Edwin Bowles d/b/a Kenco Electric & Signs and J. R. Hall d/b/a J. R. Hall Electric, Single or Joint Employers *and* International Brotherhood of Electrical Workers, Local Union No. 995, AFL–CIO. Case 15–CA–14219

July 17, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge and an amended charge filed by the Union on February 10 and April 30, 1997, respectively, the General Counsel of the National Labor Relations Board issued an amended complaint (the complaint) on April 30, 1997, against Edwin Bowles d/b/a Kenco Electric & Signs and J. R. Hall d/b/a J. R. Hall Electric (collectively the Respondent), alleging that it has violated Sections 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and the complaint, the Respondent has failed to file an answer.

On January 12, 1998, the General Counsel filed a Motion for Summary Judgment. On January 20, 1998, 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 a response to the Notice to Show Cause.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 and 102.21 of the Board's Rules and Regulations provide 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 states that unless an answer is filed within 14 days of service, all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board. Further, the undisputed allegations in the Motion for Summary Judgment reveal that the Region served a copy of the complaint on the Respondent by certified mail on May 5, 1997. After the Respondent failed to file an answer to the complaint, the Region, by letter dated December 19, 1997, advised the Respondent that unless an answer to the complaint was filed by the close of business on December 29, a Motion for Summary Judgment would be filed with the Board.

The Respondent did not file either an answer to the complaint or a request for an extension of time to do so. In response to the Notice to Show Cause, however, the Respondent filed a letter with the Board essentially denying the allegations of the complaint. The letter contains no explanation of why the Respondent failed to answer the complaint despite the appropriate notice and warning that if no answer was forthcoming by the given date, a Motion for Summary Judgment would be filed. Nor does the letter explain why the Respondent never requested an extension of time to file an answer.

We note that the Respondent is representing itself pro se. In determining whether to grant a Motion for Summary Judgment on the basis of a respondent's failure to file a sufficient or timely answer, the Board has, as a general matter in these circumstances, shown leniency to respondents proceeding without the benefit of counsel. Thus, the Board will generally not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer which can reasonably be construed as denying the substance of the complaint allegations.[2] In the instant case, however, the Respondent did not respond to the complaint's allegations until after the Notice to Show Cause was issued, on January 20, 1998, despite the December 19, 1997 reminder letter. And, it has provided no explanation for its failure to do so. In these circumstances, including consideration of the Respondent's pro se representation, we find that the Respondent's attempt to answer the complaint's allegations in its response to the Notice to Show Cause is untimely. See *Middle Eastern Bakery*, 243 NLRB 503, 504 fn. 1 (1979).

Accordingly, in the absence of good cause being shown for the Respondent's failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Edwin Bowles d/b/a Kenco Electric & Signs, a sole proprietorship (Kenco) with a job site in Baton Rouge, Louisiana, has been engaged in the building and construction industry as a subcontractor performing electrical work. During the 12-month period ending March 31, 1997, Kenco, in conducting its operations described above, purchased and

[1] By facsimile received February 3, 1998, the Respondent requested an extension of time to respond to the Notice to Show Cause. An extension was granted until March 19, and by letter dated March 17, received by the Board on March 19, the Respondent filed a response.

[2] See, e.g., *Harborview Electric Construction Co.*, 315 NLRB 301 (1994), and cases cited therein.

The Board has also been willing, in certain limited circumstances, to consider postcharge, precomplaint statements of position submitted by a respondent acting pro se in lieu of a timely filed answer. See, e.g., *Central States Xpress, Inc.*, 324 NLRB No. 77 (Sept. 25, 1997). In this case, however, the Respondent did not submit a statement of position or any other written response to the charge.

received at the Baton Rouge job site goods valued in excess of $50,000 directly from points outside of the State of Louisiana.

