Interstate Brands, Inc. *and* United Food and Commercial Workers Union Local 367. Case 19–CA–32618

December 8, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER 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 July 15, 2010, the Acting General Counsel issued the complaint on August 27, 2010, against Interstate Brands, 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 October 4, 2010, the Acting General Counsel filed a Motion for Default Judgment with the Board. On October 5, 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. On November 4, 2010, the Board issued a revised Notice to Show Cause. 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 states that unless an answer was filed by September 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 Acting General Counsel's motion disclose that the Region, by letter dated September 22, 2010, notified the Respondent that unless an answer was received by September 29, 2010, a motion for default judgment would be filed. The Respondent failed to file an answer.

Accordingly, in the absence of good cause being shown for the failure to file an 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

The Respondent, a State of Delaware corporation with offices and places of business in Pierce and Thurston Counties in the State of Washington, is engaged in the business of retail sales of bread, snack-food and pastry products.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, derived gross revenues in excess of $500,000 and purchased and received at its State of Washington facilities goods valued in excess of $50,000 directly from points outside the State of Washington.

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 United Food and Commercial Workers Union Local 367 (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, Janeen Duncan held the position of field human resources manager, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

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 (the unit):

> All retail sales employees in Retail Baking operations of Respondent's present and future retail establishments located within the jurisdiction of the Union, excluding supervisors as defined in the Act.

Since at least 1978, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from February 8, 2009, to July 13, 2013.

At all times since at least 1978, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About March 19, 2009, the Union filed a grievance on behalf of unit employee Antoinette Keuler regarding overtime pay.

About March 19, 2009, the same date, the Union, by letter to Duncan, requested that the Respondent furnish the Union with schedules and pay records for employee

Keuler for the previous 3 months if it denied the grievance described above.

About April 3, 2009, the Respondent, by letter from Duncan to the Union, denied the grievance, and provided the information requested.

About November 10, 2009, the Union, by electronic mail to Duncan, requested that the Respondent furnish the Union with pay records, schedules, and hours worked for Keuler for the previous 2 years, minus the previously provided information.

About April 15, 2010, the Union, by electronic mail to Duncan, repeated its request for the information set forth above.

About May 13, 2010, the Respondent, by Duncan at a meeting with the Union, provided the pay records requested above.

About May 14, 2010, the Union, in a telephone conversation with Duncan, repeated its request for the schedules and hours worked information described above.

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

Since about May 14, 2010, the Respondent has failed and refused to furnish the Union with the schedules and hours worked information it requested as described above.

Between about November 10, 2009, and May 13, 2010, the Respondent unreasonably delayed providing the Union the pay records as described above.

CONCLUSION OF LAW

By failing to furnish the Union with certain requested information and by unreasonably delaying providing the Union with other requested information, the Respondent has failed and refused to bargain collectively and in good faith with the Union as 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 and refusing to furnish the Union with certain information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, and by unreasonably delaying in providing the Union with other such requested information, we shall order the Respondent to furnish the Union with the information it requested on November 10, 2009, and May 14, 2010, that has not already been provided.

ORDER

The National Labor Relations Board orders that the Respondent, Interstate Brands, Inc., Pierce and Thurston Counties, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with United Food and Commercial Workers Union Local 367 as the exclusive collective-bargaining representative of the unit employees by failing to furnish the Union with certain requested information and by unreasonably delaying in providing the Union with other requested information that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(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) Furnish the Union with the information it requested on about November 10, 2009, and May 14, 2010, that it has not already provided.

(b) Within 14 days after service by the Region, post at its facilities located at Pierce and Thurston Counties, in the State of Washington, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 19, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or

[1] 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."

other electronic means, if the Respondent customarily communicates with its employees by such means.[2] 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 its facilities 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 May 14, 2010.

(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 that the Respondent has taken to comply.

Dated, Washington, D.C. December 8, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

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 United Food and Commercial Workers Union Local 367 as the exclusive collective-bargaining representative of our unit employees by failing to furnish the Union with certain requested information and by unreasonably delaying in providing the Union with other requested information that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the collective-bargaining 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 furnish the Union with the information it requested on about November 10, 2009, and May 14, 2010, that we have not already provided.

INTERSTATE BRANDS, INC.