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Ellrich Corporation d/b/a Lewis Goodman Wood Products and Carpenters' District Council of Kansas City and Vicinity, AFL-CIO, affiliated with United Brotherhood of Carpenters and Joiners of America. Case 17-CA-23894

December 6, 2007

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

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. Based on a charge and an amended charge filed by Carpenters' District Council of Kansas City and Vicinity, AFL-CIO, affiliated with United Brotherhood of Carpenters and Joiners of America, on June 12 and July 12, 2007, respectively, the General Counsel issued a complaint on August 31, 2007, against Ellrich Corporation d/b/a Lewis Goodman Wood Products, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On October 2, 2007, the General Counsel filed a Motion for Default Judgment with the Board. On October 11, 2007, 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 September 14, 2007, all of the allegations in the complaint could be considered admitted as true. Further, the undisputed allegations in the motion disclose that the Region, by letter dated September 17, 2007, notified the Respondent that an answer to the complaint had not been filed and that unless an answer was received by the close of business on September 24, 2007, a motion for default judgment would be filed. The letter also confirmed counsel for the General Counsel's understanding, based on a phone conversation with the Respondent's president, that the Respondent did

not intend to file an answer. To date, no answer to the complaint has been 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 corporation with its office and place of business in Kansas City, Missouri (the Respondent's facility), has been engaged in the business of designing and manufacturing architectural millwork.

During the 12-month period ending July 31, 2007, the Respondent, in conducting its business operations described above, purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, David Ellrich 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 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, excluding delivery truck drivers, hardwood finishers, office, clerical and supervisory employees.

Since on about June 1, 2006, and at all material times, the Union has been the designated exclusive collective-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 the Respondent's adoption of a collective-bargaining agreement covering unit employees, effective from April 1, 2006, to March 31, 2007, between the Union and the Respondent's predecessor, Lewis Goodman Wood Products.

At all times since about June 1, 2006, the Union has been the exclusive collective-bargaining representative of the unit.

On about April 25, 2007, the Respondent insisted that, as a condition of reaching a collective-bargaining agree-

ment, the Union agree to allow the Respondent to offer different pension and health and welfare benefits to unit employees based on their union membership.

The condition described above is prohibited by Section 8(a)(3) of the Act.

On about April 27, 2007, the Respondent bargained to impasse over the condition described above.

On about May 4, 2007, the Respondent unilaterally implemented its proposal to offer different pension and health and welfare benefits to unit employees based on their union membership.

On about April 1, 2007, the Respondent unilaterally eliminated payments of \$3.15 per hour for each hour worked by each unit employee to Carpenter's District Counsel Pension Fund; payments of \$4.50 per hour for each hour worked by each unit employee to Carpenters' Health and Welfare Plan of Kansas City and Vicinity; and payments of 7 cents per hour for each hour worked by each unit employee to Cabinet Markers and Millmen Joint Apprenticeship Committee.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without first bargaining with the Union to a good-faith impasse.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its 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 violated Section 8(a)(5) and (1) of the Act by failing to bargain in good faith by insisting to impasse on an unlawful condition to reaching an agreement and by unilaterally implementing its proposal to offer different pension and health and welfare benefits to unit employees based on their union membership, we shall order the Respondent, on request, to bargain in good faith with the Union until an agreement or a good-faith impasse in negotiations is reached. In addition, we shall order the Respondent to restore the status quo ante that existed prior to its unlawful change and

make its unit employees whole for any losses they may have suffered as a result of the Respondent's unlawful implementation of its bargaining proposal.

Further, having found that the Respondent unilaterally eliminated payments on behalf of unit employees to the Carpenter's District Counsel Pension Fund, the Carpenters' Health and Welfare Plan of Kansas City and Vicinity, and the Cabinet Markers and Millmen Joint Apprenticeship Committee without first bargaining with the Union to a good-faith impasse, we shall order the Respondent to make all required contributions that have not been made on behalf of the unit employees since April 1, 2007, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).¹ The Respondent shall also be required to reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), affd. mem. 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), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Ellrich Corporation d/b/a Lewis Goodman Wood Products, Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain in good faith with Carpenters' District Council of Kansas City and Vicinity, AFL-CIO, affiliated with United Brotherhood of Carpenters and Joiners of America, as the exclusive collective-bargaining representative of its unit employees by insisting to impasse on an unlawful condition to reaching an agreement and by unilaterally implementing its proposal to offer different pension and health and welfare benefits to unit employees based on their union membership. The appropriate unit is:

All production and maintenance employees, excluding delivery truck drivers, hardwood finishers, office, clerical and supervisory employees.

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(b) Unilaterally eliminating required payments on behalf of unit employees to the Carpenter's District Council Pension Fund; the Carpenters' Health and Welfare Plan of Kansas City and Vicinity; and the Cabinet Markers and Millmen Joint Apprenticeship Committee.

(c) 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) On request, bargain in good faith with the Union until an agreement or a good-faith impasse in negotiations is reached.

(b) Rescind its unilateral implementation of its proposal to offer different pension and health and welfare benefits to unit employees based on their union membership, and make its unit employees whole for any losses they may have suffered as a result of the Respondent's unlawful implementation of its proposal.

(c) Make all required benefit fund payments and contributions on behalf of unit employees that have not been made since April 1, 2007, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, with interest, in the manner set forth in the remedy section of this decision.

(d) 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.

(e) Within 14 days after service by the Region, post at its facility in Kansas City, Missouri, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 17, 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

² 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."

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 1, 2007.

(f) 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 6, 2007

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow, 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 to bargain in good faith with Carpenters' District Council of Kansas City and Vicinity, AFL-CIO, affiliated with United Brotherhood of Carpenters

and Joiners of America, as the exclusive collective-bargaining representative of our unit employees by insisting to impasse on an unlawful condition to reaching an agreement and by unilaterally implementing our proposal to offer different pension and health and welfare benefits to unit employees based on their union membership. The appropriate unit is:

All production and maintenance employees, excluding delivery truck drivers, hardwood finishers, office, clerical and supervisory employees.

WE WILL NOT unilaterally eliminate required payments on behalf of our unit employees to the Carpenter's District Counsel Pension Fund; the Carpenters' Health and Welfare Plan of Kansas City and Vicinity; and the Cabinet Markers and Millmen Joint Apprenticeship Committee.

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, on request, bargain in good faith with Carpenters' District Council of Kansas City and Vicinity, AFL-CIO, affiliated with United Brotherhood of Carpenters and Joiners of America until a new agreement or good-faith impasse in negotiations is reached.

WE WILL rescind our unilateral implementation of our proposal to offer different pension and health and welfare benefits to unit employees based on their union membership, and WE WILL make our unit employees whole for any losses they may have suffered as a result of our unlawful implementation of our proposal.

WE WILL make all required benefit fund payments and contributions on behalf of our unit employees that have not been made since April 1, 2007, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

ELLRICH CORPORATION D/B/A LEWIS GOODMAN
WOOD PRODUCTS