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SK Hand Tool, as a Debtor in Possession and International Brotherhood of Teamsters Local Union 743, AFL-CIO. Cases 13-CA-46119 and 13-CA-46298

March 24, 2011

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 SK Hand Tool, as a Debtor in Possession (the Respondent), has failed to file an answer to the consolidated complaint and compliance specification. Upon a charge and amended charges filed by the Union on July 1, September 17, and November 23, 2010, the Acting General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on November 30, 2010, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act. Thereafter, on December 21, 2010, the Acting General Counsel issued an order consolidating consolidated complaint and compliance specification and notice of hearing. The Respondent failed to file an answer to either the consolidated complaint or to the consolidated complaint and compliance specification.

On January 28, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 31, 2011, 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. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint, and the consolidated complaint and compliance specification, affirmatively stated that the Board may find, pursuant to a motion for default judgment, that the allega-

tions in the consolidated complaint are true unless an answer was received by December 14, 2010, for the consolidated complaint, or by January 11, 2011, for the consolidated complaint and compliance specification. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated January 13, 2011, notified the Respondent that unless an answer was received by January 20, 2011, 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 Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Since about June 29, 2010, the Respondent has been a debtor-in-possession with full authority to continue its operations and to exercise all powers necessary to administer its business.

At all material times, the Respondent, an Illinois corporation with an office and place of business in Chicago, Illinois, has been engaged in the business of manufacturing and shipping tools. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, purchased and received at its Chicago facility goods and services valued in excess of \$50,000 from points located 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 the International Brotherhood of Teamsters Local Union 743, 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:

Claude Fugar	President
Bella Keigher	Human Resources Manager

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, Maintenance and Warehouse employees, but excluding office clerical employees, office janitors, all other employees, timekeepers, time study men, professional employees, watchmen, guards and supervisors as defined by the National Labor Relations Act for its plant located at 3535 West 47th Street, Chicago, Illinois.

At all times since October 14, 1968, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About November 3, 2009, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement.

Since February 15, 2010, the Union has requested that the Respondent execute a written contract containing the agreement described above.

Since June 29, 2010, the Respondent, by Bella Keigher, has failed and refused to execute the agreement described above.

On June 29, 2010, the Respondent failed to continue in effect all the terms and conditions of the agreement, by failing, pursuant to section 1, article XV, of the collective-bargaining agreement, to pay vacation pay owed to the bargaining unit employees named below:

Botrice, Sami	Neff, Julia
Cobar, Julio	Oliveras, Jose
Del Real, Everardo	T. Pope, Sam
Flig, Czeslaw	Prach, Kim Sour
Fox, Joseph	Ramirez, Fernando
Gavatski, Dejan	Ramirez, Salvador
Jaquez, Ana	Rodriguez, Maria S.
Khuu, Cao	Roman, Francisco J.
Kobek, Joseph	Seidler, Kenneth J.
Kulik, Zoltan M.	Spiewak, Terrance
Marusarz, Wladyslaw	Terry, Freddie
Napiorlowska, Margaret	Trinidad, Norma

The subject in the preceding paragraph relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct described above without the Union's consent.

CONCLUSION OF LAW

By failing to execute a written contract and failing to pay contractually-required vacation pay to unit employees, 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 in violation of Section 8(a)(5) and (1). 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 June 29, 2010, to execute the collective-bargaining agreement reached on November 3, 2009, we shall order the Respondent to execute and implement the agreement and give retroactive effect to its terms. In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the collective-bargaining agreement with respect to section 1, article XV, by failing to pay vacation pay owed to the employees in the bargaining unit, we shall order the Respondent to make the employees whole by paying them the amounts set forth in attachment A of the consolidated complaint and compliance specification, plus interest accrued to the date of payment at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1171 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholdings required by Federal and State laws.

ORDER

The National Labor Relations Board orders that the Respondent, SK Hand Tool, as a Debtor in Possession, Chicago, 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 the International Brotherhood of Teamsters Local 743, AFL-CIO, as the exclusive collective-bargaining representative of the following unit, by failing and refusing to execute the collective-bargaining agreement reached on November 3, 2009, regarding the terms and conditions of employment of the unit employees.

