

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Consumer Product Services, LLC and Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski. Case 13–CA–46622

September 7, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE 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 consolidated corrected complaint and compliance specification. Upon a charge and an amended charge filed by the Charging Parties on March 4 and May 9, 2011, respectively, the Acting General Counsel issued a corrected complaint, compliance specification, answer requirement, notice of consolidated hearing, and an order consolidating complaint and compliance specification (the consolidated complaint and compliance specification), on June 1, 2011, against Consumer Product Services, LLC (the Respondent), alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer to the consolidated complaint and compliance specification.

On July 11, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on July 13, 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.

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 compliance specification affirmatively stated that unless an answer was received by June 22, 2011, the

Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compliance specification are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by email and by letter dated June 22, 2011, notified the Respondent that unless an answer was received by June 29, 2011, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.¹

In the absence of good cause being shown for the failure to file an answer to the consolidated complaint and compliance specification, we deem the allegations in the consolidated complaint and compliance specification to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.²

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 in Alsip, Illinois, the Respondent's facility, has been engaged in the business of refurbishing household appliances.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its facility goods valued in excess of \$50,000 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.

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

¹ The letter was returned to the Regional Office "unclaimed" and the email was returned "undeliverable." However, it is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn.5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003).

² The Acting General Counsel's motion indicates that on April 29, 2011, the Respondent filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court, Eastern District of New York, Case Number 8–11–72989–ast. On June 3, 2011, that case was converted from Chapter 11 to Chapter 7 by Court Order. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933, 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited there; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336 (2d Cir. 1992). Accord: *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Robert Madden	-	VP Operations
Paul Paliwoda	-	Manager
Mariusz _____	-	Supervisor/Manager

Since approximately October 2010, the Charging Parties concertedly protested the Respondent's failure to pay wages by holding work stoppages and contacting various news media outlets in December 2010 to protest the Respondent's repeated failure to pay wages.

In about November or December 2010, the Respondent, through Paliwoda and Mariusz, at the Employer's facility, threatened employees with discharge in response to their protected concerted activities.

In about November or December 2010, the Respondent, through Mariusz, at the Employer's facility, threatened employees with physical removal by security personnel in response to their protected concerted activities.

In about December 2010, the Respondent, through Madden, via telephone, threatened employees with discharge in response to their protected concerted activities.

In about January 2011, the Respondent, through its security guard service, threatened employees with police arrest in response to their protected concerted activities.

In January 2011, the Respondent failed to recall the Charging Parties from layoff in response to their protected concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(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 has violated Section 8(a)(1) by failing to recall the Charging Parties from layoff in response to their protected concerted activities, we shall order the Respondent to offer Charging Parties Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski full reinstatement to their former

positions, or, if those positions no longer exist, to substantially similar positions, without prejudice to their seniority and other rights and privileges previously enjoyed. In addition, we shall order the Respondent to make the Charging Parties whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, as set forth in the compliance specification, with 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.³ The Respondent shall also be required to remove from its files all references to the unlawful failure to recall from layoff Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski and to notify them in writing that this has been done and that the unlawful failure to recall them from layoff will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Consumer Product Services, LLC, Alsip, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge in response to their protected concerted activities.

(b) Threatening employees with physical removal by security personnel in response to their protected concerted activities.

(c) Threatening employees with police arrest in response to their protected concerted activities.

³ The compliance specification states that the backpay period for the wages owed to and on behalf of the discriminatees commences on the date of the Respondent's failure to recall them, January 3, 2011, and ends on March 11, 2011, the last day production employees of the Respondent worked. The total amount due to each discriminatee includes interest calculated through May 27, 2011.

In the consolidated complaint and compliance specification, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. Further, the Acting General Counsel requests that the Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enf'd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

(d) Failing to recall employees from layoff in response to their protected concerted activities.

(e) 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) Within 14 days from the date of this Order, offer Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) make Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to recall them from layoff, by paying them the amount set forth below, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this decision:

DISCRIMINATEE	BACKPAY DUE
Andres Restrepo	\$ 6,064
Matthew Abedini	\$ 3,653
Gregory Brankiewicz	\$ 5,166
Robert Czerwien	\$ 4,479
Richard Hermasillo	\$ 5,209
Chris Kroplewski	\$ 5,812
Jerry Kroplewski	\$ 5,659
Ana Marin	\$ 3,704
Leonardo Martinez	\$ 3,871
Ludwika Mendrala	\$ 3,693
Bogumila Szczensny	\$ 3,689
Magaly Torres	\$ 3,537
Michael Zamora	\$ 5,659

William Zamora	\$ 4,042
Jamie Rosian	\$ 3,739
Tadeusz Dabrowski	\$ 5,255
TOTAL BACKPAY:	\$73,231

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful failure to recall from layoff Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

(d) 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.

(e) Within 14 days after service by the Region, post at its facility in Alsip, Illinois, copies of the attached notice marked "Appendix."⁴ 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.⁵ 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 pro-

⁴ 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."

⁵ 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.

ceedings, 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 November 2010.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 13 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. September 7, 2011

Mark Gaston Pearce, 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 threaten employees with discharge in response to their protected concerted activities.

WE WILL NOT threaten employees with physical removal by security personnel in response to their protected concerted activities.

WE WILL NOT threaten employees with police arrest in response to their protected concerted activities.

WE WILL NOT fail to recall employees from layoff in response to their protected concerted activities.

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, within 14 days from the date of the Board's Order, offer Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski whole for any loss of earnings and other benefits suffered as a result of our unlawful failure to recall them from layoff, by paying them the amount set forth in the Board's Order, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful failure to recall from layoff Andres Restrepo, Matthew Abedini, Gregory Brankiewicz, Robert Czerwien, Richard Hermasillo, Chris Kroplewski, Jerry Kroplewski, Ana Marin, Leonardo Martinez, Ludwika Mendrala, Bogumila Szczensny, Magaly Torres, Michael Zamora, William Zamora, Jamie Rosian, and Tadeusz Dabrowski, and WE WILL within 3 days thereafter, notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

CONSUMER PRODUCT SERVICES, LLC