

**Capital District Enterprises, Inc. d/b/a Acme Press
and Graphic Communications Confer-
ence/International Brotherhood of Teamsters,
Local 259-M. Case 3–CA–26828**

December 31, 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 complaint. Upon a charge filed by the Union on August 28, 2008, the General Counsel issued the complaint on October 30, 2008, against Capital District Enterprises, Inc. d/b/a Acme Press, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On December 5, 2008, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on December 10, 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.

Ruling on Motion for Default Judgment¹

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 must be received by the Regional Office on or before November 13, 2008, and 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 by letter dated November 17, 2008, the Region notified the Respondent that unless an answer was received by close of business on November 24, 2008, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer to the complaint.

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.

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 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.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business located in Schenectady, New York (Schenectady, New York facility), has been engaged in the business of commercial offset printing. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 to the State of New York, which is 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 Graphic Communications Conference/International Brotherhood of Teamsters, Local 259-M, 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 Giminiani 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 employees performing bargaining unit work of the type described in Article 5 of the collective-bargaining agreement between the Union and Respondent, in effect from May 6, 2003 through May 5, 2006.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from May 6, 2003, through May 5, 2006, and which was extended by the agreement of the parties from May 6, 2007, through May 5, 2008.

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

On about August 22, 2008, the Respondent ceased operations at its Schenectady, New York facility.

Since about August 22, 2008, the Respondent failed to pay bargaining unit employees their vacation pay, as

required by article 17, sections 4 and 5 of the collective-bargaining agreement.²

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purpose of collective bargaining. The Respondent engaged in the conduct described above without notice to the Union and without providing the Union with an opportunity to bargain.

CONCLUSION OF LAW

By the acts and 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, 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 violated Section 8(a)(5) and (1) by failing to pay unit employees their vacation pay since August 22, 2008, we shall order the Respondent to make the unit employees whole by paying them the vacation pay that has not been paid to them since that date. All payments to employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³

In view of the fact that the Respondent has ceased operations at its Schenectady, New York facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent on or after August 22, 2008, in order to inform them of the outcome of this proceeding.

² Although there is no indication that the parties further extended their contract beyond May 5, 2008, the Board has long held that terms and conditions of employment established in a collective-bargaining agreement, such as vacation pay, survive expiration of the contract and cannot be changed by the employer without first bargaining to impasse with the union. See *NLRB v. Katz*, 369 U.S. 736 (1962); *The Pantry Restaurant*, 341 NLRB 243, 244 (2004) (vacation pay survives expiration of contract and cannot be changed by the employer without first bargaining to impasse).

³ 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, e.g., *Glen Rock Ham*, 352 NLRB No. 69, slip op. at 1 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

ORDER

The National Labor Relations Board orders that the Respondent, Capital District Enterprises, Inc. d/b/a Acme Press, Schenectady, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Graphic Communications Conference/International Brotherhood of Teamsters, Local 259-M, as the exclusive collective-bargaining representative of the employees in the unit set forth below, by failing to pay unit employees their vacation pay. The unit is:

All employees performing bargaining unit work of the type described in Article 5 of the collective-bargaining agreement between the Union and Respondent, in effect from May 6, 2003 through May 5, 2006.

(b) 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) Make whole the unit employees by paying them the vacation pay that has not been paid to them since August 22, 2008, with interest, as set forth in the remedy section of this decision.

(b) 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.

(c) 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"⁴ to the Union and to all unit employees who were employed by the Respondent at any time on or after August 22, 2008.

(d) 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 the Respondent has taken to comply.

⁴ 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."

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 refuse to bargain collectively with Graphic Communications Conference/International Brotherhood of Teamsters, Local 259-M, as the exclusive collective-bargaining representative of our employees in the unit set forth below, by failing to pay unit employees their vacation pay. The unit is:

All employees performing bargaining unit work of the type described in Article 5 of the collective-bargaining agreement between the Union and Acme Press, in effect from May 6, 2003 through May 5, 2006.

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 make whole our unit employees by paying them the vacation pay that has not been paid to them since August 22, 2008, with interest.

CAPITAL DISTRICT ENTERPRISES, INC. D/B/A
ACME PRESS