

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

LEIFERMAN ENTERPRISES, LLC  
d/b/a HARMON AUTO GLASS

and

Case 18-CA-18134

INTERNATIONAL UNION OF PAINTERS  
AND ALLIED TRADES-DISTRICT COUNCIL 82

and

LIGHTHOUSE MANAGEMENT GROUP, INC.  
RECEIVER

Party-In-Interest

**David M. Biggar, Esq.**, for the General Counsel  
**Douglas P. Seaton, Esq. and**  
**Jon Olson, Esq.**, for the Party-In-Interest

DECISION

STATEMENT OF THE CASE

Jane Vandeventer, Administrative Law Judge. This case was tried on January 25 and 26, 2007, in Minneapolis, Minnesota. The complaint alleges Respondent violated Section 8(a)(5) of the Act by failing and refusing to provide the Charging Party Union with information which was relevant and necessary to collective bargaining negotiations. The complaint also alleges Respondent violated Section 8(a)(5) of the Act unilaterally implementing changes in employees' terms and conditions of employment in the absence of a lawful impasse. The Respondent and the Party-In-Interest, the receiver, Lighthouse Management Group, Inc. (herein "Lighthouse") jointly filed an answer denying the essential allegations in the complaint. The Answer was filed by attorney Douglas Seaton on November 15, 2006, at which time he represented both Respondent and Lighthouse. At the hearing herein, Douglas Seaton stated on the record that he was appearing as attorney for Lighthouse only, and not for Respondent. He also gave evidence as described below. After the conclusion of the hearing, General Counsel and Lighthouse filed briefs which I have read.

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following

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## FINDINGS OF FACT

### I. JURISDICTION

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Respondent is a corporation with an office and places of business in Minneapolis, Minnesota, where it is engaged in the retail sale and installation of automotive glass. During a representative one-year period, Respondent derived gross income in excess of \$500,000, and purchased and received at its Minneapolis facilities goods valued in excess of \$50,000 directly from points outside the State of Minnesota. Accordingly, I find, as Respondent and Lighthouse admit, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

### II. UNFAIR LABOR PRACTICES

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#### A. The Facts

##### 1. Background

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Respondent Harmon Auto Glass is a company with numerous retail locations in the Minneapolis area. It was owned by a company called The Dwyer Group until April 2004, at which time Respondent Leiferman Enterprises, LLC, purchased the business and continued to operate it in the same manner as previously, and using the same employees. It is undisputed that Respondent recognized the Union and adopted the collective bargaining agreement which was then in effect between the Union and Harmon Auto Glass.<sup>1</sup> The term of that agreement was July 1, 2003, through June 30, 2006. Subsequently, in 2005, Respondent was charged by the Union with failing to make certain benefit payments to a 401(k) plan called for in the collective bargaining agreement, and a complaint was issued by the NLRB Regional Director. That complaint was settled, and the settlement agreement is still in existence. It was agreed by the parties at trial that the prior settled charges have no bearing on the instant matter.

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The Union has represented Respondent's employees in the following unit for over twenty years:

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<sup>1</sup> While Respondent denied in its answer that it had adopted the collective bargaining agreement, the evidence at trial showed that it indeed adopted the collective bargaining agreement. Counsel for Lighthouse represented on the record that Respondent had adopted the collective bargaining agreement.

All full-time and regular part-time employees employed by the Company within the Twin Cities and immediate suburbs; excluding all other employees of the Company, Inside Sales Representatives (ISRs), Business Leads, and/or Shop Managers as defined in the Act.

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The Union has been recognized as the collective bargaining representative of the unit employees by Respondent since Respondent purchased the business in April 2004.<sup>2</sup>

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It was admitted that Scott Leiferman is the owner of Respondent and that Jeff Barr was the Vice President of Respondent through September 2006. Jeff Barr appeared at the hearing as the designated representative of Lighthouse. Barr did not testify.

