Uwanta Linen Supply, Inc. *and* Mid-Atlantic Regional Joint Board, Local 141, Workers United *and* General Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 697, a/w International Brotherhood of Teamsters. Cases 6–CA–36888 and 6–CA–36900

August 17, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

The Acting General Counsel seeks default judgment in this case, asserting that the Respondent has failed to file an answer to the complaint.[1] Upon charges filed by Mid-Atlantic Regional Joint Board, Local 141, Workers United (Workers United) on April 6, 2010,[2] and amended on August 12, and by General Teamsters, Chauffeurs and Helpers Local 697 a/w International Brotherhood of Teamsters (General Teamsters) on April 19, the Acting General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on August 27 against Uwanta Linen Supply, Inc. (the Respondent), alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to bargain collectively and in good faith with Workers United and General Teamsters (collectively, the Unions) about the group health insurance benefits of employees represented by the Unions and by failing and refusing to continue in effect the contractual provisions regarding such insurance. Copies of the charges and the consolidated complaint were properly served on the Respondent. By letter dated September 14, the Region advised the Respondent that it had not received an answer by the September 10 deadline set forth in the complaint, and asserted that, unless the Respondent filed an answer by the close of business on the third business day following receipt of the letter or unless the Region granted an extension of time to file an answer, a motion for default judgment would be filed with the Board.

On September 17, the Respondent's president, Arden D. Wilson II, telephoned the Regional Office and requested an extension of time in which to file an answer, based on the fact that he and his wife had been in an automobile accident at some point in the past. The Respondent was given an extension until September 21. On September 20, Wilson telephoned the Regional Office and requested an additional extension of time in which to file an answer, asserting that his computer had been affected by a virus. The Region denied the Respondent's request.

On September 21, the Acting General Counsel filed a Motion for Default Judgment with the Board, asserting that no answer had been filed. Thereafter, on September 27, 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's answer to the complaint was received by the Regional Office on September 29.[3] On October 12, the Respondent filed a timely response, with exhibit attached, to the Notice to Show Cause.

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 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, unless an answer was received on or before September 10 or postmarked on or before September 9, 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 motion for default judgment disclose that the Region, by certified letter dated September 14, informed the Respondent that unless an answer was received by the close of business on the third business day following receipt of the letter, a motion for default judgment would be filed. On September 17, the Region granted the Respondent's telephonic request for an extension of time in which to answer the complaint, setting September 21 as the new deadline.[4] On September 20, the Region denied the Respondent's telephonic request for a further extension of time in which to answer the complaint and informed the Respondent that the answer's due date remained September

[1] As explained below, the Respondent submitted an answer to the Region on September 29, 2010, after the Acting General Counsel had already filed its motion for default judgment.

[2] All dates refer to 2010, unless otherwise indicated.

[3] Because the Respondent did not include a certificate of service with its answer and we do not know how the answer was filed, we also do not know when it was filed in relation to the Respondent's receipt of the Board's Order and Notice to Show Cause, which was served on the Respondent by certified mail on September 29.

[4] In a September 17 email to Wilson, the Region reminded the Respondent of the September 21 deadline and of the Board's procedures for filing and service of answers. Attached to the email were copies of the complaint and of the sections of the Board's Rules and Regulations pertaining to answers.

21. Nevertheless, the Respondent failed to file an answer by September 21.[5]

As described above, the Respondent transmitted an answer to the complaint to the Region on September 29, after the Acting General Counsel's Motion for Default Judgment was filed on September 21 and possibly after the case had been transferred to the Board. The answer, which was signed by Wilson, contains paragraph-by-paragraph responses to the complaint, as well as Wilson's apology and explanation of the difficulties in his personal life that assertedly justify the untimely filing.[6]

On October 12, in response to the Board's Notice to Show Cause, the Respondent filed a letter signed by Wilson. The substantive text of the letter is as follows:

> I am writing to request that the Acting General Counsel's Motion not be granted. I did give written response, but admittedly not in the time frame requested. I sincerely apologize for the lateness of the reply, but both my wife and I are still suffering serious long-term effects from a near fatal car accident. My absence of management was what led to the problems cited in the above cases. I was off full time work for close to a year and a half. My wife especially has needed my help recently because of a degenerating spinal and nerve condition (for which she had spinal surgery at University Hospitals in Morgantown by Dr. Julian Bailes along with several follow ups) and *extreme* pain. We no longer have any relatives in the Wheeling area to help. The many friends who helped immediately after the accident have had to go back to their own lives. I am truly trying my best to balance all my obligations. I certainly wish to handle this matter in the most expedient manner. All of the above can easily be substantiated by public records, hospital and lab reports, and doctors' statements.
>
> Again, I am requesting that the Counsel's Motion not be granted and the case continued in Pittsburgh.

