Standard Plumbing & Appliance Co., Inc. *and* Plumbers Local No. 15. Cases 18–CA–18966 and 18–CA–19001

July 2, 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The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answers to the complaint and consolidated complaint. Upon a charge and an amended charge filed on February 5 and March 5, 2009, respectively, in Case 18–CA–18966, and a charge filed on March 16, 2009, in Case 18–CA–19001, by Plumbers Local Union No. 15 (the Union), the General Counsel issued an order consolidating cases and consolidated complaint on April 8, 2009, against Standard Plumbing & Appliance Co., Inc. (the Respondent) alleging that it has violated Section 8(a)(5), (3), and (1) of the Act. The Respondent filed answers to the complaint and the consolidated complaint. However, on May 5, 2009, the Respondent withdrew its answers.

On May 21, 2009, the General Counsel filed a Motion for Default Judgment with the Board. On May 26, 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.[1] The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment[2]

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 and consolidated complaint separately and affirmatively stated that the answers must be received by the Regional Office on or before March 24 and April 22, 2009, respectively. Although the Respondent filed separate answers to the complaint and consolidated complaint, it subsequently withdrew those answers at the hearing held on May 5, 2009. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint and consolidated complaint must be considered to be true.[3] 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, a Minnesota corporation with an office and place of business in St. Louis Park, Minnesota, has been a plumbing contractor for residential customers. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, purchased and received at its St. Louis Park, Minnesota facility goods and materials valued in excess of $50,000 from SPS Companies Inc., located in St. Louis Park, Minnesota, which in turn received these goods and materials directly from points located outside the State of Minnesota. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, derived gross revenue from the sale of goods and services in excess of $500,000.

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 Plumbers Local No. 15 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 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:

Derek Judkins - Owner and Chief Executive Officer
Ollie Ness - Owner

[1] On May 28, 2009, an Order correcting the Notice to Show Cause was issued. The Respondent filed no response.

[2] 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 *Snell Island SNF LLC v. NLRB*, __ F.3d __, 2009 WL 1676116 (2d Cir. June 17, 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 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*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

[3] See *Maislin Transport,* 274 NLRB 529 (1985).

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:

> All journeymen, foremen, general foremen and apprentices employed at Respondent's 8015 Minnetonka Boulevard, St. Louis Park, Minnesota facility; excluding all other employees including administrative and office clerical employees, and guards and supervisors as defined in the National Labor Relations Act.

On a date not precisely known by the General Counsel but prior to December 31, 2006, the Respondent, an employer engaged in the building and construction industry, agreed to be bound by the collective-bargaining agreements between the Union and Metro Association of Plumbing-Heating-Cooling Contractors, Inc. (PHCC).

At all material times prior to April 30, 2008, the Respondent was bound to collective-bargaining agreements between the Union and PHCC, including an agreement effective from May 1, 2005, through April 30, 2008.

By the conduct described above, at all material times prior to April 30, 2008, the Respondent recognized the Union as the exclusive collective-bargaining representative of a multiemployer collective-bargaining unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

In about January 2007, PHCC expelled the Respondent from membership in the PHCC.

On about May 1, 2008, the Respondent, by adopting the collective-bargaining agreement described below, recognized the Union as the exclusive collective-bargaining representative of the employees in the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

At all material times, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.[4]

On about May 1, 2008, the Union and the Respondent reached complete agreement on the terms and conditions of employment of the unit when the Respondent adopted the collective-bargaining agreement between the Union and PHCC effective from May 1, 2008, to April 30, 2011 (the 2008–2011 Agreement). In about November 2008, the Union requested the Respondent to execute a written contract containing the 2008–2011 Agreement.

1. Since about November 2008, the Respondent, by Derek Judkins, has failed and refused to execute the 2008–2011 Agreement.

2. In about November 2008, the Respondent notified the Union that it was withdrawing recognition from the Union as the limited exclusive collective-bargaining representative of the unit effective immediately or in the alternative, no later than on January 1, 2009.

3. In about November 2008, but no later than January 1, 2009, the Respondent withdrew recognition from the Union as the limited exclusive collective-bargaining representative of the unit.

4. In November 2008, the Respondent ceased making contributions to the Union's medical, pension, apprenticeship, and training funds, as required by the 2008–2011 Agreement.

5. Effective January 1, 2009, the Respondent implemented wage rates and other terms and conditions of employment inconsistent with the terms and conditions of the 2008–2011 Agreement.

The subjects set forth in paragraphs 4 and 5 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining, and the Respondent engaged in the conduct without prior notice to the Union.

By the conduct described above in paragraphs 4 and 5, the Respondent failed to continue in effect the terms and conditions of the 2008–2011 Agreement, and thereby modified the 2008–2011 Agreement without the Union's consent.

