its files any and all references to Young's unlawful demotion, hourly wage rate reduction, and discharge, and the refusal to hire Cole, and to notify Young and Cole in writing that this has been done and that the unlawful conduct will not be used against them in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, Tapiko Electrical Company, LLC, Chillicothe, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union activities and suggesting to them that they quit their employment with the Respondent.

(b) Telling employees that if they are trying to organize for a union they should leave.

(c) Coercively interrogating employees concerning the union activities of other employees and telling them that the Respondent wants those employees off the job because they are trying to organize the Respondent.

(d) Discharging, demoting, or reducing the hourly wage rate of employees, or otherwise discriminating against employees, because they support International Brotherhood of Electrical Workers, Local Union No. 575, AFL-CIO, or any other labor organization, and engage in protected concerted activities, or to discourage employees from engaging in such activities.

(e) Refusing to consider for hire and to hire applicants for employment because of their union activity.

(f) 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 Jeramiah Young full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Make Jeremiah Young whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this Decision.

(c) Within 14 days from the date of this Order, offer William Cole reinstatement to the position for which he applied or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he would have enjoyed absent the discrimination against him.

(d) Make William Cole whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(e) Within 14 days from the date of this Order, remove from its files any and all references to Jeremiah Young's unlawful demotion, hourly wage rate reduction, and discharge, and the unlawful failure to hire William Cole, and within 3 days thereafter, notify Young and Cole in writing that this has been done and that the unlawful conduct will not be used against them in any way.

(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 Chillicothe, Ohio, copies of the attached notice marked "Appendix."<sup>2</sup> 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 July 23, 2003.

<sup>2</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."

(h) 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. February 23, 2004

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Robert J. Battista, Chairman

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Peter C. Schaumber, Member

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Ronald Meisburg, 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 coercively interrogate you concerning your union activities and suggest to you that you quit your employment with us.

WE WILL NOT tell you that if you are trying to organize for a union you should leave.

WE WILL NOT coercively interrogate you concerning the union activities of other employees and tell you that we want those employees off the job because they are trying to organize us.

WE WILL NOT discharge, demote, or reduce the hourly wage rate of employees, or otherwise discriminate against employees, because they support International Brotherhood of Electrical Workers, Local Union No. 575, AFL-CIO, or any other labor organization, and engage in protected concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT refuse to consider for hire and to hire applicants for employment because of their union activity.

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 Jeramiah Young full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make Jeramiah Young whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer William Cole instatement to the position for which he applied or, if that position no longer exists, to a

substantially equivalent position, without prejudice to his seniority or any other rights or privileges he would have enjoyed absent the discrimination against him.

WE WILL make William Cole whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to Jeramiah Young's unlawful demotion, hourly wage rate reduction, and discharge, and the unlawful failure to hire William Cole, and WE WILL, within 3 days thereafter, notify Young and Cole in writing that this has been done and that the unlawful conduct will not be used against them in any way.

TAPIKO ELECTRICAL COMPANY, LLC