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## 2. Bargaining for a successor contract in 2006

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In June 2006, the Union and Respondent met to commence negotiations for a successor contract. There were four meetings during June and July 2006<sup>3</sup> — June 16, June 28, July 18, and July 24. A fifth bargaining session had been scheduled for July 31, but was not held. The Union was represented by Michael Gavanda, business manager and secretary-treasurer, and Russell Pavlak, business representative.<sup>4</sup> Respondent was represented in bargaining by Attorney Douglas Seaton and Vice President Jeff Barr.

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On June 16, the parties met for about two hours. The Union presented its bargaining proposal to Respondent. The parties discussed the Union's proposal and the then-outstanding complaint relating to 401(k) plan benefit payments. The major change proposed by the Union was a return to the previous defined benefit plan for pension, rather than the 401(k) plan which the Union had negotiated with the Dwyer Group. The parties also discussed what Respondent intended to propose, such as merit pay. Seaton stated that Respondent was having financial trouble and was "bleeding money." Seaton stated that Respondent could make its payroll or pay the owed 401(k) payments, but was unable to do both. Seaton also stated that Respondent could not afford to continue the current collective bargaining agreement, and that its proposal, when presented at the second meeting, would be "harsh" because of its financial condition.

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On June 28, the parties again met for about two hours. Most of the session was consumed with going over Respondent's proposal article by article. Respondent's proposal contained changes in the pay system, both a two-tier wage scale, and a "merit

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<sup>2</sup> Attorney Seaton stated at the hearing that the Respondent purchased the business in February 2004, but no evidence was introduced on this point. In any case, whether Respondent purchased Harmon Auto Glass in February or April 2004 is not material to the findings and conclusions below.

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<sup>3</sup> All dates hereafter are in 2006 unless otherwise specified.

<sup>4</sup> Pavlak was present for only three of the four bargaining sessions. He was absent from the July 18 session.

5 pay” proposal. At the meeting, Gavanda asked for the goals, objectives, and standards  
by which merit pay was to be awarded. Seaton responded that there were none, and  
that essentially it was entirely within the discretion of Respondent. Respondent’s  
proposal contained a 401(k) plan, but there were no required contributions. These, too,  
10 were entirely within the discretion of Respondent. Respondent’s proposal for health  
insurance required the employees to increase the share of health insurance they paid  
from 25 percent of the cost to 50 percent of the cost. The Union stated that it needed  
time to evaluate Respondent’s many proposed changes, and would respond at the next  
15 bargaining session, which was scheduled for July 12. The parties agreed to an  
extension of the collective bargaining agreement through July 13. Seaton stated that  
time was important, and that Respondent needed to complete the negotiations quickly.

15 Due to a funeral, the third meeting was rescheduled to July 18, and lasted about  
three hours. The Union presented responses to Respondent’s proposals. Several  
agreements were reached as the parties went through the proposals. The Union  
indicated that it was willing to work out a system which would minimize or eliminate  
20 pyramiding of overtime, and indicated a willingness to agree to employees’ paying some  
increased portion of health insurance premiums. The “merit pay” or production based  
pay was discussed for a considerable period, along with the proposed lower rate for  
new hires. Gavanda asked questions about the goals or objectives which would be  
applied so that an employee would know what would qualify him for merit pay.  
25 Gavanda stated that he needed the information in order to explain the proposal to  
employees. Seaton responded that there were no goals or objectives, and the awarding  
of merit pay would be discretionary with Respondent. Seaton testified he was aware  
that several of Respondent’s proposals had legal implications, and that the Union had  
asked its attorney to evaluate those proposals. The Union further stated that it would  
30 drop its proposal to return to the defined benefit plan for pensions and health coverage.  
Seaton again stated that Respondent needed to save a great deal of money in order to  
continue in business. The parties agreed to two further bargaining sessions, one on  
July 24 and another on July 31. Seaton testified that he stated to the Union that the  
parties should be able to get to their final positions at the July 24 meeting and to be in a  
35 position to respond to a final offer at the July 31 meeting.

