

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Supreme Delivery Service, Inc. and International Brotherhood of Teamsters Local 773.** Case 4–CA–36629

November 10, 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 and amended charges filed by the Union on March 9, May 15,<sup>1</sup> and June 5, 2009, respectively, the General Counsel issued the complaint on August 20, 2009, against Supreme Delivery Service, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On September 14, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 17, 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<sup>2</sup>

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

<sup>1</sup> Although the complaint inadvertently omitted a reference to the filing of the first amended charge on May 15, 2009, the General Counsel's motion refers to its filing, and a copy of the charge and the affidavit of service of the charge are attached to the motion as exhibits.

<sup>2</sup> 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*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. September 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted \_\_ S.Ct. \_\_, 2009 WL 1468482 (U.S. Nov. 2, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed, \_\_ U.S.L.W. \_\_ (U.S. September 29, 2009) (No. 09-377).

shown. In addition, the complaint affirmatively stated that unless an answer was received by September 3, 2009, 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 September 3, 2009, notified the Respondent that unless an answer was received by September 10, 2009, a motion for default judgment would be filed.<sup>3</sup>

In the absence of good cause being shown for the failure to file an answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and 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 until about February 13, 2009, the Respondent, an Ohio corporation with an operating base at a facility owned and operated by DHL Worldwide Express, Inc. at 871 Marcon Boulevard, Allentown, Pennsylvania (DHL), was engaged in the delivery of packages for DHL.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received revenues in excess of \$50,000 for the services it performed for DHL, a Delaware corporation headquartered in Florida and an employer 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 International Brotherhood of Teamsters Local 773, 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, John Renz has been the Respondent's owner, 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.

<sup>3</sup> On August 20, 2009, copies of the complaint were sent by certified and regular mail to 12 different addresses for the Respondent, including the address designated by the Respondent with the State of Ohio Department of State for service of process, as well as the Respondent's Registered Office Address listed with the Commonwealth of Pennsylvania Department of State. Several of the letters sent by certified and regular mail were returned marked "Attempted—Not Known—Unable to Forward." It is well settled that a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003).

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 full-time and regular part-time Drivers and Dockworkers employed at its Allentown, Pennsylvania site located within DHL's Allentown, Pennsylvania warehouse, but excluding Dock Supervisor, Manager, guards and supervisors as defined in the Act.

On July 30, 2007, the Union was certified by the Board in Case 4-RC-21306 as the exclusive collective-bargaining representative of the unit.

At all times since July 30, 2007, the Union has been the exclusive collective-bargaining representative of the unit.

1. The Respondent and the Union entered into a collective-bargaining agreement (the agreement), effective by its terms from September 11, 2008 through August 31, 2011, and containing wages and other terms and conditions of employment of the unit.

2. The agreement contains, inter alia, a provision at article 20, section 3, entitling unit employees who have worked at least 200 working days in the preceding calendar year to earn 1 to 3 weeks of vacation (depending on their seniority) and, in the event of severance from their employment, to be paid for the unused vacation days they have earned on a prorated basis.

3. The agreement contains, inter alia, a provision at article 25, entitling unit employees who have completed their probationary periods to a total of 5 optional days per year, which were to be with full pay and which could be used for personal illness or personal reasons. The optional (personal) days were to be awarded on January 1st of each year of the agreement and could be accumulated or cashed out at the end of each year without limit.

4. The subjects set forth above in paragraphs 2 and 3 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

5. About February 25, 2009, the Union, by facsimile transmission and by regular mail, requested the Respondent to furnish it with a list of all earned and used vacation and optional (personal) days for each unit employee and payroll records confirming that employees had been paid for their unused vacation and optional (personal) days. The Union, by its Business Agent Darrin Fry, reiterated this request in a phone conversation with John Renz during the last week of February 2009 or the first week of March 2009, a more precise date being unknown to the General Counsel.

6. About March 12, 2009, the Union, by facsimile transmission and by regular mail, requested that the Respondent furnish it with the payroll records showing unit employees who had signed up for dental and vision coverage.

