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**BBHM Management Company d/b/a Moo & Oink, Inc. and United Food & Commercial Workers Union, Local 1546.** Case 13-CA-46129

May 18, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER  
AND PEARCE

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file a legally sufficient answer to the complaint. Upon a charge filed by the Union, the Acting General Counsel issued a complaint on September 24, 2010,<sup>1</sup> alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing to provide the Union with information related to an arbitration award ordering the Respondent to reinstate and pay backpay to employee Lewana Coleman.<sup>2</sup> Copies of the charge and complaint were properly served on the Respondent. On October 15 and 19, the Respondent, by counsel, transmitted to the Region, via facsimile, two documents intended to constitute the Respondent's answer. The Respondent did not serve either document on the Charging Party.

On October 20, the Acting General Counsel filed a Motion for Default Judgment. In support of his motion, the Acting General Counsel asserts that the Respondent's answer is legally insufficient under Section 102.20 of the Board's Rules, was improperly filed via facsimile under Section 102.114(g), and was not served on the Charging Party as required under Section 102.21. On October 22, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the Acting General Counsel's Motion for Default Judgment should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that all 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. Section 102.20 further provides that "any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge," shall be deemed admitted. The complaint cited Section 102.20 and affirmatively stated that, unless an answer was received on or before October 8, the Board could find, pursuant to a motion for default judgment, that the allegations in the

complaint were true. The undisputed allegations in the Acting General Counsel's motion establish that, by letter dated October 14, the Region informed the Respondent that it had failed to file an answer by the date specified in the complaint and that if the Respondent failed to file an answer by October 19, a motion for default judgment would be filed.

On October 15, the Respondent, by counsel, transmitted a letter via facsimile to the Region.<sup>3</sup> The letter asserted that the case should be dismissed because the Union and the Respondent had stipulated to backpay for employee Coleman and because "the stipulation from plaintiff's attorney is absolute in its form." The letter further indicated that the letter "should suffice" as the Respondent's answer, and that Respondent's counsel would assume that the case had been dismissed, unless he heard "to the opposite." On October 18, the Region notified the Respondent that the October 15 letter was not a sufficient answer and that an answer to the complaint was still required. The Region reiterated that the Respondent's answer was due by October 19.

On October 19, the Respondent's counsel transmitted a document via facsimile to the Region, titled, "Answer," that included seven numbered paragraphs and several attached exhibits.<sup>4</sup> That answer primarily consisted of

<sup>3</sup> The letter states that it was sent "via facsimile and U.S. mail," but the undisputed allegations in the Acting General Counsel's motion state that the letter was sent via facsimile only.

<sup>4</sup> The Respondent's October 19 document stated in full:

ANSWER

Now comes BBH Management Company DBA Moo & Oink by its Attorney, Norman Light in response to the complaint filed herein regarding Lowanna [sic] Coleman (Coleman) and its provision of data regarding back pay amounts due.

1. On May 1, 2010 Arbitrator Bierig issued an opinion regarding termination of Coleman and found that she shall be "reinstated and made whole". Ms. Coleman was immediately reinstated.
2. On July 8, 2010 A Labor Relations charge was filed by Coleman's Attorney relating to requested documentation. EX. A [copy of charge].
3. On August 18, 2010 Ms. Coleman's Attorney filed a Federal Court complaint to enforce the Arbitrators award, requesting documentation regarding the back pay award.
4. August 30, 2010 Defendant e-mailed Coleman's Attorney back pay information. This was the second back pay information that Defendant sent to the Plaintiff's Attorney. EX. B [copy of email with no attachments].
5. On September 2, 2010, Coleman's Attorney requested that the Arbitration hearing be reopened for the purpose [of] determining the exact amount of damages to be awarded to Lowanna [sic] Coleman. EX. C [copy of letter].
6. On September 14, 2010 Management filed a complaint against Ms. Coleman for forgery. EX. D. [copy of circuit court complaint alleging that Coleman provided counterfeit paystubs in order to secure a car loan; attached to the complaint are

<sup>1</sup> All dates hereafter refer to 2010 unless otherwise indicated.

