Spartan Industrial, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–51794

June 24, 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 failed to file an answer to the complaint. Upon a charge and an amended charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Union) on January 29 and March 24, 2009, respectively, the General Counsel issued the complaint on April 13, 2009, against Spartan Industrial, Inc. (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the Act.

On May 5, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on May 8, 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 stated that the answer had to be received on or before April 27, 2009. The complaint further stated 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. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated April 27, 2009, notified the Respondent that, unless an answer was received by May 4, 2009, 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 corporation with a facility in Detroit, Michigan, has been engaged in fabricating, repairing, and modifying racks for use in the automotive industry.

During the calendar year 2008, a representative period, the Respondent, in conducting its business operations described above, sold and shipped from its Detroit facility goods and materials valued in excess of $50,000 directly to Ford Motor Co., an enterprise directly engaged in interstate commerce.

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 and Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (Local 174), are labor organizations 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:

Terry O. Hawkins	President
Robert Balk	Plant Superintendent

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 factory, production and maintenance employees; but excluding all foremen, supervisors, confidential salaried employees, office employees and plant guards.

Since at least 2000, and at all material times, the Union has been the exclusive collective-bargaining representa-

[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 *Snell Island SNF LLC v. NLRB*, __ F.3d __, 2009 WL 1676116 (2d Cir. June 17, 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. May 1, 2009), petition for cert. filed __ U.S.L.W. __ (U.S. May 27, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. May 1, 2009), petition for rehearing filed Nos. 08-1162, 08-1214 (May 27, 2009).

tive of the unit and has been so recognized by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from July 2, 2007, through July 2, 2009.

Since at least 2000 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.

Since at least 2000, and at all times material, the Union has assigned its representative responsibilities with respect to the unit to its Local 174.

1. Since about July 2008, and continuing to date, the Respondent has unilaterally failed to remit union dues to the Union and its Local 174 as provided in the parties' 2007–2009 collective-bargaining agreement, while continuing to deduct dues from unit employees' paychecks.

2. Since about September 30, 2008, the Respondent has unilaterally failed to continue in force and effect the health insurance benefits as provided in the parties' 2007–2009 collective-bargaining agreement, while continuing to deduct such premiums from unit employees' paychecks.

3. Since about October 31, 2008, the Respondent has unilaterally failed to continue in force and effect the dental plan as provided in the parties' 2007–2009 collective-bargaining agreement.

4. Since about August 19, 2008, the Respondent has unilaterally failed to make contributions to unit employees' individual retirement accounts, as provided in the parties' 2007–2009 collective-bargaining agreement.

The subjects set forth above relate to wage and 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 prior notice to the Union and Local 174 and without affording the Union and Local 174 an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct on the unit.

5. Since about February 5, 2009, the Union, by letter, requested that the Respondent furnish it with the following information:

> 1. Dates when COBRA letters were sent to employees who had been laid off by the Respondent;
>
> 2. Records showing whether the Respondent had paid workers' compensation premiums on behalf of its employees.

The information requested by the Union is necessary for, and relevant to, its performance of its duties as the exclusive collective-bargaining representative of the unit. The Respondent has failed and refused to furnish the Union with the requested information.

CONCLUSIONS OF LAW

1. By the acts and conduct described above in paragraphs 1–4, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees within the meaning of Section 8(a)(5) and (1), and Section 8(d) of the Act.

2. By the acts and conduct described above in paragraph 5, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees within the meaning of Section 8(a)(5) and (1) of the Act.

3. These unfair labor practices affect commerce within the meaning of 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 unilaterally failing, since July 2008, to remit union dues to the Union and Local 174 while continuing to deduct dues from unit employees' paychecks, we shall order the Respondent to remit to the Union and Local 174 the dues that have been deducted pursuant to duly executed and unrevoked authorizations as provided in the 2007–2009 collective-bargaining agreement, with interest, as prescribed in *New Horizon for the Retarded*, 283 NLRB 1173 (1987).[2]

Having found the Respondent violated Section 8(a)(5) and (1) of the Act by failing since September 30, 2008, to continue in force and effect the contractual health insurance benefits while continuing to deduct such premiums from unit employees' paychecks; by failing since October 31, 2008, to continue in force and effect the contractual dental plan, and by failing, since August 19, 2008, to make contractually-required contributions to unit employees' individual retirement accounts, we shall order the Respondent to continue in force and effect the contractual health insurance benefits and dental plan, and rescind its unlawful changes. In addition, the Respondent shall make the unit employees whole for any losses suffered as a result of its unlawful conduct by making all

[2] 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 at fn. 1 (2008), citing *Rogers Corp.,* 344 NLRB 504 (2005).

required payments or contributions to unit employees' health insurance, dental plan, and individual retirement accounts that have not been made since September 30, October 31, and August 19, 2008, respectively, including any additional amounts applicable to such payments or contributions as set forth in *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979), and to make unit employees whole for any loss of interest they may have suffered as a result of the failure to make contributions to their individual retirement accounts.[3] Further, the Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's failure to continue their health insurance benefits, dental plan, and individual retirement accounts, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amount are to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest, as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information, we shall order the Respondent to provide the Union with the information requested on February 5, 2009.

