

**The Accurate Binding Company Incorporated and
Baltimore Newspaper Graphic Communications
Union 31-N, AFL-CIO, CLC.** Case 5-CA-
31367

January 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

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 filed by the Union on July 28, 2003, the General Counsel issued the complaint on October 27, 2003, against The Accurate Binding Company Incorporated, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On January 2, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On January 6, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

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 filed by November 10, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 4, 2003, notified the Respondent that unless an answer was received by December 17, 2003, 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 Maryland corporation with an office and place of business in Baltimore, Maryland, has been engaged in the business of binding books and making book covers.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, sold and shipped from its Baltimore, Maryland facility, goods valued in excess of \$50,000 directly to points located outside the State of Maryland. 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 Baltimore Newspaper Graphic Communications Union 31-N, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Thomas D. Rothe has held the position of the Respondent's president and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent at the Baltimore facility (the unit), constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent at its Baltimore, Maryland facility; but excluding all other employees, guards and supervisors as defined in the Act.

Since in or around January 2002, and all material times thereafter, the Union has been the exclusive collective-bargaining representative of the unit and, since then, the Union has been recognized as such representative by the Respondent.

Since at least February 1, 2002, 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.

On or about February 1, 2002, the Respondent and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the unit, which agreement was to remain in effect until February 1, 2005.

On or about March 10, 2003, the Respondent closed its business. Since about the same date, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to pay unit employees severance pay pursuant to article VII of the agreement.

The term and condition of employment described above is a mandatory subject for the purpose of collective bargaining. The Respondent engaged in the above conduct 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 the unit employees, and has thereby engaged in unfair labor practices affecting 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. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to pay unit employees severance pay, as required by article VII of the February 1, 2002—February 1, 2005 collective-bargaining agreement, since it closed its business on March 10, 2003, we shall order the Respondent to comply with the provisions of article VII of the agreement and to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *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).

In addition, because the Respondent has closed its business, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of any unit employees who were employed by the Respondent on or after March 10, 2003, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, The Accurate Binding Company Incorporated, Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect the terms and conditions of its February 1, 2002—February 1, 2005 collective-bargaining agreement with Baltimore Newspaper Graphic Communications Union 31-N, AFL-CIO, CLC, by failing to pay employees in the following appropriate unit severance pay as required by article VII of the agreement. The appropriate unit is:

All production and maintenance employees employed by Respondent at its Baltimore, Maryland facility; but excluding all other employees, 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) Comply with the provisions of article VII of the collective-bargaining agreement with respect to severance pay and make whole the unit employees, with interest, for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to pay them severance pay since it closed its business on March 10, 2003, as set forth in the remedy section of this Decision.

(b) 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.

(c) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"¹ to the Union and all unit employees who were employed by the Respondent on or after March 10, 2003.

(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.

APPENDIX

NOTICE TO EMPLOYEES

MAILED 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 mail 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

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed By Order of the National Labor Relations Board" shall read "Mailed Pursuant To a Judgment of the United States Court Of Appeals Enforcing an Order of the National Labor Relations Board."

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 continue in effect the terms and conditions of our February 1, 2002—February 1, 2005 collective-bargaining agreement with Baltimore Newspaper Graphic Communications Union 31-N, AFL-CIO, CLC, by failing to pay employees in the following appropriate unit severance pay as required by article VII of the agreement. The appropriate unit is:

All production and maintenance employees employed by us at our Baltimore, Maryland facility; but includ-

ing all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL comply with the provisions of article VII of the collective-bargaining agreement with respect to severance pay and WE WILL make whole the unit employees, with interest, for any loss of earnings and other benefits they may have suffered as a result of our failure to pay them severance pay since we closed our business on March 10, 2003.

THE ACCURATE BINDING COMPANY INCORPORATED