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Club Deportivo De Ponce, Inc. and Union De Trabajadores De La Industria Gastronomica De Puerto Rico, Local 610, HEREIU, AFL-CIO.
Case 24-CA-9840

September 20, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH
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 a charge and amended charge filed by the Union on April 6 and May 24, 2004, respectively, the General Counsel issued the complaint on June 25, 2004,¹ against Club Deportivo De Ponce, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On July 30, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On August 3, 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 complaint affirmatively stated that unless an answer was filed by July 9, 2004, 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 July 16, 2004, notified the Respondent that unless an answer was received by July 23, 2004, 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

¹ The General Counsel's motion inadvertently states that the complaint issued on May 25, 2004, rather than June 25, 2004.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Puerto Rico corporation, with an office and place of business in Ponce, Puerto Rico (the facility) has been engaged in the operation of a social club and the sale of food, drinks, and services to members and guests.

During the calendar year preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$50,000 from other enterprises, including Destileria Serralles and Progreso Cash and Carry, located within the Commonwealth of Puerto Rico, each of which other enterprises had received these goods directly from points outside the Commonwealth of Puerto Rico.

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 Union de Trabajadores de la Industria Gastronomica, Local 610, HEREIU, 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 Jose Cangiano held the position of the Respondent's President, 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.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All service and maintenance employees employed by the Respondent at its place of business in Ponce, Puerto Rico.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

Since at least about December 22, 1970, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 30, 2002, to June 30, 2005.

At all material times, and at least since December 22, 1970, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit.

About February 17, 2004, the Union, by letter, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about February 17, 2004, the Respondent has failed and refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, 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.² Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing since about February 17, 2004, to meet and bargain with the Union, we shall order the Respondent, on request, to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit, and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Club Deportivo De Ponce, Inc., Ponce, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively and in good faith with Union de Trabajadores de la Industria Gastronomica de Puerto Rico, Local 610, HEREIU, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

INCLUDED: All service and maintenance employees employed by the Respondent at its place of business in Ponce, Puerto Rico.

EXCLUDED: All other employees, 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) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Ponce, Puerto Rico, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be translated into Spanish and both Spanish and English notices 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 February 17, 2004.

(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. September 20, 2004

Robert J. Battista, Chairman

Dennis P. Walsh, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² At the General Counsel's request, we have provided for a Spanish language translation of the Board's notice.

³ 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."

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 meet and bargain collectively and in good faith with Union de Trabajadores de la Industria Gastronómica, Local 610, HEREIU, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

INCLUDED: All service and maintenance employees employed by us at our place of business in Ponce, Puerto Rico.

EXCLUDED: All other employees, 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, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and put in writing and sign any agreement reached.

CLUB DEPORTIVO DE PONCE