Benchmark Mechanical, Inc. *and* Sheet Metal Workers International Union, Local 17, AFL–CIO.
Cases 1–CA–42084 and 1–CA–42085

September 29, 2006

DECISION AND ORDER

BY MEMBERS SCHAUMBER, KIRSANOW, AND WALSH

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge filed by the Union on September 16, 2004 in Case 1–CA–42084 and a charge and amended charges filed by the Union in Case 1–CA–42085 on September 16, 2004, December 28, 2004, and February 7, 2005, respectively, the General Counsel issued the consolidated complaint on February 28, 2005 against Benchmark Mechanical, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (3) of the Act. Thereafter, the Respondent and the Union entered into a settlement agreement, which was approved by the Regional Director for Region 1 on June 3, 2005. The settlement required the Respondent to: (1) post a notice to employees regarding the complaint allegations and (2) make whole eight employee-applicants by payment to them of the amounts set forth in the settlement agreement over a 6-month period as outlined in a schedule of payments.[1]

The agreement also contained the following default provision:

> DEFAULT—The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to, failure to make timely installment payments of moneys as set forth above, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director may reissue the complaint based upon the allegations of the charge(s) in the instant case(s) which were found to have merit. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations of the Act alleged therein. The Charged Party understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an order requiring the Charged Party to show cause why said motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Charged Party defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is customary to remedy such violations, including but not limited to the remedial provisions of this Settlement Agreement. The parties further agree that the Board's order may be entered thereon ex parte and that, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's order, judgment may be entered thereon ex parte and without opposition from the Charged Party.

As set forth in the General Counsel's Motion for Summary Judgment, on June 23, 2005, the Respondent complied with the notice posting requirement in the settlement agreement and on July 12, 2005, paid its first installment of backpay owed to the discriminatees. The Respondent has failed to make any additional payments since that time.

By letter dated August 17, 2005, the compliance officer for Region 1 advised the Respondent that it was in default of the settlement agreement because it had failed to remit the second installment of backpay due on August 15, 2006. The compliance officer warned that failure to make the agreed-upon payment by August 18, 2005 could result in revocation of the settlement agreement and reissuance of the consolidated complaint. The Respondent did not reply to this letter.

By letter dated August 22, 2005, the Acting Regional Director again requested the Respondent to comply with the settlement agreement, and advised that the Region would reissue the complaint and initiate summary judgment proceedings in accordance with the terms of the settlement agreement unless the Respondent complied by September 6, 2005.

The Respondent failed to comply. Accordingly, on September 27, 2005, the Acting Regional Director issued an order reinstating the consolidated complaint.

On June 9, 2006, the General Counsel filed a Motion for Summary Judgment with the Board. On June 13, 2006, the Board issued an order transferring the proceed-

[1] Under the settlement agreement, the Respondent was to pay a total of $34,495 in backpay, to be disbursed in the following amounts to the alleged discriminatees over a 6-month period: Tim Finch $8000, Mike Melville $8000, Mike Stoddard $3299, Scott Lahar $3299, Emilio Scott $3299, John Olson $3299, David Moore $3299, and Irving Rounds $2000.

ing 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 Summary Judgment

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to remit the agreed-upon amounts due employees Tim Finch, Mike Stoddard, Emilio Scott, David Moore, Mike Melville, Scott Lahar, John Olson, and Irving Rounds. Consequently, pursuant to the default provisions of the settlement agreement set forth above, we find that the allegations of the consolidated complaint are true.[2] Accordingly, 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, the Respondent, a corporation with an office and place of business in Burlington, Massachusetts, herein called the Burlington facility, has been engaged in business as a sheet metal contractor.

Annually, the Respondent, in conducting its business described above, provides sheet metal contracting services valued in excess of $50,000 directly to points outside the Commonwealth of Massachusetts.

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 Sheet Metal Workers International Union, Local 17, AFL–CIO (the Union) 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 have 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:

Jeff Harding	President
Tony DiBona	Division Manager, Mechanical Construction
Kris Carlson	Manager

On or about April 13, 2004, the Respondent, by Kris Carlson, at the Burlington facility, interrogated an employee-applicant regarding his union activities.

