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Modern International Graphics, Inc. and Graphic Communications Union Local 546M, GCC/IBT.
Case 8–CA–38782

September 15, 2010

DECISION AND ORDER

BY MEMBERS BECKER, PEARCE, AND HAYES

The Acting 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 February 9, 2010, the General Counsel issued the complaint on May 27, 2010, against Modern International Graphics, 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 July 23, 2010, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on July 29, 2010, 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 a 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 received by the Regional Office by June 10, 2010, 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 motion disclose that the Region, by letter dated July 6, 2010,¹ notified the Respondent that unless an answer was received by July 16, 2010, a motion for default judgment would be filed.²

¹ The Acting General Counsel notes that although the Respondent consulted an attorney during the investigation of this matter, the attorney did not enter an appearance. The Acting General Counsel states that the attorney was nevertheless copied on all relevant correspondence.

² By email to the Region dated May 25, 2010, the Respondent stated that the company was closed and dissolved; that any assets had been distributed to the bank and/or its secured creditors; and that the secured parties had not obtained full recovery. The Respondent further stated that it had no financial resources because it had lost everything in the

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting 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, an Ohio corporation with an office and place of business in Eastlake, Ohio (the Respondent's facility), has been engaged in the operation of a printing business. Annually, at all material times, the Respondent, in conducting its business operations described above, sold and shipped from its Eastlake, Ohio facility goods valued in excess of \$50,000 directly to points outside the State of Ohio.

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 Graphic Communications Union Local 546M, GCC/IBT, 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 Margiotta 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 (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production employees, except typesetters, keyliners, and artist, employed by Respondent at its Eastlake, Ohio facility who perform the following work: shipping, receiving, delivery, process operation and new products directly associated with the processing of lithographic production (including dry or wet), (photo-engraving, intaglio, gravure), bookbinding, and finishing or otherwise reproducing images of all kinds or any other purpose, but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most

closure. We find that the Respondent's cessation of operations and asserted lack of financial resources does not excuse it from filing an answer to the complaint. See *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15–16 (2000).

recent of which is effective from August 1, 2007, to December 31, 2011.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About January 29, 2010, the Respondent ceased operations at the Respondent's facility.

On about January 29, 2010, the Union requested that the Respondent meet and bargain with it over the effects of the closure of the Respondent's facility.

Since about February 9, 2010, the Respondent has failed and refused to bargain with the Union over the effects of the closure of its facility.

Since about January 29, 2010, the Respondent has failed and refused to: pay accrued vacation pay to employees in the unit; pay severance pay to employees in the unit; continue to provide health insurance coverage to employees in the unit; and accept and process grievances.

The subjects set forth in the preceding paragraph 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 in the preceding paragraph without prior notice to the Union and/or without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct and/or without first bargaining with the Union to an agreement.³

Since about January 29, 2010, the Union orally requested certain information, and again by letters dated February 8 and 12, 2010, the Union requested that the Respondent furnish it with the following information: a copy of the foreclosure notice issued to the Respondent by PNC Bank; a copy of the bank covenant that the Respondent allegedly breached in its agreement(s) with PNC; the names of the Respondent's secured creditors and the amounts owed to each; the Respondent's balance sheet as of the time of closure; the value of the Respondent's assets at the time of closure; information regarding the contemplated disposal of the Respondent's assets following closure; information relating to contacts between the Respondent and another entity named AGS Custom Graphics prior to January 29, 2010; the names of all employees of the Respondent offered jobs with AGC Custom Graphics; work outsourced by the Respondent in

the 6 months prior to closure; the amount of accrued vacation time for each employee in the unit; and the amount of severance pay owed to each employee in the unit.

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

Since about February 12, 2010, the Respondent has failed and refused to furnish the Union with the requested information.

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 its employees within the meaning of Section 8(d) of the Act, 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.⁴

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 to bargain with the Union about the effects of its decision to close its Eastlake, Ohio facility, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. 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 to make whole the unit employees for losses suffered as a result of the violations and to recreate 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 Respon-

³ Although the complaint does not specifically allege that the effects of the Respondent's decision to close is a mandatory subject of bargaining, it is well settled that the effect of such a decision on unit employees is a mandatory bargaining subject. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681-682 (1981). Accordingly, we find that the complaint supports a cause of action as to the failure to bargain over the effects of the Respondent's decision to close its facility.

