Columbus Components Group, LLC *and* International Brotherhood of Electrical Workers, Local Union No. 1424, a/w International Brotherhood of Electrical Workers. Case 25–CA–31035

December 29, 2009

DECISION AND ORDER

BY CHAIRMAN AND LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent failed to file an answer to the complaint. Upon a charge filed by International Brotherhood of Electrical Workers, Local Union No. 1424, a/w International Brotherhood of Electrical Workers, the Union, on June 12, 2009, the General Counsel issued the complaint on August 31, 2009, against Columbus Components Group, LLC, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On November 3, 2009, the General Counsel filed a Motion for Default Judgment with the Board. On November 6, 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 states that unless an answer was received by September 14, 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 General Counsel's motion disclose that the Region, by letter to the Respondent dated September 30, 2009, and by email to the Respondent's attorney on the same date, notified the Respondent that unless an answer was received by October 7, 2009, a motion for default judgment would be filed. On September 30, 2009, by telephone, and on October 8, 2009, by an email sent on behalf of the Respondent's counsel by a law firm secretary, the Respondent's counsel informed a representative of Region 25 that the Respondent would not be responding to the complaint.

In the absence of good cause being shown for the failure to file an answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a limited liability company, with an office and place of business in Columbus, Indiana (the Columbus facility), has been engaged in the manufacture of automotive and heavy truck components.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Columbus facility goods valued in excess of $50,000 directly from points outside the State of Indiana, and sold and shipped from its Columbus facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Indiana.

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 the Union, International Brotherhood of Electrical Workers, Local Union No. 1424, a/w Inter-

[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 *Narricot Industries, L.P. v. NLRB*, ___ F.3d ___, 2009 WL 4016113 (4th Cir. Nov. 20, 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted ___ S.Ct. ___, 2009 WL 1468482 (U.S. Nov. 2, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213); *Teamsters Local 523 v. NLRB*, ___ F.3d ___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

[2] The October 8, 2009 email from the Respondent's counsel informed the Region that the Respondent had gone out of business. The Respondent's asserted cessation of operations does not excuse it from filing an answer to the consolidated complaint. See *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15–16 (2000).

Member Schaumber notes that the Respondent never explained whether, or how, the alleged cessation of operations prevented it from filing an answer. Therefore, he agrees that the asserted cessation here does not excuse the Respondent's failure to file an answer. See *OK Toilet*, supra at 1101 fn. 2.

national Brotherhood of Electrical Workers, 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 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:

Richard Holmes	-	President
Ed Andross	-	Plant Manager
Christy Mauer	-	Human Resources Manager
Lou Birkenstol	-	Human Resources Representative
Shannon Ferguson	-	Human Resources Representative

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 production and maintenance employees of the Company's Columbus, Indiana 17th Street plant, including group leaders, but excluding clerical, engineering and plant protection employees and all supervisors.

Since an unknown date prior to December 17, 2007, and at all material times, the Union has been the designated exclusive bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from December 17, 2007 until December 14, 2012.

Since at least December 17, 2007, and at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 9, 2009, the Respondent eliminated its employees' access to the unit employees' no-cost health care clinic (the clinic).

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject 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 an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 8(a)(5) and (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.[3] Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by eliminating its unit employees' access to the clinic, we shall order the Respondent to restore its employees' access to the clinic. We shall also order the Respondent to make unit employees whole for any losses suffered as a result of its elimination of the employees' access to the clinic, including reimbursing employees for any expenses they may have incurred as a result of the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. (1981), such amounts 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 set forth in *New Horizons for the Retarded*, 283 NLRB 1163 (1987).[4]

ORDER

The National Labor Relations Board orders that the Respondent, Columbus Components Group, LLC, Columbus, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Brotherhood of Electrical Workers, Local Union No. 1424, a/w International Brotherhood of Electrical Workers, as the exclusive collective-bargaining representative of the employees in the following unit by unilaterally eliminating employees'

[3] The Respondent's counsel's October 8, 2009 email to the Region asserts that the Respondent has gone out of business. The effect of the alleged cessation of operation on the remedy is a matter best left to the compliance stage of this proceeding. *Allen Storage & Moving Co.,* 342 NLRB 501, 501 fn. 1 (2004).

[4] In the complaint, the General Counsel seeks quarterly compound interest 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, 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

access to the unit employees' no-cost health care clinic. The unit is:

> All production and maintenance employees of the Company's Columbus, Indiana 17th Street plant, including group leaders, but excluding clerical, engineering and plant protection employees and all supervisors.

(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) Rescind the unilateral change implemented on April 9, 2009, and restore employees' access to the unit employees' no-cost health care clinic.

(b) Make unit employees whole for any losses they may have suffered as a result of the unlawful conduct, as set forth in the remedy section of this decision.

(c) Within 14 days after service by the Region, post at its facility in Columbus, Indiana, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 25, 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 April 9, 2009.

(d) 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. December 29, 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 bargain collectively and in good faith with International Brotherhood of Electrical Workers, Local Union No. 1424, a/w International Brotherhood of Electrical Workers, as the exclusive collective-bargaining representative of the unit set forth below by unilaterally eliminating our employees' access to the unit employees' no-cost health care clinic. The unit is:

> All production and maintenance employees of our Columbus, Indiana 17th Street plant, including group leaders, but excluding clerical, engineering and plant protection employees and all supervisors.

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 rescind the unilateral change we implemented April 9, 2009, and WE WILL restore our employees' access to the unit employees' no-cost health care clinic.

WE WILL make employees whole for any losses they may have suffered as a result of our unlawful conduct, with interest.

COLUMBUS COMPONENTS GROUP, LLC

[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."