

**Austin Printing Co. and Graphic Communications
Union Local 546M, GCC/IBT. Case 8–CA–37449**

November 28, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the amended complaint and compliance specification. Upon a charge and an amended charge filed by the Union on October 9, 2007, and March 25, 2008, respectively, the General Counsel issued an amended complaint, compliance specification and notice of hearing on June 4, 2008, against Austin Printing, 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 15, 2008, the General Counsel filed a Motion for Default Judgment and Memorandum in Support with the Board. Thereafter, on September 17, 2008, 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.¹

Ruling on Motion for Default Judgment²

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. Similarly, Section 102.56 of the Board's Rules

¹ The original complaint issued on November 30, 2007. The Respondent filed an answer to the complaint on December 14, 2007. However, on March 25, 2008, the Union filed an amended charge and the General Counsel issued an amended complaint, compliance specification and notice of hearing on June 4, 2008, advising the Respondent of its obligation to file an answer to the amended complaint and compliance specification. On July 11, 2008, the Respondent's attorney advised the Region that it would not be responding to the amended complaint and compliance specification. By letter dated July 25, 2008, the Respondent's counsel withdrew its December 14, 2007 answer to the original complaint. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

² 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 Schaumber and Member Liebman 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.

and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed with 21 days from the service of the compliance specification. In addition, the amended complaint and compliance specification affirmatively stated that the Respondent's answer must be received by the Regional Office on or before June 18, 2008. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated July 3, 2008, notified the Respondent that unless an answer to the amended complaint and compliance specification was received by July 10, 2008, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

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, an Ohio corporation, with an office and place of business in Akron, Ohio, has been engaged in the printing business. During the 12-month period preceding the issuance of the amended complaint and compliance specification, the Respondent, in conducting its operations described above, sold and shipped 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 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:

Michael Klein	President
Paul Zawistowski	Chief Financial Officer
Mark Aczel	Plant Manager

The following employees of the Respondent 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 pressroom operators, pressroom assistants, bindery employees, shippers and maintenance employees, but excluding all office cleri-

cal employees, guards and supervisors as defined in the Act.

Since at least November 1, 2006, the Union has been the designated exclusive collective-bargaining representative of the unit and, since at least that date, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in an agreement which is effective from January 1, 2007, to December 31, 2008.

At all times since November 1, 2006, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Beginning in the later part of September 2007 and continuing through October 4, 2007, the Respondent ceased its business and discontinued its operations at its Akron, Ohio facility.

The Respondent engaged in the acts and conduct described above without having afforded the Union timely notice or an opportunity to bargain as the exclusive representative of the employees in the unit over the effects of the termination of its operations at its Akron, Ohio facility.

The subject set forth above relates to the wages, hours, and other terms and conditions of employment of the unit, and is a mandatory subject for the purpose of collective bargaining.

On about October 1, 2007, the Union requested that the Respondent furnish it with the following information:

1. Whether or not the Company is planning to shut down production operations at its facility, and, if so, the effective date of such a shut down?
2. In the event the Company plans to shut down operations, what steps is the Company taking to assure employees will receive payment of all wages owed?
3. In the event the Company plans to shut down operations, what steps is the Company taking to assure employees will receive all severance benefits owed as provided for under Article 15 of the Collective Bargaining Agreement.
4. What is the current status of medical insurance coverage for employees? In the event of a shut down of operations, will COBRA benefits be available?
5. In the event the Company plans to shut down operations, what steps is the Company taking to assure employees that they will receive all earned and accrued vacation pay?
6. The amount of any unused vacation available to each employee as of October 1, 2007.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive bargaining representative of the unit. Since about October 1, 2007, the Respondent has failed and refused to furnish the Union with the information requested by it.

Since about October 4, 2007, when the Respondent ceased its operations, the Respondent failed to continue in effect all the terms and conditions of its collective-bargaining agreement described above, with respect to article 12 concerning vacation pay for employees and article 15 concerning severance pay for employees in the event that the Respondent suspends its operations. The Respondent engaged in the acts and conduct described above without the consent of the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's 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) by failing, since October 4, 2007, to continue in effect all the terms and conditions of its January 1, 2007, to December 31, 2008 collective-bargaining agreement with the Union with respect to article 12 concerning vacation pay and article 15 concerning severance pay for employees in the event the Respondent's operations are suspended, and by failing to provide a meaningful opportunity to bargain about the effects of its decision to cease business and discontinue operations at its Akron, Ohio facility, we shall order the Respondent to make the employees whole by paying them the amounts set forth in the compliance specification, as corrected below, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws.³

³ In the compliance specification, the General Counsel set forth the backpay amount owed, with interest calculated through May 31, 2008, using a compound interest formula. As we have indicated in prior cases, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Wilshire Plaza Hotel*, 353 NLRB No. 29, slip op. at 1 fn. 2 (2008); *Case Farms of North Caro-*

Further, 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 October 1, 2007, we shall order the Respondent to provide the Union with the requested information.