40 The July 24 meeting was scheduled to begin at nine in the morning. Respondent  
began the meeting by presenting a modified written package to the Union. Seaton  
stated that he would present it and talk about it, and hear the Union’s response, that he  
wanted to make a final offer during the course of the day, and that he hoped the parties  
could get an agreement that day. The parties spent about an hour going over  
Respondent’s modified proposal. The Union requested a caucus to consider the  
45 proposal. After a caucus of about three hours, the parties reconvened, and the Union  
responded. The Union reiterated that it was dropping its demand for a return to the  
defined benefit pension plan, but countered that Respondent’s plan guaranteed nothing  
to employees. The Union proposed continuing the 401(k) contribution as in the expired  
contract. The parties agreed on two aspects of the modified proposal, Articles 4.08 and  
50 14.09. Seaton stated that Respondent was “hemorrhaging money,” and that it couldn’t  
continue to move in the direction it was going and stay in business. Seaton admitted  
that although he did not mention bankruptcy, he said “in every other way...the company  
is in trouble.” He admitted stating that the company would not be “viable,” would not be

“profitable,” and would not be able to “continue the business” unless Respondent secured all the changes to the collective bargaining agreement that it was seeking.<sup>5</sup> Gavanda then requested financial information to justify the dramatic cuts Respondent was proposing, for example that there would be no required contributions to the 401(k) plan, and those employees would have to pay for one-half of the cost of health insurance. Pavlak testified that he requested the comparable cost that non-unit employees paid for health insurance. The Union again requested information about the operation of the proposed merit pay proposal, and Seaton said there was no information about its operation. Seaton told the Union that this was Respondent’s final proposal. The Union did not agree to it, but told Seaton that it would be submitted to the bargaining unit employees for their approval or disapproval, but that the Union would not recommend it, because of the lack of information about Respondent’s economic condition, and about the merit pay proposal. Seaton stated that there was no need for any further meetings, and cancelled the July 31 meeting.

On July 26, Respondent sent the Union another copy of its final contract offer from the July 24 session. On July 31, the Union responded by letter, reiterating its request for financial information to justify the drastic economic concessions demanded by Respondent.<sup>6</sup> By letter of August 4, Respondent refused to provide any financial information.

The bargaining unit employees rejected the Respondent’s offer on August 9. Respondent apparently was informed of this fact, and on August 10, wrote a letter to the Union stating that the parties were at impasse and the Respondent would implement the economic portions of its final offer on August 13. By letter dated August 14, the Union stated that it did not consider the parties to be at impasse. The letter also informed Respondent that the Union was amenable to considering certain of Respondent’s proposals. It is undisputed that Respondent implemented its July 24 economic proposals on August 13.

### 3. Respondent Placed in Receivership

On September 20, pursuant to a complaint filed in state court by Respondent’s creditors, Respondent was placed into receivership by a state court judge in Hennepin County, Minnesota. The Party-in-Interest herein, Lighthouse, was named the receiver. The receiver was ordered to operate the business of Respondent, and to take control of its financial and other records, and its assets. Lighthouse was further ordered to sell the businesses, if possible, and to continue to take normal actions necessary to operation of

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<sup>5</sup> Much of the testimony of the bargaining witnesses for both Respondent and the Union was substantially consistent. Where there are material differences, however, I specifically find that Gavanda and Pavlak are more worthy of credit than Seaton. Seaton’s testimony was often couched in conclusory or argumentative language, as opposed to straightforward factual language. His demeanor was not impressive, and he contradicted himself on several occasions.

<sup>6</sup> The same letter requested Respondent’s 401(k) plan, a copy of which was later provided to the Union. The request for information about the 401(k) plan is not an issue herein.



5 thresholds, therefore, the merit pay proposal as written was totally within the control of Respondent, who could decide on a whim whether merit pay was payable or not, how much, when, and on what basis. Respondent could change the standards at will, or could decide never to pay any merit pay. In other words, Respondent's proposal was  
10 entirely discretionary. The Board has held that when an employer proposes such a "merit pay" system of compensation, there must be **some** governing principles to the system, and the employer must provide the union with information about the operation of the system. See, e.g., **Detroit Newspapers**, 326 NLRB 700, 706 (1998), enf. denied 216 F.3d 109 (DC Cir. 2000); **McClatchy Newspapers**, 321 NLRB 1386, 1391 (1996), enf. 131 F.3d 1026 (DC Cir. 1997), cert. denied 524 U.S. 937 (1998).

