Deja Vu Mechanicals, Inc. *and* Road Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO. Case 4–CA–37040

November 24, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AN MEMBERS BECKER AND HAYES

The Acting General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge and an amended charge filed by Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO (the Union), on September 10, 2009 and February 25, 2010, respectively, the General Counsel issued the complaint on February 25, 2010, against Deja Vu Mechanicals, Inc. (the Respondent), alleging that it had violated Section 8(a)(1) of the Act. The Respondent filed an answer to the complaint.

Subsequently, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 4 on May 27, 2010. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to make whole employee Glenn Minnick in the amount of $3895 by making an initial payment of $1000 followed by five consecutive monthly payments of $579 each on the first day of each subsequent month, and to post a notice to employees.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of noncompliance 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 noncompliance without remedy by the Charged Party, the Regional Director may reissue the complaint dated February 25, 2010 in this case. The General Counsel may then file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the reissued complaint may be deemed to be true by the Board and its answer to such complaint shall be considered withdrawn. The Charged Party also waives the following: (a) filing of answer; (b) hearing; (c) administrative law judge's decisions; (d) filing of exceptions and briefs; (e) oral argument before the Board; (f) the making of findings of fact and conclusions of law by the Board; and (g) all other proceedings to which a party may be entitled under the Act or the Board's Rules and Regulations. On receipt of said motion for default 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 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. The parties further agree that the Board's order and U.S. Court of Appeals judgment may be entered thereon ex parte.

By letter dated August 11, 2010, the Acting Regional Director for Region 4 notified the Respondent that the first payment was received on June 30, 2010, but that the two subsequent payments of $579 due on July 1 and August 1, 2010, were overdue. The letter further advised the Respondent that if it continued to be in noncompliance by failing to make the two installment payments within 14 days (by Aug. 25, 2010), a motion for default judgment would be filed against the Respondent seeking full compliance with the terms of the settlement agreement. The Respondent failed to cure its default. Accordingly, pursuant to the terms of the noncompliance provisions in the settlement agreement, on September 13, 2010, the Acting General Counsel issued an Order Revoking Settlement Agreement and Reissued Complaint.

On September 13, 2010, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 15, 2010, 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

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to remit any of the five backpay installment payments of $579 that were due to be received in the Regional Office on the first day of the month beginning on July 1, 2010. Consequently, we find, pursuant to the provisions of the settlement agreement set forth above,

that all the allegations of the reissued complaint are true.[1] Accordingly, we grant the Acting 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 Pennsylvania corporation with a facility in Nazareth, Pennsylvania, has been engaged in the installation of fire protection sprinkler systems. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, provided services valued in excess of $50,000 to Dual Temp Company, Inc., an enterprise within the Commonwealth of Pennsylvania that annually performs services valued in excess of $50,000 outside the Commonwealth of Pennsylvania and that is directly engaged in interstate commerce.

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 Road Sprinkler Fitters Local Union No. 669, U.A., 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, Edward Schench and David Reicherd held the positions of the Respondent's owner/vice president and job supervisor, respectively, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent with the meaning of Section 2(13) of the Act.

About May 11, 2009, the Respondent, by David Reicherd, at the Nazareth Middle School job site, threatened to discharge an employee if the employee concertedly continued to assert the rights of employees under the Pennsylvania Prevailing Wage Act.

About May 18, 2009, the Respondent, by David Reicherd, by telephone, informed an employee that the employee's layoff was accelerated because the employee concertedly filed a lawsuit under the Pennsylvania Prevailing Wage Act on behalf of the employee and other similarly situated employees of the Respondent.

About May 5 and May 11, 2009, the Respondent's employee Glenn Minnick discussed the Respondent's wage policies with other employees and solicited them to support efforts to claim their rights under the Pennsylvania Prevailing Wage Act.

About May 15, 2009, Glenn Minnick concertedly filed a lawsuit under the Pennsylvania Prevailing Wage Act on behalf of himself and other similarly situated employees of the Respondent.

About May 19, 2010, the Respondent accelerated the layoff of Glenn Minnick.

The Respondent accelerated Glenn Minnick's layoff because he engaged in the conduct described above and to discourage other employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed 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.

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 Acting General Counsel. Specifically, the Respondent shall comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 4 on May 27, 2010.

In this regard, the Respondent agreed in the settlement agreement to make whole employee Glenn Minnick by payment of backpay in the amount of $3895, to be distributed in six defined installments. Although the Respondent properly remitted the initial $1000 payment, it failed to remit any of the five subsequent installment payments. Accordingly, we shall order the Respondent immediately to remit the full $2895 backpay amount remaining due to Glenn Minnick, plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

In limiting our backpay remedy to the remaining money owed under the settlement agreement, we are mindful that the Acting General Counsel is empowered under the agreement to seek additional backpay beyond that specified in the agreement.[2] In his motion for default judgment, however, the Acting General Counsel has not sought additional backpay and we will not, sua sponte, include it within this remedy.[3]

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

[2] As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could "issue an order providing a full remedy for the violations found as is customary to remedy such violations."

[3] Although the settlement agreement required the Respondent to post a notice to employees, the motion for default judgment is silent regarding the Respondent's compliance with that requirement. Because the motion specifically requests that the Respondent be required to post a notice, we find that a notice-posting remedy is appropriate here.

ORDER

The National Labor Relations Board orders that the Respondent, Deja Vu Mechanicals, Inc., Nazareth, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge an employee if the employee concertedly asserts the rights of other employees under the Pennsylvania Prevailing Wage Act.

(b) Informing employees that an employee's layoff was accelerated because the employee concertedly filed a lawsuit under the Pennsylvania Prevailing Wage Act on behalf of himself and other similarly situated employees of the Respondent.

(c) Accelerating the layoff of employees because they engaged in protected concerted activities and to discourage other employees from engaging in these or other protected concerted 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 to Region 4 the payment of $2895, plus interest, on behalf of Glenn Minnick in accordance with the settlement agreement approved by the Regional Director on May 27, 2010.

(b) Within 14 days after service by the Region, post at its Nazareth, Pennsylvania facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 4, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[5] 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 May 11, 2009.

(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. November 24, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, 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 threaten to discharge an employee if the employee concertedly asserts the rights of other employees under the Pennsylvania Prevailing Wage Act.

WE WILL NOT inform employees that an employee's layoff was accelerated because the employee concertedly filed a lawsuit under the Pennsylvania Prevailing Wage Act on behalf of himself and other similarly situated employees.

WE WILL NOT accelerate the layoff of employees because they engage in protected concerted activities and/or to discourage other employees from engaging in such activities.

[4] 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."

[5] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

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 remit to Region 4 $2895 to be disbursed to employee Glenn Minnick in accordance with the May 27, 2010 settlement agreement, with interest.

DEJA VU MECHANICALS, INC.