<sup>2</sup> The underlying charge identifies the discriminatee as "Lawanna Coleman," but the complaint identifies her as "Lewana Coleman."

factual statements regarding the arbitration and the related backpay award. None of the seven numbered paragraphs corresponded with any of the numbered paragraphs in the complaint, nor did the submission include any specific admissions or denials of the complaint allegations. Further, according to the undisputed allegations in the motion for default judgment, the October 19 submission was not served on the Union, nor is there any indication that the October 15 letter was served on the Union.

We find that the Respondent's October 15 and 19 submissions do not, either separately or together, constitute a legally sufficient answer under Section 102.20 of the Board's Rules.<sup>5</sup> To begin, we observe that the Respondent was represented by counsel. Therefore, the Board's practice of "show[ing] some leniency toward a pro se litigant's efforts to comply with our procedural rules," *Mid-Wilshire Health Care Center*, 331 NLRB 1032, 1033 (2000), does not apply to our evaluation of the Respondent's documents.

Turning to the substance of the Respondent's submissions, we find, first, that they fail to address any of the complaint's factual or legal allegations concerning the Respondent's alleged failure and refusal to provide the Union with requested relevant information, in violation of Section 8(a)(5) and (1) of the Act.<sup>6</sup> See, e.g., *Dunbin-clipped Inc.*, 339 NLRB 1104, 1104–1105 (2003) (respondent failed to file a proper answer under Sec. 102.20 where the answer did not address any of the complaint's factual or legal allegations); *Central Apex Reproductions*, 330 NLRB 1163, 1163 (2000) (finding a multi-paragraph answer including a general denial and affirmative defenses legally insufficient because it did not address the substance of complaint allegations); *American Gem Sprinkler Co.*, 316 NLRB 102, 103 (1995) (statement that did not specifically deny any of the complaint

allegations did not constitute a proper answer under Sec. 102.20). Second, five of the seven numbered paragraphs of the Respondent's October 19 document assert facts concerning the arbitration and other unrelated litigation, and they are not responsive to the complaint allegations. See, e.g., *Triple H Fire Protection, Inc.*, 326 NLRB 463, 463–464 (1998) (respondent's answer, which only discussed matters not alleged in the complaint, was insufficient).<sup>7</sup>

In addition to the Respondent's failure to file a legally sufficient answer under Section 102.20, we find that the Respondent failed to properly file the October 19 answer under Section 102.114(g) when it transmitted the answer via facsimile to the Region. See *Cable-Masters, Inc.*, 307 NLRB 871, 871 (1992) (rejecting respondent's answer and granting summary judgment for the General Counsel based on the respondent's submission of its answer by facsimile).<sup>8</sup> Further, the Respondent failed to serve the Charging Party as required under Section 102.21. See *Travelodge San Francisco Civic Center*, 242 NLRB 287, 288 (1979) (granting summary judgment against pro se respondent for failure to file a legally sufficient answer and also noting the respondent's failure to serve the charging party). Because we find that the Respondent's answer is legally insufficient under Section 102.20, however, we need not rely exclusively on either of those procedural deficiencies in granting default judgment.

In sum, the Respondent failed to file a sufficient answer to the complaint and failed to respond to the Board's Notice to Show Cause why default judgment should not be granted. Accordingly, in the absence of good cause being shown for the failure to file a legally sufficient 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, an Illinois corporation, with an office and place of business in Chicago, Illinois, has been engaged in the business of retail and wholesale meat and food sales and distribution.

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three earnings statements and two paychecks, all dated between June and August of 2009].

7. On October 14, 2010 a second arbitration hearing was held. At this hearing Ms. Hernandez stipulated that the amount of money due her client was adequately represented by Exhibit B, attached to the transcript. (I will be receiving a copy of this transcript within the next day or two, and will be able to send the appropriate pages).

It should be noted that there is no provision in the arbitrator's award or in the union contract directing the Employer to provide payroll information to a participant in an arbitration.

Wherefore, Defendant requests that this charge be dismissed.