6. On about January 1, 2009, the Respondent caused the termination of its employee Carl Mayfield by requiring him either to quit or to agree to the terms and conditions of employment the Respondent unilaterally implemented.

The Respondent engaged in the conduct described in paragraph 6 because Mayfield and other employees supported or assisted the Union, and to discourage employees from engaging in those activities.

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[4] The consolidated complaint alleges that Respondent is a plumbing contractor and an employer engaged in the building and construction industry. Since the Respondent withdrew its answer to the consolidated complaint denying the allegation that it is not an employer engaged in the building and construction industry, the withdrawal of the answer has the same effect as a failure to file an answer, i.e., the allegations in the consolidated complaint must be considered to be true. See *Maislin Transport,* supra. Further, the consolidated complaint alleges that the Respondent granted recognition to the Union without regard to whether the Union had established majority status. Accordingly, we find that the relationship was entered into pursuant to Sec. 8(f) of the Act and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See, e.g., *A.S.B. Cloture, Ltd*., 313 NLRB 1012 (1994).

7. Since about November 2008, the Respondent, by Derek Judkins, engaged in the following acts and conduct.

(a) In about November 2008, at the Respondent's St. Louis Park, Minnesota facility, Judkins threatened an employee that the Respondent intended to be nonunion and to no longer abide by the 2008–2011 Agreement.

(b) In about December 2008, at the Respondent's St. Louis Park, Minnesota facility, Judkins informed an employee that the employee would receive benefits different from those described in the 2008–2011 Agreement, in spite of the fact that the Agreement had not expired.

(c) On about March 9, 2009, in a telephone call, Judkins threatened and interrogated an employee concerning the employee's role with respect to an investigation conducted by the Board.

By engaging in the conduct described in paragraph 7, the Respondent has interfered with, restrained or coerced its employees in the exercise of their Section 7 rights.

CONCLUSIONS OF LAW

1. By the conduct described in paragraphs 1 through 5, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. By the acts and conduct described in paragraphs 4 and 5, the Respondent has failed to continue in effect all the terms and conditions of the 2008–2011 Agreement, and thereby modified the Agreement without the Union's consent.

2. By the conduct described in paragraph 6, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. By the conduct described in paragraph 7, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

4. 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 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)(3) and (1) by laying off Carl Mayfield on about January 1, 2009, we shall order the Respondent to offer Mayfield full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. Further, the Respondent shall make Mayfield whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. 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). The Respondent shall also be required to expunge from its files any and all references to the unlawful layoff of Carl Mayfield, and to notify him in writing that this has been done and that the unlawful layoff will not be used against him in any way.

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing since about November 2008, to execute a written contract containing the 2008–2011 Agreement, we shall order the Respondent to execute and implement a written contract containing the 2008–2011 Agreement and give retroactive effect to its terms. We shall also order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's refusal to execute the 2008-2011 Agreement, 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 (1987).[5]

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the 2008–2011 Agreement by withdrawing recognition from the Union since November 2008, but no later than January 1, 2009, and unilaterally implementing wage rates and other terms and conditions of employment inconsistent with the terms and conditions of the 2008–2011 Agreement, we shall order the Respondent to recognize and bargain with the Union, rescind the unilateral changes, restore the status quo ante, and make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizon for the Retarded,* supra.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to continue in effect all

[5] In the consolidated complaint, the General Counsel seeks compound interest computed on a quarterly basis for any backpay or other 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).

the terms and conditions of the 2008–2011 Agreement by failing, since November 2008, to make the contractually-required contributions to the Union's medical, pension, apprenticeship, and training funds pursuant to the Agreement, we shall order the Respondent to make all required benefit fund contributions that have not been made since November 2008, including any additional amounts applicable to such funds as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).[6] Further, the Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's failure to make the required contributions to the funds, 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*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Standard Plumbing & Appliance Co., Inc., St. Louis Park, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute a written contract containing the collective-bargaining agreement between the Plumbers Local No. 15, the limited exclusive collective-bargaining representative of the employees in the unit below, and Metro Association of Plumbing-Heating Cooling Contractors, Inc. (PHCC), effective from May 1, 2008 to April 30, 2011 (the 2008–2011 Agreement). The unit is:

> All journeymen, foremen, general foremen and apprentices employed at Respondent's 8015 Minnetonka Boulevard, St. Louis Park, Minnesota facility; excluding all other employees including administrative and office clerical employees, and guards and supervisors as defined in the National Labor Relations Act, as amended.

(b) Failing and refusing since November 2008, but no later than January 1, 2008, to bargain collectively and in good faith with the Union by withdrawing recognition from the Union, as the limited exclusive collective-bargaining representative of the unit.