To remedy the Respondent's unlawful failure to bargain with the Union about the effects of its decision to cease its business and discontinue its operations, we shall order the Respondent to bargain with the Union, on request, about the effects of that 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. 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 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).

Pursuant to *Transmarine*, the Respondent typically would be required to 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 ceasing its business and discontinuing its

operations on its 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.

Transmarine provides that the sum paid to these unit employees may not exceed the amount they would have earned as wages from the date on which the Respondent ceased doing business at the facility 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, *Transmarine* further provides that in no event shall this sum be less than the unit employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay is typically based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and is computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as set forth in *New Horizons for the Retarded*, supra.

Here, in the circumstances of the Respondent's cessation of operations, the General Counsel in the amended complaint and compliance specification seeks only the minimum 2 weeks of backpay due the terminated employees under *Transmarine*. Appendix A of the amended complaint and compliance specification sets forth the amount due each employee. We shall grant the General Counsel's request and order the Respondent to pay those amounts, as corrected below, to the discriminatees, plus interest accrued to the date of payment.

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, Austin Printing Co., Akron, 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 representative of the employees in the unit by failing to continue in effect all the terms and conditions of its January 1, 2007, to December 31, 2008 collective-bargaining agreement with the Union with respect to article 12 concerning vacation pay and article 15 concerning severance pay, and failing to provide proper notice and a meaningful opportunity to

lina, Inc., 353 NLRB No. 26, slip op. at 7 fn. 21 (2008); *Postar Coal Co.*, 353 NLRB No. 17, slip op. at 2 fn. 3 (2008); *Dietrich Industries*, 353 NLRB No. 7, slip op. at 1 fn. 5 (2008); *Post Tension of Nevada, Inc.*, 352 NLRB No. 131, slip op. at 1 fn. 2 (2008); *Woodbury Partners, LLC*, 352 NLRB No. 127, slip op. at 5 fn. 15 (2008); *Carpenters Local 687 (Convention & Show Services)*, 352 NLRB No. 119, slip op. at 1 fn. 2 (2008); *Glen Rock Ham*, 352 NLRB No. 69, slip op. at 1 fn. 1 (2008); *Rogers Corp.*, 344 NLRB 504 (2005). Accordingly, the calculation of amounts owed included in the compliance specification more appropriately would have been based on simple interest. The General Counsel, of course, is free to continue to request that any monetary remedy include interest compounded on a quarterly basis, should he so choose. See, e.g., *Mays Electric Co.*, 352 NLRB No. 49, slip op. at 3 fn. 7 (2008).

bargain about the effects of its decision to cease business and discontinue operations at its Akron, Ohio facility. The appropriate unit is:

All full-time and regular part-time pressroom operators, pressroom assistants, bindery employees, shippers and maintenance employees, but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to furnish the Union information that is relevant and necessary to its role 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) On request, bargain with the Union concerning the effects on unit employees of its decision to cease and discontinue its operations at its Akron, Ohio facility, and

reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Furnish the Union with the information it requested on October 1, 2007.

(c) Make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondent's failure since October 4, 2007, to continue in effect all the terms and conditions of its January 1, 2007, to December 31, 2008 collective-bargaining agreement with the Union with respect to article 12 concerning vacation pay and article 15 concerning severance pay, and its failure to bargain with the Union concerning the effects on unit employees of its decision to cease business and discontinue operations at its Akron, Ohio facility, by paying them the total amounts following their names, plus interest accrued to the date of payment, as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