15 Where, as here, an employer is offering its merit pay proposal as an alleged benefit in trade for its admittedly concessionary proposal of **no** guaranteed contributions to the 401(k) retirement plan, it is entirely rational for a union to try to find out what the merit pay plan consists of. No party to negotiations would knowingly trade something for nothing, or something for an unknown quantity, a "pig-in-a-poke." If Respondent had goals, standards, or definable objective procedures and criteria to govern its proposal, Respondent was obligated to provide these to the Union. Its failure to do so violated its  
20 duty to bargain, and Section 8(a)(5) of the Act. If Respondent had no goals, standards, or definable objective procedures and criteria to govern its merit pay proposal, then it was obligated to bargain them with the Union. Respondent refused to do so, proffering the merit pay proposal as a take-it-or-leave-it choice. By so doing, and by declaring  
25 impasse when it had failed to bargain appropriately about its merit pay proposal, Respondent showed bad faith, and violated Section 8(a)(5) of the Act.

30 The Union's third request for information concerned financial data to support Respondent's claims that its July 24 proposal was all that it could afford to offer. It is undisputed that the Union requested this information orally at the July 24 bargaining session and reiterated its request in a letter dated July 31. It is likewise undisputed that Respondent refused to provide any financial information to the Union, citing in its refusal letter the facts that it was not about to file bankruptcy, and that it had not "pled poverty." It is well settled that an employer who claims that it cannot afford to pay more than is  
35 contained in its final offer is obligated to substantiate that claim by providing financial information to the union with whom it is bargaining. **NLRB v. Truitt Mfg. Co.**, 351 U.S. 149 (1956). No particular "magic words" need be stated to trigger this obligation, and each case must turn on its particular facts. Here, Respondent's apparent insistence that it did not plead poverty is utterly contradicted by the totality of its conduct at the bargaining table, such as its statement that Respondent was "hemorrhaging" money, and could not survive in business unless its concessionary proposals were accepted. Seaton's testimony as a whole could not be clearer. He specifically testified that he told  
40 the Union negotiators in as many ways as he possibly could that Respondent was in a dire financial condition. I find that Respondent's conduct at the bargaining table amounted to a claim that Respondent could not afford to offer anything more than what was in its final offer. Respondent was therefore obligated to provide the Union with the financial justification which the Union requested. As Respondent did not do so, it  
45 violated its duty to bargain and Section 8(a)(5) of the Act. **AMF Trucking & Warehousing**, 342 NLRB 1125, 1126 (2004); **Lakeland Bus Lines**, 335 NLRB 322 (2001), enf. denied 347 F.3d 955 (DC Cir. 2003); **Atlanta Hilton & Tower**, 271 NLRB  
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1600, 1602 (1984) .

## 2. Respondent's Declaration of Impasse and Implementation of Changed Terms and Conditions of Employment

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10 It is admitted that Respondent put into effect changed terms and conditions of employment on August 13, which reflect the economic portions of its final bargaining proposal of July 24. Board law requires that during contract negotiations, an employer may not unilaterally implement changes or proposals unless the union agrees to the implementation, or impasse has been reached. Here, Respondent implemented its final proposal which contained two particular terms about which the Union had requested information, the health care costs and the merit pay plan, and which Respondent had violated the Act by refusing to provide. In addition, Respondent had also violated the Act by its refusal to provide information about its financial condition — information which was relevant to an intelligent evaluation of its entire concessionary bargaining proposal. In the face of violations of the Act which constituted direct and substantial roadblocks to the progress of collective bargaining, no valid impasse was possible. Respondent impeded the normal course of negotiations by its refusal to provide these three vitally important types of information. Where a respondent has committed unfair labor practices which inhibit bargaining as Respondent did here, no lawful impasse can be reached. *Circuit-Wise, Inc.*, 309 NLRB 905, 918 (1992).