(c) Failing to continue in effect all the terms and conditions of the 2008–2011 Agreement by failing, since November 2008, to make the contractually-required contributions to the Union's medical, pension, apprenticeship, and training funds.

(d) Unilaterally implementing wage rates and other terms and conditions of employment inconsistent with the terms and conditions of the 2008–2011 Agreement without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct.

(e) Causing the termination of employees by requiring them to either quit or agree to the terms and conditions of employment the Respondent unilaterally implemented because the employees supported or assisted the Union and to discourage employees from engaging in those activities.

(f) Threatening employees that the Respondent intended to be nonunion and to no longer abide by the 2008–2011 Agreement.

(g) Informing employees that they would receive benefits different from those described in the 2008–2011 Agreement.

(h) Threatening and interrogating employees concerning their role with respect to an investigation conducted by the Board.

(i) 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) Execute and implement a written contract containing the 2008–2011 Agreement, and give retroactive effect to the terms and conditions of the Agreement.

(b) Make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful refusal to execute the 2008–2011 Agreement, with interest, in the manner set forth in remedy section of this decision.

(c) Recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees.

(d) Rescind the unilateral implemented wage rates and other terms and conditions of employment inconsistent with the terms and conditions of the 2008–2011 Agreement.

(e) Restore the status quo ante of the 2008–2011 Agreement, and make the unit employees whole for any loss of earnings and other benefits attributable to this unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.

(f) Continue in effect all the terms and conditions of the 2008–2011 Agreement by making all the required benefit fund contributions to the Union's medical, pen-

[6] 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.

sion, apprenticeship, and training funds that have not been made since November 2008, with interest, in the manner set forth in the remedy section of this decision.

(g) Within 14 days from the date of this Order, offer Carl Mayfield full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(h) Make Carl Mayfield whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest, in the manner section forth in the remedy section of this decision.

(i) Within 14 days from the date of this Order, remove from its files all references to the unlawful termination of Carl Mayfield, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful termination will not be used against him in any way.

(j) 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 amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its facility in St. Louis Park, Minnesota, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 18, 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 November 2008.

(l) 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. July 2, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, 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 fail and refuse to execute a written contract containing the collective-bargaining agreement between the Plumbers Local No. 15, the limited exclusive collective-bargaining representative of the employees in the unit below, and Metro Association of Plumbing-Heating Cooling Contractors, Inc. (PHCC), effective from May 1, 2008, to April 30, 2011 (the 2008–2011 Agreement). The unit is:

> All journeymen, foremen, general foremen and apprentices employed at our 8015 Minnetonka Boulevard, St. Louis Park, Minnesota facility; excluding all other employees including administrative and office clerical employees, and guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union by withdrawing recognition from the Union, as the limited exclusive collective-bargaining representative of the unit.

[7] 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."

WE WILL NOT fail to continue in effect all the terms and conditions of the 2008–2011 Agreement by failing to make the contractually-required contributions to the Union's medical, pension, apprenticeship, and training funds.

WE WILL NOT unilaterally implement wage rates and other terms and conditions of employment inconsistent with the terms and conditions of the 2008–2011 Agreement, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to such conduct and the effects of such conduct.

WE WILL NOT cause the termination of employees by requiring them to either quit or agree to the terms and conditions of employment we unilaterally implemented because the employees supported or assisted the Union and to discourage employees from engaging in those activities.

WE WILL NOT threaten employees that we intended to be nonunion and to no longer abide by the 2008–2011 Agreement.

WE WILL NOT inform employees that they would receive benefits different from those described in the 2008–2011 Agreement.

WE WILL NOT threaten and interrogate employees concerning their role with respect to an investigation conducted by the Board.

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 execute and implement a written contract containing the 2008–2011 Agreement and give retroactive effect to the terms and conditions of the agreement.

WE WILL make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful refusal to execute the 2008–2011 Agreement, with interest.

WE WILL recognize and bargain in good faith with the Union, as the limited exclusive collective-bargaining representative of the unit employees.

WE WILL rescind the unilateral implemented wage rates and other terms and conditions of employment inconsistent with the terms and conditions of the 2008–2011 Agreement.

WE WILL restore the status quo ante of the 2008–2011 Agreement, and make the unit employees whole for any loss of earnings and other benefits attributable to this unlawful conduct, with interest.

WE WILL continue in effect all the terms and conditions of the 2008–2011 Agreement by making all the required benefit fund contributions to the Union's medical, pension, apprenticeship, and training funds that have not been made since November 2008, with interest.

WE WILL, within 14 days from the date of this Order, offer Carl Mayfield full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Carl Mayfield whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files all references to the unlawful termination of Carl Mayfield, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful termination will not be used against him in any way.

STANDARD PLUMBING AND APPLIANCE CO., INC.