⁴ We find it unnecessary to pass on the complaint's additional allegation that the Respondent's unlawful conduct independently violated Sec. 8(a)(1), because such a finding would not affect the remedy in this proceeding.

dent to pay backpay to the employees in the unit in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).⁵

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 the 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 its decision to cease operating its Eastlake, Ohio facility 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 its 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.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁶

Additionally, having found that the Respondent unlawfully failed and refused to pay accrued vacation pay and accrued severance pay to employees in the unit, continue to provide health insurance coverage to employees in the unit, and accept and process grievances, we shall order the Respondent to rescind these changes and make the

⁵ See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). Neither the complaint nor the motion specifies the impact, if any, on the unit employees of the Respondent's decision to close. Thus, we do not know whether, or to what extent, the refusal to bargain about the effects of this decision had an impact on the unit employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Buffalo Weaving & Belting*, 340 NLRB 684, 685 fn. 3 (2003); and *ACS Acquisition Corp.*, 339 NLRB 736, 737 fn. 2 (2003).

⁶ In the complaint, the Acting 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 *Rogers Corp.*, 344 NLRB 504 (2005).

unit employees whole for any loss of earnings and other benefits attributable to its 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*, supra. With respect to the Respondent's unilateral termination of health care coverage, we shall order the Respondent to restore the unit employees' health care coverage and reimburse the unit employees for any expenses ensuing from the Respondent's failure to continue health care coverage, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information that it requested on about January 29 and February 8 and 12, 2010.

Finally, in view of the fact that the Respondent's facility is closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Modern International Graphics, Inc., Eastlake, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Graphic Communications Union Local 546M, GCC/IBT as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to the effects of its decision to cease operations at its Eastlake, Ohio facility:

All production employees, except typesetters, keyliners, and artist employed by Respondent at its Eastlake, Ohio facility who perform the following work: shipping, receiving, delivery, process operation and new products directly associated with the processing of lithographic production (including dry or wet), (photo-engraving, intaglio, gravure), bookbinding, and finishing or otherwise reproducing images of all kinds or any other purpose, but excluding all office clerical employ-

ees and all professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to bargain with the Union by unilaterally failing to: pay accrued vacation pay to employees in the unit; pay severance pay to employees in the unit; continue to provide health insurance coverage to employees in the unit; and accept and process grievances.

(c) Failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties 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) On request, bargain collectively and in good faith with the Union about the effects of its decision to close its Eastlake, Ohio facility on January 29, 2010, and reduce to writing and sign any agreements reached as a result of such bargaining.

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

(c) Make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful failure to pay accrued vacation pay and accrued severance pay to employees in the unit and to continue to provide health insurance coverage to employees in the unit, with interest, in the manner set forth in the remedy section of this decision.

(d) Restore the unit employees' health care coverage and reimburse the unit employees for any expenses ensuing from the Respondent's unilateral failure to continue health care coverage since January 29, 2010, with interest, as set forth in the remedy section of this decision.

(e) Furnish the Union with the information it requested on January 29 and February 8 and 12, 2010.

(f) 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.

(g) 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"⁷ to the Union and to its former unit employees who were employed by the Respondent at its Eastlake, Ohio facility on, or at any time since, January 29, 2010.

(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. September 15, 2010

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) 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 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

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 Graphic Communications Union Local 546M, GCC/IBT as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to the effects on our unit

⁷ 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."

employees of our decision to close our Eastlake, Ohio facility.

All production employees, except typesetters, keyliners, and artist, employed by us at our Eastlake, Ohio facility who perform the following work: shipping, receiving, delivery, process operation and new products directly associated with the processing of lithographic production (including dry or wet), (photoengraving, intaglio, gravure), bookbinding, and finishing or otherwise reproducing images of all kinds or any other purpose, but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to bargain with the Union by failing to: pay accrued vacation pay to employees in the unit; pay severance pay to employees in the unit; continue to provide health insurance coverage to employees in the unit; and accept and process grievances.

WE WILL NOT fail and refuse to furnish the Union with the information it requested on January 29 and February 8 and 12, 2010, which is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of our unit employees.

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 about the effects on the unit employees of our decision to close our Eastlake, Ohio facility on January 29, 2010, and reduce to writing and sign any agreements reached as a result of such bargaining.

WE WILL pay unit employees their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

WE WILL make whole unit employees for any loss of earnings and other benefits suffered as a result of our failure to pay them accrued vacation and severance pay, to provide them health care coverage, and to accept and process grievances.

WE WILL restore the unit employees' health care coverage and reimburse the unit employees for any expenses ensuing from our unilateral failure to continue health care coverage since January 29, 2010, with interest.

WE WILL furnish the Union with the information it requested on January 29 and February 8 and 12, 2010.

MODERN INTERNATIONAL GRAPHICS, INC.