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It is appropriately Respondent's burden to demonstrate that an impasse exists, as Respondent is the party seeking to defend its unilateral implementation of changed terms and conditions of employment. The overall conduct of the bargaining herein further undermines Respondent's unsupported claim that the parties had reached an impasse by the end of the day on July 24. Good faith bargaining is a prerequisite to lawful impasse. Here, there were only four bargaining sessions before Respondent declared impasse, and three of them lasted only two or three hours each. Only one was nearly a full day, making a total of fifteen or fewer hours of negotiations in a situation where one party, Respondent, was demanding radical changes. The first two sessions were used to present first one party's proposal and then the other party's proposal. Thus, there were only two sessions at which real give-and-take could occur. At the third session, there was some movement by each side, and some few agreements made. At the fourth session, Respondent presented a modified proposal in the morning, went over it, and heard the Union's response. Respondent then basically converted its modified proposal into a "take-it-or-leave it," "last and final" proposal, and stated that if the Union did not agree to it, there was no need for any further bargaining, because that was all the Respondent could afford. At the fourth session, the Union had made some movement toward the Respondent's proposal, and had asked for the three types of information outlined above. Notwithstanding the incompleteness of discussion of the subjects about which information was requested, as well as the incompleteness of discussion of other areas of the proposal, Respondent insisted that bargaining was at an end. The Union held a vote among employees on Respondent's final offer, and following the rejection of the final offer by the employees, offered to get back together to continue negotiations. Respondent was not justified in assuming the employees' rejection was evidence of an impasse, especially in light of the Union's letter offering to resume negotiations, and indicating areas where the concessions needed by

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Respondent could be explored further. The very short amount of time spent by the parties in actual bargaining, not more than two eight-hour days in total, along with the large number of significant changes and concessions under discussion militate against the likelihood of a true bargaining impasse. See, e.g., **EAD Motors Eastern Air**  
 5 **Devices**, 346 NLRB No. 93, sl. op. at 3-5 (2006); **Lancaster Nissan**, 344 NLRB No. 7, sl. op. at 4 (2005); **Royal Motor Sales**, 329 NLRB 760, 761-64 (1999).

Thus, based on its conduct in prematurely terminating bargaining, as well as on  
 10 the impossibility of a lawful impasse where, as here, Respondent violated the Act by refusing to provide information necessary to the progress of bargaining, I find that Respondent violated Section 8(a)(5) of the Act by unilaterally implementing changed terms and conditions of employment of the bargaining unit employees.

### 15 3. Obligations of the Party-in Interest

The General Counsel named Lighthouse as a Party-in-Interest in the Complaint herein, but made no specific unfair labor practice allegations against Lighthouse. Notably, the General Counsel did not plead and does not contend that Lighthouse is a  
 20 successor employer to Respondent. Instead, the General Counsel argues that Lighthouse must act in its capacity as receiver to take whatever action may be ordered by the Board, citing Section 2(1) of the Act and **Holiday Inn Coliseum**, 300 NLRB 631 (1990).

Respondent argues that by virtue of its status as a receiver, it is automatically relieved of any obligation to take any actions to remedy Respondent's unfair labor practices as a matter of law. Respondent relies on a Sixth Circuit case which enforced a Board decision, but only in part. In **Peters v. NLRB**, 153 F.3d 289 (6<sup>th</sup> Cir. 1998), the  
 30 court considered a Board case decided as **Specialty Envelop Co.**, 313 NLRB 94 (1993), in which the Board had found that an individual named Peters had acted as a receiver for an ailing company, and subsequently had formed another company, Specialty Envelop Company, which had purchased the ailing company. The Board  
 35 found that Peters was a successor employer under **NLRB v. Burns Security Services**, 406 U.S. 272 (1972) and that Specialty Envelop Company was a successor under **Golden State Bottling Co. v. NLRB**, 414 U.S. 168 (1973). The Sixth Circuit court of appeals enforced the Board's order as to Peters, but denied enforcement as to the second successor, Specialty Envelop. The court reasoned that Specialty Envelop had  
 40 not had an opportunity to bargain with the original company about the purchase price, and therefore, it would be inequitable to hold it liable to remedy the original company's unfair labor practices as a **Golden State** successor. Respondent's contentions are far afield from the situation in this case. There has been no allegation of successorship,  
 45 nor has there been a subsequent sale of the business, and therefore the **Peters** case is inapposite.<sup>7</sup> Likewise, the court in **Peters** made no announcement of a bright line rule,