The unit is:

All Production, Maintenance and Warehouse employees, but excluding office clerical employees, office

janitors, all other employees, timekeepers, time study men, professional employees, watchmen, guards and supervisors as defined by the National Labor Relations Act for its plant located at 3535 West 47th Street, Chicago, Illinois.

(b) Failing and refusing to continue in effect all the terms and conditions of the November 3, 2009 collective-bargaining agreement with respect to section 1, article XV, by failing since June 29, 2010, to pay vacation pay owed to the employees in the bargaining 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) Execute and implement the collective-bargaining agreement reached on November 3, 2009, and give retroactive effect to the agreement's terms and conditions of employment.

(b) Make whole the following unit employees for the Respondent's failure since June 29, 2010, to continue in effect its November 3, 2009 collective-bargaining agreement with the Union with respect to section 1, article XV, concerning vacation pay owed to the employees, by paying them the total amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholdings required by Federal and State laws:

Name	Gross Vacation Pay Due
Alarcon Eulalio	\$ 446.72
Barrios, Irma	925.76
Botrice, Sami	1,968.40
Cobar, Julio	385.28
Del Real, Everardo T.	744.40
Flig, Czeslaw	450.72
Fox, Joseph	302.08
Gavatski, Dejan	1,198.40
Hall, William	80.80
Jacelymabak, A.	808.00
Jaquez, Ana	812.88
Johnson, James	185.00
Khuu, Cao	96.00
Kobek, Joseph	1,438.80
Kulik, Zoltan M.	457.60
Lesnicki, Maria B.	1,123.02
Martinez, Maria	404.00
Marusarz, Wladyslaw	1,544.80

Napiorlowska, Margaret	1,536.00
Neff, Julia	2,296.00
Negron, Marta M.	1,639.68
Oliveras, Jose	3,238.72
Pope, Sam	602.40
Prach, Kim Sour	2,228.80
Ptaszynski, Stanislaw	2,232.00
Ramirez, Fernando	274.56
Ramirez, Salvador	727.20
Rodriguez, Maria S.	400.56
Roman, Francisco J.	1,289.28
Seidler, Kenneth J.	324.00
Spiewak, Terrance	409.68
Talowski, Anna	792.80
Terry, Freddie	1,642.80
Trinidad, Norma	471.04
Wolny, Andrew E.	4,102.00
TOTAL:	\$37,580.18

(c) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."¹ 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. 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 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 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 June 29, 2010.

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."

² Consistent with our recently issued decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), we have ordered the Respondent to distribute the notice electronically if it is customarily communicating with employees by such means. For the reasons stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notice.

(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. March 24, 2011

Wilma B. Liebman, Chairman

Craig Becker, 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 the International Brotherhood of Teamsters Local 743, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following unit, by failing and refusing to execute the collective-bargaining agreement reached on November 3, 2009, regarding your terms and conditions of employment. The unit is:

All Production, Maintenance and Warehouse employees, but excluding office clerical employees, office janitors, all other employees, timekeepers, time study men, professional employees, watchmen, guards and supervisors as defined by the National Labor Relations Act for our plant located at 3535 West 47th Street, Chicago, Illinois.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of the collective-bargaining agreement reached on November 3, 2009, with respect to section 1, article XV, by failing since June 29, 2010, to pay vacation pay owed to you.

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 execute and implement the collective-bargaining agreement reached on November 3, 2009, and give retroactive effect to its terms and conditions of employment.

WE WILL make whole the unit employees named in the Board's Decision and Order for our failure since June 29, 2010, to continue in effect our November 3, 2009 collective-bargaining agreement with the Union with respect to section 1, article XV, concerning vacation pay, by paying them the amounts set forth in the Board's Decision and Order, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws.

SK HAND TOOL, AS A DEBTOR IN POSSESSION