Mays Printing Company, Inc. *and* Local 2/289-M, Graphic Communications Conference, District Council 3, International Brotherhood of Teamsters. Case 7–CA–51544

May 29, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and first and second amended charges filed by the Union on October 2 and November 18, 2008, and February 24, 2009, respectively, the General Counsel issued the complaint on February 27, 2009, against Mays Printing Company, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On March 30, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on March 31, 2009, 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.

Ruling on Motion for Default Judgment[1]

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 received by the Regional Office on or before March 13, 2009, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the motion disclose that the Region, by letter dated March 16, 2009, notified the Respondent that unless an answer was received by March 23, 2009, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, 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, a Michigan corporation with an office and facility located at 15800 Livernois Avenue, Detroit, Michigan, has been engaged in the printing business. By direction of the Board, investigative subpoenas duces tecum B-572284 and B-572534 issued on December 2, 2008, and February 3, 2009, respectively, requiring the Respondent to produce jurisdictional information. Both subpoenas were delivered to 15800 Livernois Avenue, Detroit, Michigan 48238, the Respondent's mailing address, by certified mail. The Respondent failed to produce the requested information.

During calendar year 2008, a representative period, the Respondent, in conducting its business operations described above, purchased and received from DTE Energy Company, a local public utility company, natural gas in excess of $10,000, and this natural gas originated from outside the State of Michigan.

Because the Respondent has failed to comply with properly served Board subpoenas calling for the production of jurisdictional information, the Board is dispensing with its application of the $50,000 discretionary jurisdictional standard and asserting jurisdiction because a showing of de minimis commerce has been established.[2]

Accordingly, 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, Local 2/289-M, Graphic Communications Conference, District Council 3, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *New Process Steel v. NLRB*, ___ F.3d ___, 2009 WL 1162556 (7th Cir. May 1, 2009), petition for cert. filed __ U.S.L.W. __ (U.S. May 27, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, ___ F.3d ___, 2009 WL 1162574 (D.C. Cir. May 1, 2009), petition for rehearing filed Nos. 08-1162, 08-1214 (May 27, 2009).

[2] *Continental Packaging Corp*., 327 NLRB 400, 401 (1998) (where a respondent "refused to provide information relevant to the Board's jurisdictional determination, only statutory jurisdiction need be established for the General Counsel to establish a sufficient basis for the assertion of jurisdiction"), citing *Tropicana Products*, 122 NLRB 121 (1959); *Valentine Painting & Wallcovering*, 331 NLRB 883, 883–885 (2000), enfd. mem. 8 Fed.Appx. 116 (2d Cir. 2001).

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, James Mays has held the position of chief executive officer of the Respondent and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and agent of the Respondent within the meaning of Section 2(13) of the Act.

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

> All full-time and regular part-time designers, strippers, press employees, bindery employees, operators and production employees employed by Respondent at its facility located at 15800 Livernois Avenue, Detroit, Michigan, but excluding all other employees such as office clerical, managers, and guards and supervisors as defined in the Act.

Since at least November 2006 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 2, 2007, through October 31, 2010.

At all times since at least November 2006, by virtue of Section 9(a) of the Act, the Union has been the exclusive representative of the unit for purposes of collective bargaining with respect to wages, hours of employment, and other terms and conditions of employment.

Since about July 2008, the Respondent has failed to continue in effect the health insurance benefits described in the 2007–2010 collective-bargaining agreement while continuing to deduct health insurance premiums from unit employees' paychecks.

About October 1, 2008, the Respondent announced its implementation of a wage reduction of unit employees' wages.