<sup>7</sup> Even if the **Peters** case were on point, it would be merely persuasive, not dispositive, as it was decided in a Circuit Court of Appeals different from the Eighth Circuit, where the instant  
 50 case arose. The issue in **Peters** has not been addressed by the Supreme Court, and Board law is to the contrary. I find that it is unpersuasive of Respondent's contention.

it merely addressed the particular factual situation it faced, a rather unusual factual situation. Even if **Peters** were to govern the instant situation, Lighthouse's role in the instant case is analogous to that of Peters, the **Burns** successor, not to that of Specialty Envelop.<sup>8</sup>

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To the extent Lighthouse argues that it did not have notice of the unfair labor practices committed by Respondent, I find that argument disingenuous to the point of speciousness. It is undisputed that Seaton represented Respondent, was the primary agent of Respondent during bargaining negotiations, and for a period following the appointment of Lighthouse as receiver, represented both Respondent and Lighthouse for several months. It is similarly undisputed that Jeff Barr, Vice President for Respondent, was also present at the bargaining negotiations, and that he acted as Lighthouse's representative at the trial herein. It beggars common sense, and I refuse to find, that the minds of either of these two individuals became *tabula rasa* on September 20. The conduct they had participated in was still contained in their memories, whether they were agents of Respondent or of Lighthouse. The knowledge of the conduct of bargaining during their tenure as agents of Respondent is therefore attributable to Lighthouse, of whom they are now agents, and I so find.

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A straightforward analysis in the present case must begin with the issue of Lighthouse's role as a receiver. The state court designated Lighthouse as the receiver on September 20, after the unfair labor practices found herein had occurred. As summarized above, it was charged to manage Respondent in a responsible manner, and was empowered to exercise normal managerial powers in that duty. Lighthouse, as a receiver, is therefore a kind of agent or manager of Respondent. The Act includes receivers within the definition of a "person" within the meaning of the Act at Section 2(1). The Board has had occasion to decide this question in **Holiday Inn Coliseum**, above. The Board there pointed out that the receiver had been appointed to manage, control, and protect the hotel, and was not only a person within the meaning of Section 2(1) of the Act, but was likewise an agent within the meaning of Section 2(2) of the Act. The Board stated that "where the State has a temporary interest in the employing entity...we find the situation most closely analogous to bankruptcy trustees, over whom we do assert jurisdiction. See, e.g., **Karsh's Bakery**, 273 NLRB 1131 (1984)." 300 NLRB at 631, fn. 4.

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Therefore, I find that Lighthouse, as receiver for Respondent, is an agent of Respondent within the meaning of the Act, based on the powers and duties conferred on it by the state court order, and is therefore obligated to carry out Respondent's business obligations in accordance with the law, including the Act. I specifically find, and will include this finding in my recommended Order, that Lighthouse is obligated to carry out the terms of any Order issued by the Board.

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<sup>8</sup> It is unnecessary to reach the issue of whether Lighthouse is a successor under Board law, and therefore I do not decide the issue. It is worthy of note, however, that in two recent situations bearing some similarity to the instant case, the Board has held successors accountable to remedy unfair labor practices of predecessor employers. **Eldorado, Inc.**, 335 NLRB 952 (2001); **American Signature, Inc.**, 334 NLRB 880, 882 (2001).

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## CONCLUSIONS OF LAW

5           1.     The Union is the collective-bargaining representative of the employees in  
the following appropriate bargaining unit:

10                     All full-time and regular part-time employees employed by Respondent  
within the Twin Cities and immediate suburbs; excluding all other  
employees of Respondent, Inside Sales Representatives (ISRs), Business  
Leads, and/or Shop Managers as defined in the Act.

15           2.     By failing and refusing to provide relevant information requested by the  
Union, Respondent has refused to bargain with the Union and has violated Section  
8(a)(5) and (1) of the Act.

