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Mid-South Industrial, Inc. and International Union of Operating Engineers Local 369. Case 15-CA-326800

January 27, 2025

DECISION AND ORDER

BY CHAIRMAN WILCOX AND MEMBERS KAPLAN
AND PROUTY

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. International Union of Operating Engineers Local 369 (the Union) filed a charge on September 28, 2023, alleging that Mid-South Industrial, Inc. (the Respondent) violated Section 8(a)(5) and (1) of the Act.

The Respondent and the Union subsequently entered into an informal settlement agreement, which the Regional Director for Region 15 approved on May 9, 2024.¹ Among other things, the settlement agreement required the Respondent to: (1) mail the Notice to all current employees and former employees employed by the Employer at the Blue Oval SK (BOSK) Battery Manufacturing Plant located in Stanton, Tennessee any time since September 1, 2023; (2) bargain, upon request, with the Union regarding the incident related to the Union's September 25, 2023 information request; (3) provide the Union with the information it requested on September 25, 2023, or notify the Union that the information does not exist, and (4) provide proof of compliance to the Region. The settlement agreement also contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, 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 will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of

the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. 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 Charged Party agrees that the Board may then issue an order providing, as elected by the Regional Director, a full remedy for the violations found as is appropriate to remedy such violations, and/or an order requiring the Charged Party to perform terms of this settlement agreement as specified by the Regional Director. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By email dated May 15, the Region's compliance officer sent the Respondent a copy of the conformed settlement agreement, with a cover letter explaining the remedial actions it was required to take in order to comply. The cover letter also advised the Respondent that it had 14 days, until May 29, to comply. By email dated June 7, the compliance officer notified the Respondent that it had failed to comply and requested compliance by June 12. On June 27, the compliance officer notified the Respondent that it must provide evidence of its compliance by July 3. On July 3, the Respondent provided proof of partial compliance, but it failed to mail the correct Notice to Employees as required under the settlement agreement. On July 8, the Region sent another email to the Respondent stating that the Respondent, among other failures, had not mailed employees the correct notice. The email requested that the Respondent comply with the settlement agreement by July 12. On July 18, the compliance officer sent the Respondent a letter stating that that the Respondent must provide evidence of its compliance within 14 days, or the Regional Director may issue a complaint against the Respondent and file a motion for default judgment for breaching the information settlement agreement. On July 31, the Region sent the Respondent an email reminding the Respondent that the outstanding documentation was due the next day. The Respondent failed to comply.

¹ Dates are in 2024, unless otherwise indicated.

Accordingly, pursuant to the terms of the noncompliance provisions of the agreement, on October 3, the Regional Director issued the complaint. On October 22, the General Counsel filed a Motion for Default Judgment with the Board requesting that the Board issue a Decision and Order against the Respondent containing findings of fact and conclusions of law based on the allegations in the complaint. On October 24, 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 did not file a response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.² 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, the Respondent has been a corporation with a jobsite in Bells, Tennessee, and has been an industrial and mechanical contractor in the construction industry doing commercial and industrial construction, fabrication, and engineering services. During the calendar year ending December 31, 2023, the Respondent, in conducting its business, purchased and received at its Bells, Tennessee jobsite goods and materials valued in excess of \$50,000 directly from points outside the State of Tennessee.

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 Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. 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:

Colton Butler	-	Project Manager
Joe Johnson	-	President/CEO

2(a) 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.

The bargaining unit under this Agreement shall comprise the employees of the employer, now employed and employed in the future for industrial construction, maintenance, repair, replacement, renovation, and modernization in various plants within the geographical jurisdiction of the INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO.

(b) National Maintenance Agreements Policy Committee, Inc. (NMAPC) is composed of employers engaged in the building and construction industry and exists for the purpose, inter alia, of representing its employer members in negotiating and administering collective-bargaining agreements.

(c) About July 14, 2023, the Union entered into a collective-bargaining agreement with the NMAPC, effective from July 17, 2023, through July 31, 2024, recognizing the Union as the exclusive collective-bargaining representative of the Unit without regard to whether the Union's majority status had ever been established under Section 9(a) of the Act.

(d) Since about July 14, 2023, and at all material times, the Respondent has been a member of the NMAPC and thereby agreed to recognize the Union and be bound by the agreement described above in paragraph 2(c).

3(a) Since about September 14, 2023, the Union has requested, in writing, that the Respondent furnish the Union with the following information:

- i. Name of employee involved in an accident occurring on about September 11, 2023;
- ii. Employee's hire date;
- iii. Employee's job classification;
- iv. Employee's forklift certification;
- v. A copy of the accident report;
- vi. Any information pertaining to the accident; and
- vii. Any statements made relating to the accident.

(b) The information requested by the Union, as described above in paragraph 3(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) From about September 14, 2023, to about July 9, 2024, the Respondent unreasonably delayed in furnishing

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

the Union with the information requested by it as described above in paragraph 3(a).

CONCLUSION OF LAW

By the conduct described above in paragraph 3, the Respondent has been failing and refusing to recognize and bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above 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 take certain affirmative actions designed to effectuate the policies of the Act. Specifically, the Respondent shall comply with the unmet terms of the Settlement Agreement approved by the Regional Director for Region 15 on May 9, 2024.³ We shall order the Respondent to mail copies of the Notice to its employees as specified in Settlement Agreement and provide Region 15 evidence with proof that it mailed copies of the Notice, as specified in the Settlement Agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Mid-South Industrial, Inc., Bells, Tennessee, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Duplicate in color and mail, at its own expense, a copy of the attached Notice marked "Appendix"⁴ to all current employees and former employees employed by the Respondent at Blue Oval SK (BOSK) Battery Manufacturing Plant located in Stanton, Tennessee any time since September 1, 2023, as provided for in the settlement agreement.

2. Within 5 days after service by the Region, and again within 60 days after service, notify the Regional Director for Region 15 in writing what steps the Respondent has taken to comply with this Order, as specified in the settlement agreement.

³ We note that the Settlement Agreement refers to the date of the information request as September 25, 2023, whereas the complaint alleges that the Respondent failed to provide information since "about September 14, 2023." Although we find the complaint allegation true, in the attached Notice we retain the September 25 date specified in the Settlement Agreement.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. January 27, 2025

Gwynne A. Wilcox, Chair

Marvin E. Kaplan, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED AND 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 interfere with, restrain, or coerce you in the exercise of the above rights.

International Union of Operating Engineers Local 369 (Local 369) was the employees' exclusive collective-bargaining representative in dealing with us regarding wages, hours, and other working conditions of the employees who work(ed) at the Blue Oval SK (BOSK) Battery Manufacturing Plant located in Stanton, Tennessee in the following unit:

Operating Engineer employees of the Employer, employed for industrial construction, maintenance, repair, replacement, renovation, and modernization in various plants within the geographical jurisdiction of the International Union of Operating Engineers, AFL-CIO.

IF IN THE FUTURE a union is the exclusive bargaining representative of any of our employees, WE WILL NOT

refuse to provide and/or unreasonably delay in providing the union with requested information that is relevant and necessary to its role as your bargaining representative.

WE HAVE bargained in good faith with Local 369 regarding the incident related to the Union's September 25, 2023 information request.

WE HAVE provided Local 369 with the information it requested on September 25, 2023, or notified Local 369 that the information does not exist.

WE WILL, in a timely manner, provide any of your exclusive bargaining representatives with requested information that is relevant and necessary to its role as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

MID-SOUTH INDUSTRIAL, INC.

The Board's decision can be found at <https://www.nlr.gov/case/15-CA-326800> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