In determining whether to grant a motion for default judgment on the basis of a respondent's failure to file a timely and sufficient answer, the Board typically shows some leniency toward respondents who proceed without benefit of counsel. See *LBE, Inc.*, 356 NLRB No. 84, slip op. at 1 (2011), enfd. summarily, Case No. 11-1326 (6th Cir. May 11, 2011); *A.P.S. Production/A. Pimental Steel*, 326 NLRB 1296, 1297 (1998). The Board has recognized, however, that a respondent's "lack of representation does not excuse it from its obligation to file an appropriate answer to the complaint." *LBE*, supra, slip op. at 2 (citing *Newark Symphony Hall*, 323 NLRB 1297 (1997)). Generally, to get a determination on the merits, a pro se respondent must file a timely answer which can reasonably be construed as denying the substance of the complaint allegations, or provide a "good cause" explanation for failing to do so. See *Clearwater Sprinkler System*, 340 NLRB 435, 435 (2003).

Here, the Respondent's September 29 answer was clearly untimely. That answer, along with Wilson's October 12 letter, did offer an explanation for the Respondent's tardiness based on Wilson's personal situation. Nevertheless, even if we were to accept the Respondent's explanation as constituting good cause for the untimely answer and thereby treat the September 29 answer as timely filed, that answer cannot reasonably be construed as denying the substance of the complaint's factual allegations. See *Clearwater Sprinkler System*, 340 NLRB at 436.

The substantive deficiencies in the Respondent's answer are illustrated by its response to the allegation that the Respondent ceased maintaining health insurance coverage. The answer states, "False: Coventry Health cancelled our coverage for multiple NSF checks." This statement does not deny the cessation of unit employees' insurance coverage or even the Respondent's responsibility for the cessation of coverage. Similarly, in response to the complaint allegations that the Respondent failed to provide notice to and bargain with the Unions over the insurance coverage, the Respondent states, "Uwanta was busily engaged in trying to reestablish health coverage." Although this asserts that the Respondent was attempting to resolve its problem with the health insurance carriers, this assertion does not address the alleged failure to give the Unions notice and an opportunity to bargain over the cessation of group health insurance coverage. As the complaint alleges, the maintenance of group health insurance coverage is a mandatory subject of bargaining. See *Mid-Continent Concrete*, 336 NLRB 258 (2001), enfd. sub nom. *NLRB v. Hardesty Co.*, 308 F.3d 859 (8th Cir. 2002). Responding to the allegation that it acted without the Unions' consent, the Respondent states, "[w]e did not contact the Teamsters or Workers' [sic] United, because we did not believe it would take very long to either reinstate coverage or find another provider." This statement actually admits the allegation.

Despite those nonresponsive answers and admissions, the Respondent's answer denies the legal conclusion that its conduct constitutes an unlawful refusal to bargain in good faith with Workers United and the Teamsters. We

[5] The Respondent admits in its opposition to the motion for default judgment that its answer was late.

[6] The narrative portion of Wilson's answer is essentially an abbreviated version of his opposition to the motion for default judgment, set forth infra.

find this general denial to be legally insufficient to rebut the effectively admitted factual allegations in the complaint. See *Pantry Restaurant*, 341 NLRB 243, 244 (2004); see also *Massachusetts Coastal Seafoods*, 313 NLRB 731, 732 (1994) (striking respondent's denial of legal conclusions in answer that admitted conduct that was the gravamen of the complaint).

