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Energy Services International, Inc. and Arkansas Wiring Systems Inc., alter egos and International Brotherhood of Electrical Workers, Local 700. Case 26–CA–21570

September 30, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge and first amended charge filed by the Union on February 17 and May 27, 2004, respectively, the General Counsel issued the complaint on May 28, 2004, against Energy Services International, Inc. (ESI) and its alter ego Arkansas Wiring Systems, Inc. (AWS), collectively referred to as the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer to the complaint. On July 16, 2004, however, the Respondent withdrew its answer.

On August 2, 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 June 11, 2004, all the allegations in the complaint would be considered admitted. On June 8, 2004, the Respondent filed an answer to the complaint. Thereafter, on July 16, 2004, the Respondent filed a motion to withdraw its answer pursuant to a conversation and agreement with the General Counsel. On the same date, the Regional Director issued an Order approving the withdrawal of the Respondent's answer. The withdrawal of an answer has the same effect as a

failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹

Accordingly, 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 until about September 2003, Respondent ESI, a Missouri corporation with an office and place of business located in Fayetteville, Arkansas, was an electrical contractor in the building and construction industry performing commercial and industrial work.

At all material times since about October 3, 2003, Respondent AWS, an Arkansas corporation with an office and place of business in Fayetteville, Arkansas, has been an electrical contractor in the building and construction industry performing commercial and industrial work.

About September or October 2003, Respondent AWS was established by Respondent ESI as a subordinate instrument to and a disguised continuation of Respondent ESI.

At all material times Respondent ESI and Respondent AWS have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have had identical business purposes; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises.

Based on the conduct described above, Respondent ESI and Respondent AWS, are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

During the 12-month period ending February 29, 2004, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 in states other than the State of Arkansas and purchased and received at the Respondent's Arkansas facilities and job-sites goods valued in excess of \$50,000 directly from points located outside the State of Arkansas. 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 700, is a labor organization within the meaning of Section 2(5) of the Act.

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

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:

Glenn Evans - Current President and Secretary-Treasurer, Respondent AWS; President and Secretary-Treasurer, Respondent ESI

Brian Geels - Former President and General Manager, Respondent AWS; Vice-President and General Manager, Respondent ESI

Lydia Crouch - Until about 2003, President, Respondent ESI

At all material times, the Fort Smith Division, Arkansas Chapter of the National Electrical Contractors Association (NECA), has been an organization composed of employers engaged in the electrical contracting business and exists for the purpose, inter alia, of representing its employer members in negotiating and administering collective-bargaining agreements.

At all material times until about May 2003, Respondent ESI was a member of NECA, and NECA was authorized by Respondent ESI to bargain collectively on its behalf with the Union concerning wages, hours, and other terms and conditions of employment of the unit.

About September 1, 2002, the Union entered into a collective-bargaining agreement with NECA. That agreement (the Inside Agreement), is effective for the period September 1, 2002 through August 31, 2004.

About March 21, 2001, Respondent ESI, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit covered by the Inside Agreement and since that date the Union has been recognized as such representative by Respondent ESI without regard to whether the majority status of the Union has ever been established under the provisions of Section 9(a) of the Act.

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

All employees employed by Respondent performing electrical work, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

For the period from September 1, 2002 through August 31, 2004, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.²

By letter dated August 15, 2003, received by the Union on August 18, 2003, the Respondent withdrew its recognition of the Union as the limited exclusive collective-bargaining representative of the unit.

Since on or about August 18, 2003, the Respondent has refused to recognize or bargain with the Union.

Since on or about August 18, 2003, the Respondent has failed to continue in effect all terms and conditions of the Inside Agreement, including but not limited to provisions requiring the Respondent to:

(a) deduct and forward to the Union, upon receipt of a voluntary written authorization, working union dues from the pay of each member of the Union;

(b) use the Union hiring hall as its sole and exclusive source of referral of applicants for employment;

(c) provide names and social security numbers of all temporary employees;

(d) comply with a ratio of two apprentices for every three journeyman wiremen or fraction thereof;

(e) provide appropriate supervision for apprentices;

(f) make contributions to the apprenticeship and training trust fund;

(g) make contributions to the National Electric Benefit Fund;

(h) make contributions to the Annuity Trust Fund; and

(i) make other health and welfare contributions.

The Respondent engaged in the conduct described above without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

The Union, by letter dated September 8, 2003, requested that the Respondent furnish it with the following information for all employees hired after July 15, 2002: name, address, phone number, hours worked daily, and date of termination.

This information is necessary for and relevant to the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit.

² 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).

From September 8, 2003, to March 2004, the Respondent unreasonably delayed in providing the Union with the information it requested on September 8, 2003.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, 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.³

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.

Having found the Respondent violated Section 8(a)(5) and (1) since about August 18, 2003, by failing and refusing to continue in effect all terms and conditions of its collective-bargaining agreement, including by failing to: deduct and forward union dues to the Union, use the union hiring hall as its exclusive source of referrals for employment, provide names and social security numbers of temporary employees, comply with a ratio of two apprentices for every three journeymen, provide appropriate supervision for apprentices, and make contributions to the apprenticeship and training trust funds, the National Electric Benefit Fund, the Annuity Trust Fund, and other health and welfare contributions, we shall order the Respondent to honor the terms and conditions of the Inside Agreement, and any automatic renewal or extension of it.

