Wrangell Seafoods, Inc. *and* Alaska Fisheries Division of the United Industrial, Service, Transportation, Professional and Government Workers of North America. Case 19–CA–31546

April 29, 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 failed to file an answer to the complaint. Upon a charge, amended charge, and second amended charge filed by the Union on September 26, October 24, and November 10, 2008, respectively, the General Counsel issued the complaint on December 31, 2008, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On February 12, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on February 19, 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 a timely response to the Notice to Show Cause.

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 notes that the answer must be received on or before January 14, 2009. The complaint further noted that if no answer was filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Thereafter, on January 30, 2009, the Region sent a letter to the Respondent's registered agent notifying the Respondent that it had failed to submit an answer in response to the complaint and the significance of that failure. The letter provided the Respondent with additional time until February 4, 2009, to file an answer.

In its response to the Notice to Show Cause, the Respondent claims that its counsel became aware of the complaint and the Notice to Show Cause on March 2, 2009, and that the Respondent has not had time to investigate the charges set out in the General Counsel's motion. The Respondent further contends that it has been struggling financially and administratively, and that it has not consistently maintained an individual on its premises to deal with administrative matters. In the latter regard, the Respondent maintains that the Respondent's secretary-treasurer, Levi Dow, had been checking the mail, but was away from the premises for medical reasons at some points during January and February 2009.

The Respondent admits that on February 10, Dow received the General Counsel's letter extending the period for filing an answer but asserts that the letter was inadvertently not forwarded to counsel. The Respondent further contends that it is now in bankruptcy proceedings; that those proceedings stay the instant procedure; and that it has no operations and no assets and will be unable to remedy the unfair labor practices alleged. In response, the General Counsel contends that bankruptcy proceedings do not stay the Board's administrative procedures.

For the reasons set forth below, we find that the Respondent's arguments do not constitute good cause for failing to file a timely answer to the amended complaint. The Respondent has admitted that the individual designated to deal with the Respondent's correspondence received the Region's letter, and failed to forward it to its attorney or contact the Region for an extension of time in which to file an answer. A failure to promptly request an extension of time to file an answer is a factor demonstrating lack of good cause.[2] Further, the Board has found that assertions of "turmoil" caused by the sudden closing of an office and "the departure of all key employees,"[3] the preoccupation of the respondent's agents with other aspects of the respondent's business,[4] and the illness and absence of respondent's agents from the business[5] do not constitute good cause for the respondent's failure to file a timely answer. In addition, bankruptcy proceedings do not constitute either good cause for failing to file an answer or a basis for denying the General Counsel's mo-

[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.

[2] See *Day & Zimmerman Services*, 325 NLRB 1046 (1998), citing *Ancorp National Services*, 202 NLRB 513 (1973), enfd. mem. 502 F.2d 1159 (1st Cir. 1973) (good cause not found where respondent's vice president in charge of labor relations was out of the office due to illness and complaint was inadvertently filed away; no timely request for an extension of time to file an answer was made).

[3] *Dong-A Daily North America, Inc.*, 332 NLRB 15, 15 (2000).

[4] See *Lee & Sons Tree Service*, 282 NLRB 905 (1987).

[5] *Ancorp National Services*, supra.

tion.[6] It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition.[7]

Because good cause has not been shown for the failure to file a timely answer to the complaint,[8] we grant the General Counsel's Motion for Default Judgment.[9]

On the entire record, the National Labor Relations Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is an Alaska corporation with a place of business in Wrangell, Alaska, where it is engaged in the business of fish processing and canning.

The Respondent, during the 12-month period preceding issuance of the complaint, which period is representative of all material times, in conducting its operations described above, derived gross revenues in excess of $500,000, and purchased and received at its Wrangell, Alaska facility goods valued in excess of $10,000 directly from points outside the State of Alaska.

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, Alaska Fisheries Division of the United Industrial, Service, Transportation, Professional and Government Workers of North America, 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 have 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/or agents within the meaning of Section 2(13) of the Act acting on the Respondent's behalf:

Teresa Elliot	Comptroller
Steven Elliot	Owner
Terry Montford	Chief Executive Officer
Levi S. Dow	Registered Agent
Douglas W. Roberts	Director/Majority Owner

The employees of the Respondent who perform the following work, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All seafood processing from the time the product arrives at the plant and the several operations, until the finished product is packed in cartons or cases and delivered to the warehouse, truck, dock or vessels, including the loading and unloading of vans and containers, and the operation and maintenance of all processing equipment.