<sup>5</sup> An answer to a complaint may consist of more than one document. See *Acme Building Maintenance*, 307 NLRB 358, 359 (1992) (both letters respondent filed with the Region constituted its complaint answer). Accordingly, we have considered both the October 15 and 19 submissions in determining whether default judgment is appropriate.

<sup>6</sup> In its submissions, the Respondent claims that it provided "backpay information" to the Union. The Respondent does not specify, however, whether it provided the Respondent's backpay calculation and copies of Coleman's paystubs, both of which were requested by the Union.

<sup>7</sup> The Board has summarily rejected defenses raised in respondents' answers that are contrary to established law. See, e.g., *Pantry Restaurant*, 341 NLRB 243, 244 (2004). Even if the Respondent's October 19 submission could be read as asserting a defense to the complaint allegations based on the fact that "there is no provision in the arbitrator's award or in the union contract directing the Employer to provide payroll information to a participant in an arbitration," that assertion is a legally insufficient answer that would not prevent the entry of default judgment. It is well settled that information concerning wages is presumptively relevant and must be provided on request. *West Point Pepperell*, 290 NLRB 1242, 1244 (1988).

<sup>8</sup> Sec. 102.114(g) of the Board's Rules and Regulations was formerly Sec. 102.114(e), which is cited in *Cable-Masters*.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods and materials 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 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, Joann Creekmore held the position of human resources director 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 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time production and maintenance employees, excluding non-working supervising foremen, superintendents, office workers, salesmen, chauffeurs, engineers and security guards.

At all material times herein, the Union has been the designated collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from November 1, 2006 through October 31, 2011.

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

On or about June 1, 9, and 29, 2010, the Union by letter requested that the Respondent furnish the Union with a copy of Joann Creekmore's backpay calculation for employee Lewana Coleman.

On or about June 29, 2010, the Union by letter requested that the Respondent furnish the Union with Coleman's weekly paystubs showing earnings and deductions from August 1, 2008 through her discharge date.

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

Since on or about June 14, 2010, the Respondent has failed and refused to furnish the information requested by the Union.

## 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 within the meaning of Section 8(a)(5) and (1), and has thereby engaged in an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in an unfair labor practice, 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 unlawfully failed to provide the information requested by the Union, we shall order it to do so.

## ORDER

The National Labor Relations Board orders that the Respondent, BBHM Management Company, d/b/a Moo & Oink, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Failing and refusing to bargain collectively with United Food & Commercial Workers Union, Local 1546 (the Union), by failing to provide the Union with requested information that is necessary and relevant to the performance of the Union's duties as the exclusive collective-bargaining representative for the employees in the following appropriate unit:

All full-time and part-time production and maintenance employees, excluding non-working supervising foremen, superintendents, office workers, salesmen, chauffeurs, engineers and security guards.

(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 purposes of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on June 1, 9, and 29, 2010, with respect to the Respondent's backpay calculation for Lewana Coleman, and copies of Coleman's weekly paystubs from August 1, 2008, through her discharge date.

(b) Within 14 days after service by the Region, post at its plant in Chicago, Illinois, copies of the attached notice marked "Appendix."<sup>9</sup> Copies of the notice, on forms provided by the Regional Director of Region 13, after

<sup>9</sup> 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."

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. 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 14, 2010.

(c) 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. May 18, 2011

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Wilma B. Liebman,                      Chairman

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Craig Becker,                              Member

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Mark Gaston Pearce,                      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 United Food & Commercial

Workers Union, Local 1546, by failing and refusing to furnish it with information necessary and relevant to the performances of its functions as the collective-bargaining representative of our employees in the following bargaining unit:

All full-time and part-time production and maintenance employees, excluding non-working supervising foremen, superintendents, office workers, salesmen, chauffeurs, engineers and security guards.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on June 1, 9, and 29, 2010, with respect to the Respondent's backpay calculation for the discharged employee, and copies of that employee's weekly paystubs from August 1, 2008, through her discharge date.

BBHM MANAGEMENT COMPANY D/B/A MOO & OINK, INC.