At all material times, J. R. Hall d/b/a J. R Hall Electric, a sole proprietorship (Hall Electric) with its principal office and place of business in Grand Prairie, Texas, has been engaged in the building and construction industry as a subcontractor performing electrical work. During the 12-month period ending March 31, 1997, Hall Electric, in conducting its operations described above, purchased and received at its Texas facilities goods valued in excess of $50,000 directly from points outside the State of Texas.

We find that Kenco and Hall Electric are each employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

At all material times, at the Baton Rouge job site, Kenco and Hall Electric have been affiliated business enterprises with common supervision; 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 a single integrated business enterprise. Based on the operations described above, at all materials times at the Baton Rouge job site, Kenco and Hall Electric have constituted a single integrated enterprise and a single employer within the meaning of the Act or have been joint employers of the employees of Kenco at that job site.

II. ALLEGED UNFAIR LABOR PRACTICES

About January 15, 1997,[3] the Respondent promulgated and maintained a rule prohibiting employees from talking about the Union while working.

About January 15, the Respondent threatened not to hire applicants who were members or supporters of the Union if its employees continued to engage in union or concerted activities.

About January 15, the Respondent threatened to terminate employees if they continued to engage in union or concerted activities.

About January 16, the Respondent threatened to terminate employees because they engaged in union or concerted activities.

About January 14, the Respondent terminated its employee Todd Gautreau, and about January 15, terminated its employee Cecil Jackson, because they assisted the Union and engaged in concerted activities, and in order to discourage its employees from engaging in such activities.

About January 16, the Respondent refused to consider for hire or to hire applicants Tim Overmier, Daniel Overmier, Roland Goetzman or Kendrick Russell, because they assisted the Union and engaged in concerted activities.

Since about January 17, certain employees of the Respondent employed at the job site ceased work concertedly and engaged in a strike that was caused and prolonged by the Respondent's unfair labor practices.

Since about January 23, the Respondent has failed and refused to reinstate unfair labor practice strikers Cliff Zylks and Greg Lavergne, and since January 25 has failed and refused to reinstate unfair labor practice striker Taylor Webb, although they have each made an unconditional offer to return to work.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, or coerced, and is continuing to interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

In addition, by terminating Gautreau and Jackson; by refusing to consider for hire and refusing to hire T. Overmier, D. Overmier, Goetzman, and Russell; and by refusing to reinstate unfair labor practice strikers Zylks, Lavergne, and Webb, the Respondent has also discriminated, and is continuing to discriminate, in regard to the hire, tenure, or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

THE 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 that the Respondent has violated Section 8(a)(3) and (1) by discharging Gautreau and Jackson and by refusing to reinstate unfair labor practice strikers Zylks, Lavergne, and Webb, we shall order the Respondent to offer them immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges and the unlawful refusals to reinstate the discrimina-

[3] All dates hereinafter are in 1997 unless otherwise specified.

tees, and to notify them in writing that this has been done.

In addition, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to consider for employment and refusing to employ applicants T. Overmier, D. Overmier, Goetzman, and Russell, we shall order the Respondent to offer them immediate employment in the positions for which they applied, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. The Respondent shall also be required to expunge from its files any and all references to the unlawful refusals to consider for employment or to employ the discriminatees, and to notify them in writing that this has been done. Because the Respondent is engaged in the construction industry, the Respondent shall be allowed to introduce evidence in compliance concerning how long the discriminatees would have continued in the Respondent's employment and whether or not they would have been retained after completion of the project for which they would have been hired.[4]

Backpay shall be computed in accordance with *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, single or joint employers Edwin Bowles d/b/a Kenco Electric & Signs, a sole proprietorship, Baton Rouge, Louisiana, and J. R. Hall d/b/a J. R. Hall Electric, a sole proprietorship, Grand Prairie, Texas, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act by promulgating and maintaining rules prohibiting employees from talking about the Union while working; threatening not to hire applicants who are members or supporters of the Union if its employees continue to engage in union or concerted activities; threatening to terminate employees if they continue to engage in union or concerted activities; and threatening to terminate employees because they engaged in union or concerted activities.