On or about August 3, 2004, the Respondent, by Tony DiBona, at the Burlington facility, interrogated an employee-applicant regarding his union activities.

Since at least on or about March 20, 2004, the Respondent has maintained a hiring policy that discriminates against employee-applicants who have worked for, or were affiliated with, the Union.

Since about April 8, 2004, the Respondent has failed to consider for hire employee-applicants Ed Marenburg, Robert Eva, Tim Finch, Mike Stoddard, Scott Lahar, Emilio Scott, John Olson, David Moore, Brad Lopes, and Mike Melville.

Since about April 20, 2004, the Respondent has failed to hire applicant Scott Lahar and/or one of the applicants listed above.

Since about June 17, 2004, the Respondent has failed to hire applicant John Olson and/or one of the applicants listed above.

Since about June 25, 2004, the Respondent has failed to hire applicant Mike Stoddard and/or one of the applicants listed above.

Since about July 29, 2004, the Respondent has failed to hire applicant Emilio Scott and/or one of the applicants listed above.

Since about August 2, 2004, the Respondent has failed to hire applicant Dave Moore and/or one of the applicants listed above.

Since about August 23, 2004, the Respondent has failed to hire applicant Tim Finch and/or one of the applicants listed above.

Since about August 30, 2004, the Respondent has failed to hire applicant Mike Melville and/or one of the applicants listed above.

Since about August 30, 2004, the Respondent has failed to hire applicant Brad Lopes and/or one of the applicants listed above.

Since about August 31, 2004, the Respondent has failed to hire applicant Irving Rounds and/or one of the applicants listed above.

The Respondent failed to hire the applicants listed above because they formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By interrogating employee-applicants regarding their union activities and by maintaining a hiring policy that discriminates against employee-applicants who have worked for or were affiliated with the Union, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

[2] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

2. By failing to consider for hire and failing to hire employee-applicants because they formed, joined, or assisted the Union or engaged in concerted activities, the Respondent has discriminated in regard to the hire or tenure, or terms and conditions of employment of employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) 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, as requested by counsel for the General Counsel. Specifically, the Respondent shall comply with the remaining unmet terms of the settlement agreement approved by the Regional Director for Region 1 on June 3, 2005, by paying to the discriminatees the remaining backpay owed under the settlement agreement. In limiting our affirmative remedy to the remaining backpay owed under the settlement agreement, we note that the General Counsel is empowered under the default provisions of the settlement agreement to seek "full remedy for the violations found as is customary to remedy such violations," including instatement, full backpay, and expungement. However, in his Motion for Summary Judgment, the General Counsel has not sought such additional remedies and we will not, sua sponte, include them within this remedy.[3]

[3] The General Counsel has requested, in his Motion for Summary Judgment, that the Board issue "an order requiring Respondent to comply with the terms of the settlement agreement by immediately paying the remaining principal amount of $27,770.25, together with interest thereon, to the discriminatees."

ORDER

The National Labor Relations Board orders that the Respondent, Benchmark Mechanical, Inc., Burlington, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employee-applicants concerning their union membership, activities, or sympathies.

(b) Maintaining a hiring policy that discriminates against employee-applicants who have worked for or were affiliated with Sheet Metal Workers International Union, Local 17, AFL–CIO, or any other labor organization.

(c) Refusing to consider for hire or to hire employee-applicants because they formed, joined, or assisted Sheet Metal Workers International Union, Local 17, AFL–CIO, or any other labor organization, or engaged in concerted activities, and to discourage employees from engaging in these activities.

(d) 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) Remit $27,770.25 plus interest to Region 1 of the National Labor Relations Board to be disbursed to Tim Finch, Mike Stoddard, Emilio Scott, David Moore, Mike Melville, Scott Lahar, John Olson, and Irving Rounds, in accordance with the terms of the settlement agreement approved by the Regional Director on June 3, 2005.

(b) 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.