7. The information requested by the Union, as described above in paragraphs 5 and 6, is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

8. Since about February 25, 2009, the Respondent has failed and refused to furnish the Union with the information it requested as described above in paragraph 5.

9. Since about March 12, 2009, the Respondent has failed and refused to furnish the Union with the information it requested as described above in paragraph 6.

10. Since about October 11, 2008, the Respondent has failed and refused to continue in effect the terms and conditions of employment of the unit set forth in article 20, section 3 of the agreement by failing and refusing to pay employees for their unused vacation days as described above in paragraph 2.

11. Since about October 11, 2008, the Respondent has failed and refused to continue in effect the terms and conditions of employment of the unit set forth in article 25 of the agreement by failing and refusing to pay employees for their unused optional (personal) days as described above in paragraph 3.

12. The Respondent engaged in the conduct set forth above in paragraphs 10 and 11 without the Union's consent, without prior notice to the Union, and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting 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 failing, since about October 11, 2008, to pay its employees for all their unused vacation days as set forth in article 20, section 3 of the agreement and unused optional (personal) days as set forth in article 25 of the agreement, we shall order the Respondent to make

the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. All amounts due to employees 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).<sup>4</sup>

In addition, 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 requested on February 25 and March 12, 2009, we shall order the Respondent to furnish the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Supreme Delivery Service, Inc., Allentown, Pennsylvania, 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 Brotherhood of Teamsters Local 773, as the exclusive collective-bargaining representative of the employees in the unit by failing to continue in effect all the terms and conditions of its September 11, 2008 to August 31, 2011 collective-bargaining agreement with the Union with respect to Article 20, Section 3 concerning vacation pay and Article 25 concerning pay for optional (personal) days. The appropriate unit is:

All full-time and regular part-time Drivers and Dockworkers employed at its Allentown, Pennsylvania site located within DHL’s Allentown, Pennsylvania warehouse, but excluding Dock Supervisor, Manager, guards and supervisors as defined in the Act.

(b) Failing and refusing to furnish the Union with information it requested on February 25 and March 12, 2009, which is relevant and necessary to the Union’s performance of its duties as the exclusive bargaining representative of the employees in the unit.

(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) Pay the unit employees for all their unused vacation days, with interest, in the manner set forth in the remedy section of this decision.

(b) Pay the unit employees for all their unused optional (personal) days, with interest, in the manner set forth in the remedy section of this decision.

(c) Furnish the Union with the information it requested on February 25 and March 12, 2009.

(d) Within 14 days after service by the Region, post at its facility in Allentown, Pennsylvania, copies of the attached notice marked “Appendix.”<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, 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 its Allentown, Pennsylvania facility at any time since October 11, 2008.

(e) 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. November 10, 2009

\_\_\_\_\_  
Wilma 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

<sup>4</sup> In the complaint, the General Counsel seeks interest computed on a compounded, quarterly basis 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, 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

<sup>5</sup> 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.”

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 recognize and bargain collectively and in good faith with International Brotherhood of Teamsters Local 773, as the exclusive collective-bargaining representative of the employees in the unit by failing to continue in effect all the terms and conditions of our September 11, 2008 to August 31, 2011 collective-bargaining agreement with the Union with respect to article 20, section 3 concerning vacation pay and article 25 concerning pay for optional (personal) days. The appropriate unit is:

All full-time and regular part-time Drivers and Dockworkers employed at our Allentown, Pennsylvania site located within DHL's Allentown, Pennsylvania warehouse, but excluding Dock Supervisor, Manager, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to furnish the Union with information it requested on February 25 and March 12, 2009, which is relevant and necessary to the 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 pay our unit employees for all their unused vacation days, with interest.

WE WILL pay our unit employees for all their unused optional (personal) days, with interest.

WE WILL furnish the Union with the information it requested on February 25 and March 12, 2009.

SUPREME DELIVERY SERVICE, INC.