Bradford Printing & Finishing, LLC *and* New England Joint Board, UNITE-HERE. Cases 01–CA–046524, 01–CA–046545, 01–CA–046631, and 01–CA–046657

September 13, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

The Acting General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon charges and amended charges filed by New England Joint Board, UNITE-HERE (the Union), the Acting General Counsel issued the consolidated complaint on May 31, 2011, against Bradford Printing & Finishing, LLC (the Respondent), alleging that the Respondent violated Section 8(a)(5) and (1) of the Act.

Subsequently, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 1 on November 3, 2011. Among other things, the settlement agreement required the Respondent to: (1) make whole the employees named in the settlement agreement by paying backpay in the total amount of $127,310.31, to be paid in monthly installments to the Region beginning on November 28, 2011 through January 28, 2013; (2) recall the named employees by seniority consistent with the terms of the collective-bargaining agreement and Memorandum of Agreement between the Respondent and the Union; (3) provide the Region with a copy of the financing statement filed with the State of Rhode Island in connection with the settlement agreement; and (4) post, mail, and read the notice to employees.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on May 31, 2011, in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated February 7, 2012, the Regional Director for Region 1 notified the Respondent that it had failed to comply with the settlement agreement's requirements with respect to the timely payment of backpay in scheduled installments.[1] The letter demanded that the Respondent remedy its noncompliance by February 28, 2012. In response, the Respondent requested an extension of time in which to cure its default and to achieve and remain in compliance with the settlement agreement. By letter dated February 9, 2012, the Region granted the Respondent's request.

Although the Respondent remitted some payments towards its obligation, it failed to meet and satisfy its obligations under the installment payment schedule as modified by the Region's extension of time. By letter dated April 11, 2012, the Region advised the Respondent that it was in default of its obligations under the installment schedule. The letter further advised the Respondent that the settlement agreement provided that in the event of default on the installment schedule, the full $127,310.31, less the amounts previously paid, would be immediately due and payable. Pursuant to this provision, the letter demanded immediate payment to the Region of $109,970.71. The letter further stated that if the amount was not paid by May 1, 2012, the Region would reissue the consolidated complaint and seek default judgment. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, the Acting Regional Director reissued the consolidated complaint on August 7, 2012. Also on August 7, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on August 9, 2012, the Board issued

[1] The letter acknowledged that the Respondent had complied with the requirement to post, mail, and read the notice to employees.

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

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement with respect to the timely payment of backpay in scheduled installments. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued consolidated complaint are true.[2] Accordingly, 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, a Rhode Island limited liability corporation, with an office and place of business at 460 Bradford Road, Bradford, Rhode Island (the Bradford facility), has been engaged in the business of textile finishing.

During the calendar year ending December 31, 2010, the Respondent, in conducting its business operations described above, sold and shipped from the Bradford facility goods valued in excess of $50,000 directly to points outside the State of Rhode Island, and purchased and received at the Bradford facility goods valued in excess of $50,000 directly from points outside the State of Rhode Island.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that 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:

Nicholas Griseto	-	President and CEO
Bob Jacob	-	Production Manager
Karen Ward	-	Controller
Wayne Silva	-	Supervisor
Patty Bowen	-	Human Resources Administrator

1. The Respondent, by Nicholas Griseto, at the Bradford facility, on the dates indicated below, engaged in the following conduct:

(a) On about September 21, 2010, disparaged the Union by:

(i) telling employees that they did not need union representation;

(ii) telling employees that the Respondent only had to recognize the Union for 6 months; and

(iii) telling employees to find a union representative that speaks English.

(b) On about October 23, 2010, interfered with the selection of the Union's bargaining committee by:

(i) telling employees that women were over represented on the Union's bargaining committee; and

(ii) suggesting to employees that certain employee members on the Union's bargaining committee be replaced by other employees.

(c) On about November 22, 2010:

(i) implied to employees that it was futile to have the Union represent them as their designated collective-bargaining representative; and

(ii) told employees that members of the Union's bargaining committee would be replaced if they could not get along.

(d) On about February 17, 2011, created an impression among its employees that their union activities were under surveillance by the Respondent; and

(e) On about February 17, 2011, implied to its employees that it would sue the Union's representative for conduct that occurred at a union meeting.

2. On about February 17, 2011, the Respondent, by Nicholas Griseto and Karen Ward, at the Bradford facility, implied to its employees that the Union was to blame for the Respondent's financial problems.

3. 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 and maintenance employees employed at the Respondent's Bradford facility, but excluding

[2] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

general office help, clerical employees, scientific employees, foremen, department heads, watchmen, guards, and supervisors as defined in the Act.

4. By a Decision and Order dated March 25, 2011,[3] the Board found that the Respondent, a *Burns*[4] successor to Bradford Dyeing Association, had an obligation to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit as of January 16, 2010. The Board further found that the Respondent had thereafter unlawfully refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit and ordered the Respondent to cease and desist from refusing to recognize, or withdrawing recognition from, the Union and to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of its employees in the unit with respect to wages, hours, and other terms and conditions of employment, and if an agreement is reached, embody such agreement in a signed document. 5. Since about January 16, 2009, and at all material times, based on the facts described above in paragraph 4, the Union has been the exclusive collective-bargaining representative of the unit.

6. On about December 10, 2010, before which date the Union did not know and could not have known, the Union was put on notice that in about January and March 2010, the Respondent changed the health insurance plan that it offers to unit employees.

7. On about November 15, 2010, the Respondent changed the amount, and method by which, unit employees contribute towards their health insurance.