(b) Terminating employees for assisting the Union and engaging in concerted activities, and in order to discourage employees from engaging in such activities.

(c) Refusing to consider for employment or refusing to employ job applicants because they assisted the Union or any other labor organization.

(d) Refusing to reinstate unfair labor practice strikers who have made unconditional offers to return to work.

(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 Todd Gautreau, Cecil Jackson, Cliff Zylks, Greg Lavergne, and Taylor Webb full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of this Order, offer Tim Overmier, Daniel Overmier, Roland Goetzman, and Kendrick Russell full employment in positions for which they sought to apply or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights or privileges to which they would have been entitled absent the discrimination against them.

(c) Make Todd Gautreau, Cecil Jackson, Cliff Zylks, Greg Lavergne, Taylor Webb, Tim Overmier, Daniel Overmier, Roland Goetzman, and Kendrick Russell whole for any loss of earnings and other benefits they may have suffered by reason of the discrimination against them in the manner described in the Remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges of Todd Gautreau and Cecil Jackson; the unlawful refusal to reinstate Cliff Zylks, Greg Lavergne, and Taylor Webb; and, the unlawful refusal to consider for employment or to employ Tim Overmier, Daniel Overmier, Roland Goetzman, and Kendrick Russell. Within 3 days thereafter notify them in writing that this has been done and that the discharges, refusals to reinstate, or refusals to consider for employment or to employ will not be used against them in any way.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days of service by the Region, post at its Baton Rouge, Louisiana, job site, all current job sites, and its Grand Prairie, Texas facility, copies of the attached notice marked ''Appendix.''[5] Copies of

[4] *Dean General Contractors*, 285 NLRB 573, 574 (1987).

[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

the notice, on forms provided by the Regional Director for Region 15, 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 the named discriminatees, and all current employees and former employees employed by the Respondent at any time since January 14, 1997.

(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.

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act by promulgating and maintaining rules prohibiting them from talking about the Union while working; threatening not to hire applicants who are members or supporters of the Union if employees continue to engage in union or concerted activities; threatening to terminate employees if they continue to engage in union or concerted activities; and threatening to terminate employees because they engaged in union or concerted activities.

WE WILL NOT terminate employees for assisting the Union and engaging in concerted activities and in order to discourage our employees from engaging in such activities.

WE WILL NOT refuse to consider for employment or refuse to employ job applicants because they assisted the Union or any other labor organization.

WE WILL NOT refuse to reinstate unfair labor practice strikers who have made unconditional offers to return to work.

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 Todd Gautreau, Cecil Jackson, Cliff Zylks, Greg Lavergne, and Taylor Webb full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, offer Tim Overmier, Daniel Overmier, Roland Goetzman, and Kendrick Russell full employment in positions for which they sought to apply, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights or privileges to which they would have been entitled absent the discrimination against them.

WE WILL make Todd Gautreau, Cecil Jackson, Cliff Zylks, Greg Lavergne, Taylor Webb, Tim Overmier, Daniel Overmier, Roland Goetzman, and Kendrick Russell whole for any loss of earnings and other benefits they may have suffered by reason of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharges of Todd Gautreau and Cecil Jackson; the unlawful refusal to reinstate Cliff Zylks, Greg Lavergne, and Taylor Webb; and, the unlawful refusal to consider for employment or to employ Tim Overmier, Daniel Overmier, Roland Goetzman, and Kendrick Russell, and WE WILL, within 3 days thereafter notify them in writing that this has been done and that the discharges, refusals to reinstate, or refusals to consider for employment or to employ will not be used against them in any way.

EDWIN BOWLES D/B/A KENCO ELECTRIC & SIGNS AND J. R. HALL D/B/A J. R. HALL ELECTRIC, SINGLE OR JOINT EMPLOYERS