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Elmhurst Lincoln Mercury and Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO.
Case 13-CA-45873

September 21, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS 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 26, 2010, the General Counsel issued the complaint on April 28, 2010, against Elmhurst Lincoln Mercury, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On June 24, 2010, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 28, 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 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 received by May 12, 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 Acting General Counsel's motion disclose that the Region, by letter dated May 19, 2010, notified the Respondent that unless an answer was received by close of business on May 25, 2010, a motion for summary judgment would be filed.

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, a Delaware corporation, with an office and place of business in Elmhurst, Illinois, the Respondent's facility, has been engaged in the sale and service of new and used automobiles.

During the past calendar year, a representative period, the Respondent, in conducting the business described above, derived gross revenues in excess of \$500,000, and purchased and received at its facility goods valued in excess of \$5000 directly from points outside the State of Illinois.

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 Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO, 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 the following individuals 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 agents of the Respondent within the meaning of Section 2(13) of the Act:

David Mears	Chairman
John Moroni	President

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 Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, and semiskilled technicians.

At all material times, the Respondent has been an employer-member of the New Car Dealer Committee (the Committee), a multiemployer association, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union.

At all material times, the Respondent has authorized the Committee to represent it in negotiating and administering collective-bargaining agreements with the Union.

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

the most recent of which is effective August 1, 2009, through July 31, 2013 (the 2009–2013 agreement).

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the multiemployer association unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

Since about September 2009, and various times thereafter, the Respondent unilaterally ceased paying unit employees wages required pursuant to the 2009–2013 agreement.

At all times since August 26, 2009, the Respondent has failed to make contributions to the Union's welfare fund and pension fund on behalf of unit employees for all hours worked by unit employees.

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 notwithstanding that these subjects are required by the 2009–2013 agreement and without the Union's consent.

About December 11, 2009, the Respondent repudiated the 2009–2013 agreement, and has since refused to abide by any of its terms.

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.

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 has violated Section 8(a)(5) and (1) by failing to make contractually-required contributions to the Union's welfare fund and pension fund on behalf of the unit employees since August 26, 2009, failing to pay employees contractually-required wages since September 2009, and repudiating the 2009–2013 agreement by failing and refusing to abide by any of its terms since December 11, 2009, we shall order the Respondent to honor the terms of the 2009–2013 agreement, and to make the 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*, 283 NLRB 1173 (1987).¹

Further, we shall order the Respondent to make all contractually-required welfare fund and pension fund contributions that have not been made since August 26, 2009, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979).² We shall also order the Respondent 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), enfd. 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.

ORDER

The National Labor Relations Board orders that the Respondent, Elmhurst Lincoln Mercury, Elmhurst, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL–CIO (the Union), as the exclusive collective-bargaining representative of the employees in the following unit by repudiating the terms and conditions of its 2009–2013 collective-bargaining agreement with the Union by failing to abide by its terms. The bargaining unit is:

All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, and semiskilled technicians.

(b) Failing to pay unit employees contractually-required wages.

(c) Failing to make contractually-required contributions to the Union's welfare fund and pension fund on behalf of unit employees.

¹ In the complaint, the General Counsel seeks compound interest computed on a 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).

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the 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.

(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) Honor and comply with the terms and conditions of the 2009–2013 collective-bargaining agreement with the Union.

(b) 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 2009–2013 agreement since December 11, 2009, with interest, in the manner set forth in the remedy section of this decision.

(c) Make whole the unit employees for any loss of earnings they may have suffered as a result of the Respondent's failure to pay unit employees wages as required pursuant to the 2009–2013 agreement since September 2009, with interest, in the manner set forth in the remedy section of this decision.

(d) Make all contractually-required welfare fund and pension fund contributions on behalf of all unit employees that have not been made since August 26, 2009, and reimburse unit employees for any expenses ensuing from its failure to make the required contributions, with interest, in the manner set forth in the remedy section of this decision.

(e) 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.

(f) Within 14 days after service by the Region, post at its facility in Elmhurst, Illinois, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 13, 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 Re-

spondent 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 August 26, 2009.

(g) 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 21, 2010

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, 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 Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL–CIO (the Union), as the exclusive collective-bargaining representative of the employees in the following unit by repudiating the terms and conditions of our 2009–2013 collective-bargaining agreement with the Union by failing to abide by its terms. The bargaining unit is:

All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, and semiskilled technicians.

³ 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."

WE WILL NOT fail to pay unit employees contractually-required wages.

WE WILL NOT fail to make contractually-required contributions to the Union's welfare fund and pension fund on behalf of 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 honor and comply with the terms and conditions of our 2009–2013 collective-bargaining agreement with the Union.

WE WILL make whole our unit employees for any loss of earnings and other benefits they may have suffered as

a result of our repudiation of our 2009–2013 agreement since December 11, 2009, with interest.

WE WILL make whole our unit employees for any loss of earnings they may have suffered as a result of our failure to pay unit employees wages as required pursuant to the 2009–2013 agreement since September 2009, with interest.

WE WILL make all contractually-required welfare fund and pension fund contributions on behalf of our unit employees that have not been made since August 26, 2009, with interest, and WE WILL reimburse our unit employees for any expenses ensuing from our failure to make the required contributions, with interest.

ELMHURST LINCOLN MERCURY