At all material times, since at least January 1, 2007, the Union has been the exclusive collective-bargaining representative of the unit and recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period May 1, 2008 through April 30, 2009.

At all material times since at least January 1, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employed by the Respondent.

Since about the dates noted below, the Union, in writing, has requested that the Respondent furnish the Union with the following information:

On May 9, 2008, list of unit employees from whom dues were withheld for the 2008 season; and on September 16, 2008, time records for the unit.

Since about September 16 or 26, 2008, the Union, by its steward, Joy Watts, verbally requested that the Respondent provide information regarding who in the unit had been paid and how much they had been paid.

The information requested by the Union, as described above, is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

The Respondent, by Terry Montford, has failed and refused to furnish the Union with the requested information described above since about May 9 and September 16, 2008.

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[6] See *OK Toilet & Towel Supply, Inc*., 339 NLRB 1100, 1100 (2003) (institution of bankruptcy proceedings do not constitute good cause for denial of motion for summary judgment).

[7] See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

[8] In Member Schaumber's view, in assessing a respondent's "good cause" showing, the proper analysis is that utilized by the Federal courts, i.e., the reasons the answer was untimely, the merits of the respondent's defense and whether any party would suffer prejudice if the default motion were denied. *R-Max Services,* 346 NLRB 177, 177 fn. 4 (2005). Member Schaumber also believes that the Board's Notice to Show Cause form should be amended to make clear that the respondent is obligated to provide good cause for its failure to file a timely answer at the time it responds to the Notice. Id. Nonetheless, Member Schaumber agrees that default judgment is appropriate here.

[9] We also grant the General Counsel's motion to amend his proposed Order and notice to employees. We have revised the proposed Order and notice to employees to more closely reflect the complaint allegations and the Board's usual remedial language.

The Respondent, by Teresa Elliot, has failed and refused to furnish the Union with the requested information as described above since about September 16 or 26, 2008.

About August 8, 2008, First American Title Insurance Company foreclosed upon the Respondent. Notice of the foreclosure and resulting auction was published on October 22, 2008. The foreclosure described above relates to the wages, hours, and other terms and conditions of employment of the unit, and is a mandatory subject for the purposes of collective bargaining.

On November 10, 2008, the Union, by letter, requested that the Respondent bargain with it concerning the effects of the foreclosure on the unit. From about November 10, 2008, and continuing to present, the Respondent has failed and refused to bargain with the Union with respect to the effects of the foreclosure.

By the following conduct, the Respondent has repudiated its collective-bargaining agreement described above.

About September 5, 2008, the Respondent failed to remit to the Union the 2008 dues deducted from unit employees.

About May 9, 2008, the Respondent failed to honor its settlement of the Union's grievance, filed on April 17, 2008, pertaining to the Respondent's failure to remit to the Union the 2008 dues deducted from unit employees.

About September 5, 2008, the Respondent failed to fully and/or properly pay unit employees their last paychecks.

On September 16, 2008, the Respondent failed to respond to the Union's grievance pertaining to the failure to fully and/or properly pay unit employees, as described above.

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, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the foreclosure of the Respondent's facility, we shall order the Respondent to bargain with the Union, on request, about the effects of the closing. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).[10]

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the foreclosure on the unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.,*

[10] See also, *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[11]

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to provide relevant and necessary information requested by the Union by letters dated May 9 and September 16, and verbally on September 16 or 26, 2008, we shall order the Respondent to provide the Union with the requested information. Further, having found that the Respondent violated Section 8(a)(5) and (1) by repudiating its collective-bargaining agreement with the Union by failing to remit to the Union the 2008 dues deducted from unit employees paychecks, and fully and/or properly pay unit employees their last paychecks, we shall order the Respondent to remit to the Union the 2008 dues deducted from its unit employees, with interest, as prescribed in *New Horizons for the Retarded*, supra.

We shall also order the Respondent to make unit employees whole by fully and/or properly paying them their last paychecks. All payments to unit employees shall 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 prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to honor its settlement of the Union's grievance filed on April 17, 2008, and by failing to respond to a grievance filed by the Union, we shall order the Respondent, on request, to honor its settlement of the Union's April 17, 2008 grievance, and to respond to the Union's grievances.