About October 1, 2008, the Respondent engaged in a course of conduct to bypass the Union and deal directly with unit employees on the subject of employees' wages.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union a meaningful opportunity to bargain with respect to this conduct and the effects of this conduct on the unit. The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting 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. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing since about July 2008 to continue in effect unit employees' health insurance benefits as required by the parties' 2007–2010 collective-bargaining agreement while deducting health insurance premiums from unit employees' paychecks, we shall order the Respondent to restore the unit employees' health insurance benefits, and make all required benefit-fund payments or contributions that have not been made since about July 2008, including any additional amounts applicable to such payments or contributions as set forth in *Merryweather Optical Co.,* 240 NLRB 1213, 1216 fn. 7 (1979).[3] Further, the Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's failure to continue their health-care benefits, as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (2987).[4]

In addition, having found that the Respondent unlawfully implemented a reduction in wages, we shall order the Respondent to rescind that reduction, restore the status quo ante, and make the unit employees whole for any loss of earnings and other benefits attributable to its

[3] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions to the funds during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to any amount that the Respondent otherwise owes the funds.

[4] In the complaint, the General Counsel seeks compound interest computed on a quarterly basis for any monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham,* 352 NLRB 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra. Further, because the wage rates that were unilaterally reduced are not alleged as being set forth in the 2007–2010 collective-bargaining agreement, we shall also order the Respondent to maintain the wage rates in effect prior to the October 1, 2008 unilateral change until it bargains in good faith with the Union to an agreement or impasse about wages.

ORDER

The National Labor Relations Board orders that the Respondent, Mays Printing Company, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 2/289-M, Graphic Communications Conference District Council 3, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the following appropriate unit, by failing to continue in effect the health insurance benefits described in the 2007–2010 collective-bargaining agreement, unilaterally implementing a reduction in unit employees' wages, and bypassing the Union and dealing directly with unit employees on the subject of employees' wages. The appropriate unit is:

> All full-time and regular part-time designers, strippers, press employees, bindery employees, operators and production employees employed by Respondent at its facility located at 15800 Livernois Avenue, Detroit, Michigan, but excluding all other employees such as office clerical, managers, and guards and supervisors as defined in the Act.

(b) 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) Continue in effect the health insurance benefits described in the 2007–2010 collective-bargaining agreement.

(b) Make all required health insurance benefit fund payments or contributions that have not been made since about July 2008, and reimburse unit employees for any expenses resulting from its unlawful failure to continue their health care benefits, with interest, in the manner set forth in the remedy section of this decision.

(c) Rescind the unilateral reduction in employees' wages implemented on October 1, 2008, and restore the status quo that existed prior to that reduction, until the Respondent bargains with the Union in good faith to an agreement or an impasse.

(d) Make whole the unit employees for any loss of earnings and benefits suffered as a result of the unilateral reduction in wages, with interest, 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 amounts of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, 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 July 2008.

(g) Within 21 days after service 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. May 29, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[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."

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 fail and refuse to bargain with Local 2/289-M, Graphic Communications Conference District Council 3, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the following appropriate unit, by failing to continue in effect the health insurance benefits described in our 2007–2010 collective-bargaining agreement with the Union, unilaterally implementing a reduction in unit employees' wages, and bypassing the Union and dealing directly with unit employees on the subject of employees' wages. The appropriate unit is:

All full-time and regular part-time designers, strippers, press employees, bindery employees, operators and production employees employed by us at our facility located at 15800 Livernois Avenue, Detroit, Michigan, but excluding all other employees such as office clerical, managers, and guards and supervisors as defined in the Act.

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 continue in effect the health insurance benefits described in the 2007–2010 collective-bargaining agreement.

WE WILL make all required health insurance benefit fund payments or contributions that have not been made since about July 2008, and reimburse unit employees for any expenses resulting from our unlawful failure to continue their health insurance benefits, with interest.

WE WILL rescind the unilateral reduction in employees' wages implemented on October 1, 2008, and restore the status quo that existed prior to the unilateral changes, until we bargain with the Union in good faith to an agreement or an impasse.

WE WILL make the unit employees whole, with interest, for any loss of earnings and benefits suffered as a result of the unilateral reduction in wages.

MAYS PRINTING COMPANY, INC.