In order to remedy the Respondent's failure to make contractually-required fringe benefit payments, the Respondent shall be required to make all contractually-required benefit payments or contributions that have not been made since August 18, 2003, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall

³ In finding that the Respondent violated Sec. 8(a)(5) by refusing to provide the Union with the names and social security numbers of all temporary employees, we note that the Board has held that social security numbers are not presumptively relevant to a union's duties as an exclusive collective-bargaining representative. *RFS Escusta, Inc.*, 342 NLRB No. 91, slip op. at 3 fn. 4 (2004). Where, as here, however, the Respondent is required to furnish social security numbers under the parties' collective-bargaining agreement, the Board has held that the necessary showing of relevance has been made. *MBC Headwear*, 315 NLRB 424 fn. 2 (1994).

reimburse unit employees for any expenses ensuing from its failure to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁴

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to deduct and remit working union dues as required by the Inside Agreement, we shall order the Respondent to deduct working union dues pursuant to valid checkoff authorizations, for the period from August 18, 2003 through the expiration of the Inside Agreement or any automatic renewal or extension of it, and remit them to the Union, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Energy Services International, Inc. (ESI), and Arkansas Wiring Systems, Inc., (AWS), alter egos, Fayetteville, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from International Brotherhood of Electrical Workers, Local 700, as the limited exclusive collective-bargaining representative of the employees in the following unit, during the term of its 2002-2004 collective-bargaining agreement (the Inside Agreement) with the Union, and any automatic renewal or extension of it. The unit is:

All employees employed by Respondent performing electrical work, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

(b) Refusing to recognize or bargain with the Union during the term of the 2002-2004 Inside Agreement, and any automatic renewal or extension of it.

(c) Failing and refusing to continue in effect all terms and conditions of the 2002-2004 Inside Agreement, and any automatic renewal or extension of it, including but not limited to provisions requiring the Respondent to:

⁴ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(i) deduct and forward to the Union, upon receipt of a voluntary written authorization, working union dues from the pay of each member of the Union;

(ii) use the Union hiring hall as its sole and exclusive source of referral of applicants for employment;

(iii) provide names and social security numbers of all temporary employees;

(iv) comply with a ratio of two apprentices for every three journeyman wiremen or fraction thereof;

(v) provide appropriate supervision for apprentices;

(vi) make contributions to the apprenticeship and training trust fund;

(vii) make contributions to the National Electric Benefit Fund;

(viii) make contributions to the Annuity Trust Fund; and

(ix) make other health and welfare contributions.

(d) Unreasonably delaying in furnishing the Union with information that is relevant and necessary to the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit employees.

(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) Honor the terms of the 2002-2004 Inside Agreement and any automatic renewal or extension of it, including using the union hiring hall as its sole and exclusive source of referral of applicants for employment; providing names and social security numbers of all temporary employees; complying with a ratio of two apprentices for every three journeymen wiremen or fraction thereof; and providing appropriate supervision for apprentices.

(b) Deduct working dues for employees who have executed valid dues-checkoff authorizations that have not been deducted and since August 18, 2003, as required by the 2002-2004 Inside Agreement, and remit them to the Union, with interest as set forth in the remedy section of this decision.

(c) Offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by the Respondent's failure to hire them. Backpay is to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New*

Horizons for the Retarded, supra. Reinstatement and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceeding. *J. E. Brown Electric*, 315 NLRB 620 (1994).

(d) Make all the contractually-required benefit fund contributions that have not been made on behalf of unit employees since August 18, 2003, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, in the manner set forth in the remedy section of this decision.

(e) 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.

(f) Within 14 days after service by the Region, post at its facility in Fayetteville, Arkansas, copies of the attached notice marked "Appendix."⁵ 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 18, 2003.

(g) 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 30, 2004

Peter C. Schaumber, Member

⁵ 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."

Dennis P. Walsh, Member

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 withdraw recognition from International Brotherhood of Electrical Workers, Local 700, as the limited exclusive collective-bargaining representative of the employees in the following unit, during the term of our 2002–2004 collective-bargaining agreement (the Inside Agreement) with the Union, and any automatic renewal or extension of it. The unit is:

All employees employed by us performing electrical work, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to recognize or bargain with the Union during the term of the 2002–2004 Inside Agreement, and any automatic renewal or extension of it.

WE WILL NOT fail and refuse to continue in effect all terms and conditions of the 2002–2004 Inside Agreement, and any automatic renewal or extension of it, including but not limited to provisions requiring us to:

(i) deduct and forward to the Union, upon receipt of a voluntary written authorization, working union dues from the pay of each member of the Union;

(ii) use the Union hiring hall as its sole and exclusive source of referral of applicants for employment;

(iii) provide names and social security numbers of all temporary employees;

(iv) comply with a ratio of two apprentices for every three journeyman wiremen or fraction thereof;

(v) provide appropriate supervision for apprentices;

(vi) make contributions to the apprenticeship and training trust fund;

(vii) make contributions to the National Electric Benefit Fund;

(viii) make contributions to the Annuity Trust Fund; and

(ix) make other health and welfare contributions.

WE WILL NOT unreasonably delay in furnishing the Union with information that is relevant and necessary to the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfering with, restraining, or coercing you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of the 2002–2004 Inside Agreement and any automatic renewal or extension of it, including using the union hiring hall as its sole and exclusive source of referral of applicants for employment; providing names and social security numbers of all temporary employees; complying with a ratio of two apprentices for every three journeymen wiremen or fraction thereof; and providing appropriate supervision for apprentices.

WE WILL deduct working dues for employees who have executed valid dues-checkoff authorizations that have not been deducted since August 18, 2003, as required by the 2002–2004 Inside Agreement, and remit to them the Union, with interest.

WE WILL offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by the Respondent's failure to hire them, with interest.

WE WILL make all the contractually-required benefit fund contributions that have not been made on behalf of unit employees since August 18, 2003, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, with interest.

ENERGY SERVICES INTERNATIONAL, INC. AND
ARKANSAS WIRING SYSTEMS, INC., ALTER
EGOS