ORDER

The National Labor Relations Board orders that the Respondent, Spartan Industrial, Inc., Detroit, Michigan, 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 Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive collective-bargaining representative of the unit set forth below by unilaterally failing to continue in force and effect the contractual health insurance benefits while continuing to deduct such premiums from unit employees' paychecks, failing to continue in force and effect the contractual dental plan, and failing to make contractually-required contributions to unit employees' individual retirement accounts. The appropriate unit is:

> All factory, production and maintenance employees; but excluding all foremen, supervisors, confidential salaried employees, office employees and plant guards.

(b) Failing to remit union dues to the Union and Local 174, as provided in the 2007–2009 collective-bargaining agreement, while continuing to deduct dues from unit employees' paychecks.

(c) Failing and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

(d) 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) Continue in force and effect the health insurance benefits and dental plan, as provided in the parties' 2007–2009 collective-bargaining agreement.

(b) Rescind the unilateral changes to the contractual health insurance benefits and dental plan, and make unit employees whole for any losses they may have suffered as a result of its failure to continue in force and effect all the terms and conditions of the 2007–2009 collective-bargaining agreement, as set forth in the remedy section of this decision.

(c) Reimburse the unit employees for any expenses ensuing from the Respondent's failure to continue in effect the contractual health insurance benefits and dental plan, with interest, as set forth in the remedy section of this decision.

(d) Make all contractually-required contributions to the unit employees' individual retirement accounts that have not been made since October 31, 2008, including any additional amounts due the accounts, and make the unit employees whole for any loss of interest they may have suffered as a result of the failure to make such payments, as set forth in the remedy section of this decision.

(e) Remit union dues to the Union and Local 174 that have been deducted from unit employees' paychecks since July 2008 pursuant to duly executed and unrevoked authorizations, as provided in the 2007–2009 collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(f) Furnish the Union with the information requested on February 5, 2009.

(g) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7,

[3] To the extent that an employee has made personal contributions to a benefit or other fund that has been accepted by the fund in lieu of the Respondent's delinquent contributions to the funds during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to any amount that the Respondent otherwise owes the funds.

[4] 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."

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 July 2008.

(h) 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. June 24, 2009

Wilman 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 Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive collective-bargaining representative of the unit set forth below by unilaterally failing to continue in force and effect the contractual health insurance benefits while continuing to deduct such premiums from unit employees' paychecks, failing to continue in force and effect the contractual dental plan, and failing to make contractually-required contributions to unit employees' individual retirement account. The appropriate unit is:

> All factory, production and maintenance employees; but excluding all foremen, supervisors, confidential salaried employees, office employees and plant guards.

WE WILL NOT fail to remit union dues to the Union and Local 174, as provided in our 2007–2009 collective-bargaining agreement, while continuing to deduct dues from unit employees' paychecks.

WE WILL NOT fail and refuse to furnish the Union information that is relevant and necessary to its role as the exclusive 2007–2009 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 continue in force and effect the health insurance benefits and dental plan, as provided in our 2007-2009 collective-bargaining agreement.

WE WILL rescind the unilateral changes to the contractual health insurance benefits and dental plan and make unit employees whole for any loss of earnings and other benefits they may have suffered as a result of our failure to continue in effect all the terms and conditions of our 2007–2009 collective-bargaining agreement.

WE WILL reimburse the unit employees for any expenses ensuing from our failure to continue in effect the contractual health insurance benefits and dental plan, with interest.

WE WILL make all contractually required contributions to the unit employees' individual retirement accounts that have not been made since October 31, 2008, including any additional amounts due the accounts, and make the unit employees whole for any loss of interest they may have suffered as a result of our failure to make such payments.

WE WILL remit union dues to the Union and Local 174 that have been deducted from unit employees' paychecks since July 2008 pursuant to duly executed and unrevoked authorization, as provided in our 2007–2009 collective-bargaining agreement.

WE WILL furnish the Union with the information requested on February 5, 2009.

SPARTAN INDUSTRIAL, INC.