8. On about November 15, 2010, the Respondent refused to allow the Union access to the Bradford facility to meet with members of its employee bargaining committee because not all members of the committee were present.

9. In about mid-December 2010, the Respondent granted its employees a 10-percent wage increase, to be effective January 1, 2011.

10. On about March 2, 2011, the Respondent rescinded the 10-percent wage increase described above.

11. On about February 9, 2011, the Respondent laid off unit employees Cindy Abate, Christopher Bridgham, Peter Harris, and James Olson.

12. On about March 3, 2011, the Respondent laid off unit employees John Arnold, Jim DeCosta, Don Lavallee, Jim Lindeborg, and Mark Pendleton.

13. The subjects set forth in paragraphs 6 through 12 relate to wages, hours and other terms and conditions of employment of the unit; and are mandatory subjects for the purposes of collective bargaining.

14. The Respondent engaged in the conduct described in paragraphs 6 through 10 without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

15. The Respondent engaged in the conduct described in paragraph 11 without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct.

16. The Respondent engaged in the conduct described in paragraph 12 without affording the Union an opportunity to bargain with the Respondent with respect to the decision to lay off unit employees and the effects of this conduct.

17. In about late October 2010, the Respondent, by Nicholas Griseto, at the Bradford facility, bypassed the Union and dealt directly with its employees in the unit by polling them about whether they wanted to work the Veterans Day holiday (November 11, 2010).

18. On about November 4, 2010, the Respondent, by Patricia Bowen, bypassed the Union and dealt directly with employees by polling them about whether they wanted to work the Veterans Day holiday (November 11, 2010).

19. On about February 9, 2011, the Respondent, by Nicholas Griseto, reneged on an agreement the Respondent reached with the Union to advise only six named employees that they were being laid off.

20. (a) Since about November 17, December 14, and December 28, 2010, the Union has requested that the Respondent furnish the Union with the following information:

(i) the job descriptions of three working foremen and the identities of the employees they are alleged to supervise;

(ii) plan documents related to the health insurance plans the Respondent offers to its employees and any changes that have been made to those plans; and

(iii) The hire dates and job classifications of two laid-off employees—Doug Boss and Joseph DePerry.

(b) Since about February 9 and 10, 2011, the Union requested that the Respondent furnish the Union with the job titles and job descriptions for each of the nonunit employees the Respondent listed on a seniority list that it provided to the Union on February 9, 2011.

(c) Since about March 2, 2011, the Union requested the Respondent to furnish the Union with the following information:

[3] 356 NLRB No. 109 (2011).

[4] *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

(i) An explanation of the cash flow problem the Respondent was experiencing that justified a layoff of unit employees;

(ii) Documentation showing the cost savings the Respondent expects to realize from a layoff of bargaining unit employees;

(iii) Names of all customers that have cut orders with the Respondent and the net loss of revenue this has caused;

(iv) Documentation substantiating the Respondent's precarious financial condition; and

(v) Any documentation of the careful analysis of the Respondent's operational needs, and the skills and qualifications of employees or an explanation of this analysis if no such documentation exists, which would explain the selection of employees for the March 2011 layoff referred to above in paragraph 12.

21. The information requested by the Union, as described in paragraph 20, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

22. Since about November 17, 2010, December 14 and 28, 2010, February 9 and 10, 2011, and March 2, 2011, the Respondent has failed and refused to furnish the Union with information requested by it as described in paragraphs 20 and 21.

23. On about November 3, 2010, the Respondent and the Union commenced negotiations for a collective-bargaining agreement.

24. At all material times, Pamela Cornell has been a member of the Union's bargaining committee and an agent of the Union for purposes of collective bargaining with the Respondent.

25. Since about December 21, 2010, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit unless Pamela Cornell ceased to act as the Union's agent for the purpose described in paragraph 24.

26. From about January 10, 2011, January 21, 2011, and February 15, 2011, the Respondent failed and refused to meet in negotiations for a collective-bargaining agreement before late March 2011.

CONCLUSIONS OF LAW

1. By the acts and conduct described in paragraphs 1 and 2, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By the conduct described in paragraphs 6 through 19, 22, 25, and 26, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

3. 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 take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent shall comply with the terms of the settlement agreement approved by the Regional Director for Region 1 on November 3, 2011, by paying to the Region the remaining backpay obligation in the sum of $109,970.71, 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).

In limiting our affirmative remedy as set forth above, we note that the Acting General Counsel is empowered under the noncompliance provisions of the settlement agreement to seek "full remedy for the violations found as is appropriate to remedy such violations." However, in his motion for default judgment, the Acting General Counsel has not sought such additional remedies and we will not, sua sponte, include them.[5]

ORDER

The National Labor Relations Board orders that the Respondent, Bradford Printing & Finishing, LLC, Bradford, Rhode Island, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Remit $109,970.71, plus interest, to Region 1 of the National Labor Relations Board, to be disbursed to the unit employees in accordance with the settlement agreement approved by the Regional Director on November 3, 2011.

2. 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.

[5] In his motion for default judgment, the Acting General Counsel stated that the Respondent has failed to comply with the settlement agreement with respect to the required timely payment of backpay in scheduled installments. The Acting General Counsel requested "[t]hat an appropriate Remedial Order be issued to include, among other things, that Respondent be ordered to fulfill its backpay obligation by payment of the sum of $109,970.71." Accordingly, we construe the Acting General Counsel's motion as a request to enforce the unmet backpay provisions of the settlement agreement, and we shall order that affirmative remedy.

Dated, Washington, D.C. September 13, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD