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Germantown Electric, Inc. and International Brotherhood of Electrical Workers, Local Union No. 34, AFL-CIO. Case 33-CA-14500

July 30, 2004

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 complaint. Upon a charge filed by the Union on January 13, 2004, the General Counsel issued the complaint on March 30, 2004, against Germantown Electric, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On May 3, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On May 10, 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 April 13, 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 April 14, 2004, notified the Respondent that unless an answer was received by April 21, 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

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in East Peoria, Illi-

nois, has been engaged in the business of electrical construction work for both residential and commercial customers.

During the 12 months prior to September 1, 2003, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received and caused to be transferred and delivered to its various projects at points within the State of Illinois supplies and materials valued in excess of \$2800, which were transported to said projects and locations directly from points outside the State of Illinois. 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 International Brotherhood of Electrical Workers, Local Union No. 34, 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, Dennis Miller 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 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing work covered by the collective bargaining agreement by and between the Central Illinois (Peoria) Chapter, National Electrical Contractors Association (NECA), and the Union, captioned and herein referred to as the Inside Construction Agreement and effective by its terms from August 8, 2003 through February 28, 2006; but excluding all office clerical employees, guards, professional employees and supervisors as defined in the Act.

About January 3, 1997, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union, specifically, by signing a letter of assent to be bound by the terms of successive collective-bargaining agreements between the Central Illinois (Peoria) Chapter, NECA and the Union, the most recent of which is the Inside Construction Agreement referred to above, without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act.

Since about January 3, 1997, pursuant to the agreement described above, the Union has been recognized as the limited exclusive collective-bargaining representative

of the unit by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act.¹ Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period August 8, 2003 through February 28, 2006.

At all times material herein, the Union has requested the Respondent to honor the terms of the existing Inside Construction Agreement to which the Respondent is bound and bargain in good faith with it as the limited exclusive representative of the unit.

About December 3, 2003, the Union, by letter, requested the Respondent to furnish the Union with information regarding the relationship of the Respondent and East Peoria Electric, Inc., including: the name and address of each officer and each director of each company, and their family relationship to each other, if any; the name and address of each supervisory employee employed by each company, including the dates of employment with each company; a list of property, equipment, tools, supplies, materials or other items used in the electrical contracting or service business which was transferred from Germantown Electric to East Peoria Electric, the amount of consideration received for each item, the date of its transfer, and the date of filing of any security interest in the transferred property; the name, location, and owner for any work commenced by or under contract to Germantown Electric which was performed by East Peoria Electric, or for which East Peoria Electric assumed responsibility for completion or performance; the name and address of each accountant, bookkeeper, lawyer, law firm, insurance agent, insurance company, bonding company or bonding agent who has performed services for each company within the last 2 years; the name, address and job description of each person who has been employed by each company at any time during the period from January 1, 2002, to the present; a description of the nature and type of work engaged in by each company including its intended customers; a list of customers for whom East Peoria Electric has performed work since its inception and for whom Germantown Electric also performed work at any time; a list of all persons, firms, or corporations to whom East Peoria Electric has bid for work since its inception who

were also persons, firms or corporations for whom Germantown Electric also bid work at any time during its existence; the names of each person who is obligated or liable for any debt of Germantown Electric or East Peoria Electric; the address, location and owner of each job on which both Germantown Electric and East Peoria Electric performed work; the address or location from which each company performed any of its work, including offices, storage yards, other storage facilities, and equipment yards; a list of any municipality in which Germantown Electric or East Peoria Electric is or has been registered as an electrical contractor; a list of each job performed by East Peoria Electric since its inception which has required it to be a licensed electrical contractor, including the name and address of the license holder used by East Peoria Electric to comply with the licensing requirement for each job.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its function as the limited exclusive collective-bargaining representative of the unit for purposes of administering the 8(f) agreement to which the Respondent is bound.

Since about December 3, 2003, the Respondent has failed and refused to bargain in good faith with the Union as the limited exclusive collective-bargaining representative of its employees in the unit by failing and refusing to furnish the Union the requested information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the limited exclusive bargaining representative of its employees and has thereby engaged in, and is engaging 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 failed and refused to furnish the Union information that is relevant and necessary to its role as the limited exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on December 3, 2003.²

¹ The complaint alleges that the Respondent is a construction industry employer and that it granted recognition to the Union without regard to whether the Union had established majority status. Accordingly, we find that the relationship was entered into pursuant to Sec. 8(f) and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See, e.g., *A.S.B. Closure, Ltd.*, 313 NLRB 1012 (1994).

² The General Counsel's Motion requests that the notice be mailed to all employees of the Respondent who were employed as of September 1, 2003. However, the General Counsel did not indicate why this special mailing remedy is necessary. Therefore, we shall order the standard notice posting remedy.

ORDER

The National Labor Relations Board orders that the Respondent, Germantown Electric, Inc., East Peoria, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish International Brotherhood of Electrical Workers, Local Union No. 34, AFL-CIO, with information necessary for and relevant to the performance of its duties as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees performing work covered by the collective bargaining agreement by and between the Central Illinois (Peoria) Chapter, National Electrical Contractors Association (NECA), and the Union, captioned and herein referred to as the Inside Construction Agreement and effective by its terms from August 8, 2003 through February 28, 2006; but excluding all office clerical employees, guards, professional employees and supervisors as defined in the Act.

(a) 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) Furnish the Union with the information it requested by letter dated December 3, 2003.

(b) Within 14 days after service by the Region, post at its facility in East Peoria, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 33, 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 December 3, 2003.

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."

(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. July 30, 2004

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 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 fail and refuse to furnish International Brotherhood of Electrical Workers, Local Union No. 34, AFL-CIO, with information necessary for and relevant to the performance of its duties as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees performing work covered by the collective bargaining agreement by and between the Central Illinois (Peoria) Chapter, National Electrical Contractors Association (NECA), and the Union, captioned and herein referred to as the Inside Construction Agreement and effective by its terms from August 8, 2003 through February 28, 2006; but excluding all office clerical employees, guards, professional employees 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 furnish the Union with the information it requested by letter dated December 3, 2003.
GERMANTOWN ELECTRIC, INC.