Finally, in view of the fact that the Respondent has closed its facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent since May 9, 2008, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Wrangell Seafoods, Inc., Wrangell, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Alaska Fisheries Division of the United Industrial, Service, Transportation, Professional and Government Workers of North America, as the exclusive collective-bargaining representative of the employees performing the following work (the unit):

> All seafood processing from the time the product arrives at the plant and the several operations, until the finished product is packed in cartons or cases and delivered to the warehouse, truck, dock or vessels, including the loading and unloading of vans and containers, and the operation and maintenance of all processing equipment.

(b) Failing and refusing to bargain with the Union over the effects on the unit employees of the August 8, 2008 foreclosure of its facility.

(c) Repudiating its collective-bargaining agreement with the Union by failing to remit union dues, failing to honor grievance settlements, failing to fully and/or properly pay unit employees, and failing to respond to grievances.

(d) Failing and refusing to furnish the Union information necessary for and relevant to the Union's performance of its duties as the exclusive bargaining representative of the employees in the unit.

(e) 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 collectively and in good faith with the Union concerning the effects on the unit employees of the foreclosure of the Respondent's Wrangell, Alaska facility on August 8, 2008, as requested by the Union by letter dated November 10, 2008, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay to the terminated unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Honor and comply with the terms and conditions of its collective-bargaining agreement with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(d) Remit to the Union the 2008 dues deducted from employees, with interest, in the manner set forth in the remedy section of this decision.

(e) On request, honor the settlement of the Union's grievance filed April 17, 2008, and respond to the grievance filed by the Union.

(f) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's repudiation of the parties' 2008–2009 collective-bargaining agreement, including

[11] In the complaint, the General Counsel seeks an Order requiring the Respondent "to make whole employees adversely affected, including pay, and, inter alia, quarterly compound interest on any backpay or monetary remedies ordered in this case." 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., *Rogers Corp.,* 344 NLRB 504 (2005).

fully and/or properly paying the unit employees their last paychecks, with interest, in the manner set forth in the remedy section of this decision.

(g) Furnish the Union with the information it requested on May 9, September 16 and 26, 2008, including a list of unit employees from whom dues were withheld for 2008, September 16, 2008 time records for the unit, and who in the unit had been paid and how much they had been paid.

(h) 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.

(i) Within 14 days after service by the Region, the Respondent shall duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[12] to the Union and to all unit employees who were employed by the Respondent at any time since May 9, 2008.

(j) 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. April 29, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[12] 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."

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 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 Alaska Fisheries Division of the United Industrial, Service, Transportation, Professional and Government Workers of North America as the exclusive collective-bargaining representative of the employees who perform the work set forth below (the unit):

> All seafood processing from the time the product arrives at the plant and the several operations, until the finished product is packed in cartons or cases and delivered to the warehouse, truck, dock or vessels, including the loading and unloading of vans and containers, and the operation and maintenance of all processing equipment.

WE WILL NOT fail and refuse to bargain with the Union over the effects on our unit employees of the August 8, 2008 foreclosure of our facility.

WE WILL NOT repudiate the 2008–2009 collective-bargaining agreement with the Union by failing and refusing to: remit to the Union the 2008 dues that were deducted from unit employees; honor our settlement of the Union's grievance filed April 17, 2008; fully and/or properly pay unit employees their last paychecks; or respond to the Union's grievance dated September 16, 2008 pertaining to our failure to fully and/or properly pay unit employees.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

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 collectively and in good faith with the Union concerning the effects on our unit employees of the foreclosure of our Wrangell, Alaska facility on August 8, 2008, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL honor and comply with the terms and conditions of our collective-bargaining agreement with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL remit to the Union the 2008 dues deducted from employees, with interest.

WE WILL, on request, honor our settlement of the Union's grievance filed April 17, 2008, and respond to the grievance filed by the Union.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our repudiation of our 2008–2009 collective-bargaining agreement, including fully and/or properly paying the unit employees their last paychecks, with interest.

WE WILL pay to the terminated unit employees their normal wages for the period, with interest.

WE WILL furnish the Union with the information it requested on May 9, September 16 and 26, 2008.

WRANGELL SEAFOODS, INC.