20           3.     By unilaterally changing the terms and conditions of employment in the  
absence of a lawful bargaining impasse, Respondent has violated Section 8(a)(5) and  
(1) of the Act.

25           4.     The violations set forth above are unfair labor practices affecting  
commerce within the meaning of the Act.

## THE REMEDY

30           Having found that Respondent has engaged in certain unfair labor practices, I  
shall recommend that it be required to cease and desist therefrom and to take certain  
affirmative action necessary to effectuate the policies of the Act. I shall recommend that  
Respondent be ordered to rescind the changes to terms and conditions of employment  
that it made on August 13, 2006, and that it be ordered to make employees whole for  
any loss of earnings and other benefits suffered as a result of the unlawful actions taken  
against them in accordance with ***Ogle Protection Service***, 183 NLRB 682 (1970), enfd.  
35           444 F.2d 502 (6<sup>th</sup> Cir. 1971), plus interest as computed in accordance with ***New  
Horizons for the Retarded***, 283 NLRB 1173 (1987).

40           On these findings of fact and conclusions of law and on the entire record, I issue  
the following recommended<sup>9</sup>

## ORDER

45           The Respondent, Leiferman Enterprises, LLC d/b/a Harmon Auto Glass, its  
officers, agents, successors, and assigns, and specifically its receiver, Lighthouse  
Management Group, Inc., shall

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50           <sup>9</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and  
Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.  
102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed  
waived for all purposes.

1. Cease and desist from

5 (a) Refusing to bargain collectively with the Union by failing and refusing to provide relevant information requested by the Union.

10 (b) Refusing to bargain collectively with the Union by unilaterally changing the terms and conditions of employment of the bargaining unit employees in the absence of a lawful bargaining impasse.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

15 2. Take the following affirmative action necessary to effectuate the policies of the Act.

20 (a) Provide the Union with the information regarding health care insurance costs, merit pay plan operation, and financial information as requested by the Union on July 24 and 31, 2006.

25 (b) Rescind the unilaterally implemented changes in terms and conditions of employment of bargaining unit employees which were put into effect on August 13, 2006.

(c) Upon request, resume collective-bargaining negotiations with the Union.

30 (d) Make employees whole for any loss of earnings and other benefits suffered as a result of the unlawful actions taken against them, in the manner set forth in the remedy section of this decision.

35 (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 amount of backpay due under the terms of this Order.

40 (f) Within 14 days after service by the Region, post at its Minneapolis-area locations copies of the attached notice marked "Appendix."<sup>10</sup> 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  
45 maintained for 60 consecutive days in conspicuous places including all places where

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50 <sup>10</sup> If this Order is enforced by a judgment of the 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 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 24, 2006.

10 (g) 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.

15 Dated at Washington, D.C., July 20, 2007.

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**Jane Vandeventer**  
**Administrative Law Judge**

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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** refuse to bargain collectively with the Union in the following appropriate unit:

All full-time and regular part-time employees employed by the Company within the Twin Cities and immediate suburbs; excluding all other employees of the Company, Inside Sales Representatives (ISRs), Business Leads, and/or Shop Managers as defined in the Act.

**WE WILL NOT** refuse to bargain collectively with the Union by failing or refusing to provide relevant information requested by the Union for the purpose of carrying out its representational duties.

**WE WILL NOT** refuse to bargain collectively with the Union by making changes in employees' terms and conditions of employment in the absence of a lawful bargaining impasse.

**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**, upon request, resume bargaining collectively with the Union in the unit set forth above.

**WE WILL** provide the Union with the information it requested by it on July 24 and 31, 2006.

**WE WILL** rescind the changes in terms and conditions of employment we made on August 13, 2006.

**WE WILL** make whole, with interest, all employees in the bargaining unit for any loss of earnings or other benefits they may have suffered as a result of our unlawful changes in terms and conditions of employment.

LEIFERMAN ENTERPRISES, LLC  
d/b/a HARMON AUTO GLASS

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

330 South Second Avenue, Towle Building, Suite 790  
Minneapolis, Minnesota 55401-2221  
Hours: 8 a.m. to 4:30 p.m.  
612-348-1757.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 612-348-1770.