Accordingly, even assuming, without deciding, that the Respondent's answer was timely filed, we reject the answer as legally insufficient, and 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, a West Virginia corporation with offices and places of business located in Wheeling, West Virginia (Respondent's Wheeling facility and Respondent's Elm Grove facility), has been engaged in the operation of a linen supply service. During the 12-month period ending March 31, 2010, the Respondent, in conducting its business operations described above, provided services valued in excess of $50,000 for Oglebay Resort & Conference Center, Wesbanco Arena, and Burger King Corporation, all of which are enterprises within the state of West Virginia, which are directly engaged in interstate commerce.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and Workers United and General Teamsters have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

At all material times, Arden D. Wilson II, has held the position of president of the Respondent, 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.

1. The laundry workers

For many years and at all material times, Workers United has been the designated exclusive collective-bargaining representative of certain employees of the Respondent engaged in laundry production work (the laundry workers unit), and has been recognized as such representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period June 6, 2006, to June 5, 2009, as extended indefinitely by agreement of the parties (the laundry workers agreement). The laundry workers unit, as set forth in the laundry workers agreement, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. At all material times, based on Section 9(a) of the Act, Workers United has been the exclusive collective-bargaining representative of the laundry workers unit.

Article 8 of the laundry workers agreement states, in pertinent part:

> 8.2(a) The Company agrees to contribute to a medical health care plan equivalent to Blue Cross/Blue Shield Select Blue Program which would also include eye care and prescription benefits at no cost to the employee. Payment for coverage under the H.M.O[.] which is not purchased through the Tri-State Laundry & Dry Cleaning Insurance Fund shall be made by the Company directly to the Health Maintenance Organization. The Company further agrees to pay all premium increases to maintain the present insurance benefits. The Employer agrees that it will provide each employee with a Summary Plan Description.

2. The drivers

For many years and at all material times, General Teamsters has been the designated exclusive collective-bargaining representative of certain driver employees of the Respondent (the driver 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 for the period March 1, 2009, to February 28, 2012 (the driver agreement). The driver unit, as set forth in the driver agreement, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. At all material times, based on Section 9(a) of the Act, General Teamsters has been the exclusive collective-bargaining representative of the driver unit.

Article XVIII of the driver agreement states, in pertinent part:

> Section 1. Each employee covered by the Agreement who has been on the Employers [sic] payroll for thirty days (30) shall have Health Care Coverage provided by Health Assurance (Carelink). Said health plan to include vision coverage. Full cost of said Health Assurance (Carelink) to be assumed by the Employer.
>
> Section 2. The Company cannot change health plans without first notifying the Local Union and employees thirty (30) days in advance, and must maintain the current benefit levels.

B. Conduct

1. The laundry workers

(a) On about January 1, 2010, the Respondent ceased to maintain group health insurance coverage for its employees in the laundry workers unit, which relates to wages, hours, and other terms and conditions of employment of the laundry workers unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to Workers United and without affording Workers United an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct.

(b) On or about January 1, 2010, the Respondent failed to continue in effect all of the terms and conditions of the laundry workers agreement by ceasing to maintain group health insurance coverage for its employees in the laundry workers unit. The Respondent engaged in this conduct without the consent of Workers United. These terms and conditions of employment are mandatory subjects for the purpose of collective bargaining.

2. The drivers

(a) On or about January 1, 2010, the Respondent ceased to maintain group health insurance coverage for its employees in the driver unit, which relates to wages, hours, and other terms and conditions of employment of the driver unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to General Teamsters and without affording General Teamsters an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct.

(b) On or about January 1, 2010, the Respondent failed to continue in effect all of the terms and conditions of the driver agreement by ceasing to maintain group health insurance coverage for its employees in the driver unit. The Respondent engaged in this conduct without the consent of General Teamsters. These terms and conditions of employment are mandatory subjects for the purpose of collective bargaining.

CONCLUSIONS OF LAW

1. By the conduct described above in section II.B.1(a), the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in the laundry workers unit in violation of Section 8(a)(5) and (1) of the Act.

2. By the conduct described above in section II.B.1(b), the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in the laundry workers unit within the meaning of Section 8(d) in violation of Section 8(a)(5) and (1) of the Act.

3. By the conduct described above in section II.B.2(a), the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in the driver unit in violation of Section 8(a)(5) and (1) of the Act.

4. By the conduct described above in section II.B.2(b), the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in the driver unit within the meaning of Section 8(d) in violation of Section 8(a)(5) and (1) of the Act.