<i>NAME</i>	<i>WAGE DUE</i>	<i>VACATION PAY OWED</i>	<i>SEVERANCE PAY</i>	<i>TOTALS</i>
Frederick Barnhart ⁴	\$ 1,528.00	\$ 2,414.24	\$ 7,640.00	\$ 11,582.24
Jonathan Barnhart ⁵	1,324.80	2,543.62	6,624.00	10,492.42
James Bond	1,771.20	3,046.46	8,856.00	13,673.66
Daniel Border	1,263.20	2,071.65	3,158.00	6,492.85
Donna Calaway	931.20	2,113.82	1,862.40	4,907.42
Robert Calaway ⁶	1,442.00	4,788.77	7,212.00	13,442.77
Edward Gnap ⁷	1,044.00	3,674.88	5,220.00	9,938.88
Patrick Gnap	1,771.20	4,463.42	8,856.00	15,090.62
Michael Greene	1,584.80	2,757.55	7,924.00	12,266.35
Derek Hankinson	1,501.60	2,582.75	7,508.00	11,592.35
Scott Heinz	1,125.60	1,316.95	1,125.60	3,568.15
Ronald Machefski	1,948.00	4,519.76	9,740.00	16,207.76
Kenneth Meffert Sr.	2,036.80	4,725.38	10,184.00	16,946.18
Kenneth Meffert Jr.	1,680.80	3,933.07	6,723.20	12,337.07
Douglas Murphy	1,771.20	4,286.30	8,856.00	14,913.50
Bradley Rohrbaugh ⁸	1,771.20	4,286.30	8,856.00	14,913.50
Larry Sarver	2,027.20	3,097.66	10,136.00	15,260.86

⁴ The first page of app. A to the compliance specification indicates that Frederick Barnhart is owed gross backpay of \$9168. However, the second page of app. A indicates that he is owed gross backpay of \$11,582.24. Our calculations show that the second page reflects the correct figure.

⁵ In app. A, the General Counsel mistakenly lists Jonathan Barnhart's gross backpay as totaling \$10,555.42. However, our calculations show that the figure actually totals \$10,492.42.

⁶ In app. A, the General Counsel mistakenly lists Robert Calaway's gross backpay as totaling \$13,443.17. However, our calculations show that the figure actually totals \$13,442.77.

⁷ In app. A, the General Counsel mistakenly lists Edward Gnap's gross backpay as totaling \$9,878.88. However, our calculations show that the figure actually totals \$9,938.88.

⁸ In app. A, the General Counsel mistakenly lists Bradley Rohrbaugh's gross backpay as totaling \$13,913.50. However, our calculations show that the figure actually totals \$14,913.50.

Richard Shandel	1,401.60	2,719.10	7,008.00	11,128.70
Billy Stopher Jr.	1,611.20	3,931.33	8,056.00	13,598.53
Charles Sumpton	1,501.60	3,183.39	7,508.00	12,192.99
Richard Swain	<u>1,771.20</u>	<u>5,030.21</u>	<u>8,856.00</u>	<u>15,657.41</u>
TOTALS	\$32,808.40	\$71,486.61	\$151,909.20	\$256,204.21
TOTAL BACKPAY DUE				\$256,204.21

(d) 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.

(e) 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" to the Union and to all unit employees employed by the Respondent at any time since late September 2007.

(f) 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.

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

⁹ 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."

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 representative of the employees in the unit, by failing to continue in effect all the terms and conditions of our January 1, 2007, to December 31, 2008 collective-bargaining agreement with the Union with respect to article 12 concerning vacation pay and article 15 concerning severance pay, and failing to provide proper notice and a meaningful opportunity to bargain about the effects of our decision to cease business and discontinue operations at our Akron, Ohio facility. The appropriate unit is:

All full-time and regular part-time pressroom operators, pressroom assistants, bindery employees, shippers and maintenance employees, but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to furnish the Union information that is relevant and necessary to its role as the exclusive 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 with the Union over the effects on unit employees of our decision to cease business and discontinue operations at our Akron, Ohio facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL furnish the Union with the information it requested on October 1, 2007.

WE WILL make whole the unit employees for any loss of earnings and other benefits suffered as a result of our failure since October 4, 2007, to continue in effect all the terms and conditions of our January 1, 2007, to December 31, 2008 collective-bargaining agreement with the Union with respect to article 12 concerning vacation pay and article 15 concerning severance pay, and our failure to bargain with the Union concerning the effects on unit

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

employees of our decision to cease business and discontinue operations at our Akron, Ohio facility by paying

them the total amounts following their names plus interest.

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TOTALS	\$32,808.40	\$71,486.61	\$151,909.20	\$256,204.21
TOTAL BACKPAY DUE				\$256,204.21

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