5. The Respondent's unfair labor practices described above 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 from those practices 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), from about January 1, 2010, by failing and refusing to bargain collectively and in good faith with Workers United and General Teamsters and by failing and refusing to continue in effect all the terms and conditions of the laundry workers agreement and the driver agreement by ceasing to maintain group health insurance coverage for these unit employees, we shall order the Respondent to bargain in good faith with the Unions over health insurance benefits and to apply all the terms and conditions of the laundry workers agreement and the driver agreement, and any automatic extensions thereof.

In addition, we shall order the Respondent to restore the health and medical insurance benefits that were provided to employees in the laundry workers unit and in the driver unit before the Respondent ceased to maintain group health insurance coverage for these employees on or about January 1, 2010.[7] Further, the Respondent shall

[7] The Respondent's untimely answer states that the insurer terminated the group health insurance plans in effect before January 1, 2010, because the Respondent submitted "multiple" payment checks that were returned by the bank for lack of funds. We recognize that in this circumstance, the insurer might not permit the Respondent to repurchase those group plans. Therefore, we will allow the Respondent to litigate in compliance whether it would be impossible or unduly or unfairly burdensome to restore the same group insurance plans provided for in the laundry workers agreement and the driver agreement. See, e.g., *Larry Geweke Ford*, 344 NLRB 628, 628–629 (2005). Nonetheless, even if the prior group insurance plans are unavailable to the

reimburse these employees for any expenses ensuing from its failure to maintain group health insurance coverage, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate 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).

ORDER

The National Labor Relations Board orders that the Respondent, Uwanta Linen Supply, Inc., Wheeling, West Virginia, 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 exclusive collective-bargaining representatives of its employees in the laundry workers unit and in the driver unit in violation of Section 8(a)(1) and (5) of the Act, by failing to bargain over the cessation of those employees' group health insurance coverage.

(b) Failing and refusing to continue in effect the terms and conditions of the laundry workers agreement or the driver agreement, including by failing, since about January 1, 2010, to maintain group health insurance coverage.

(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) Bargain in good faith regarding health insurance coverage with Mid-Atlantic Regional Joint Board, Local 141, Workers United, as the exclusive collective-bargaining representative of employees in the laundry workers unit and with General Teamsters, Chauffeurs and Helpers Local 697 a/w International Brotherhood of Teamsters as the exclusive collective-bargaining representative of employees in the driver unit.

(b) Honor and comply with the terms of the laundry workers agreement and the driver agreement, and any automatic extensions thereof.

(c) Restore the health and medical insurance benefits that were provided to employees in the laundry workers unit and in the driver unit before the Respondent ceased maintaining group health insurance coverage for these employees on or about January 1, 2010, and reimburse these employees for any expenses ensuing from its failure to maintain group health insurance coverage, in the manner set forth in the remedy section of this decision.

(d) Within 14 days after service by the Region, post at its facilities in Wheeling and Elm Grove, West Virginia, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 6, 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. 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 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 January 1, 2010.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 6 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. August 17, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Respondent, restoring the status quo ante requires that the Respondent provide its represented employees with the same coverage, at the same cost to them, that it provided before January 1, 2010. See *Exxon Co., USA*, 315 NLRB 952, 952 (1994) (requiring restoration of prior benefits but not of the actual insurance plan, which had been eliminated).

[8] 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."

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 your exclusive collective-bargaining representatives over your group health insurance coverage.

WE WILL NOT fail and refuse to continue in effect the terms and conditions of the laundry workers agreement and the driver agreement, including by failing to maintain group health insurance coverage.

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 bargain in good faith with Mid-Atlantic Regional Joint Board, Local 141, Workers United and with General Teamsters, Chauffeurs and Helpers Local 697 a/w International Brotherhood of Teamsters as the exclusive collective-bargaining representatives of the laundry workers unit and the driver unit, respectively.

WE WILL honor and comply with the terms of the laundry workers agreement and the driver agreement, and any automatic extensions thereof.

WE WILL restore the health and medical insurance benefits that we provided to you before we stopped maintaining your group health insurance coverage about January 1, 2010, and WE WILL reimburse you for any expenses resulting from our failure to maintain your group health insurance coverage, plus interest.

UWANTA LINEN SUPPLY, INC.