Dubin Paper Company *and* Warehouse Employees Local 169 a/w International Brotherhood of Teamsters. Case 04–CA–079713

November 21, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES AND GRIFFIN

The Acting General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge, first amended charge, and second amended charge filed by the Union on April 26, June 29, and July 23, 2012, respectively, the Acting General Counsel issued a complaint and notice of hearing on August 23, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On September 17, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 18, 2012, 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 a timely response 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 states that the answer must be received on or before September 6, 2012. The complaint further states that if no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true. The Respondent failed to file an answer. Thereafter, on September 10, 2012, the Region sent a letter to the Respondent notifying the Respondent that it had failed to submit an answer in response to the complaint and the significance of that failure. The letter provided the Respondent with additional time until September 17, 2012 to file an answer. The Respondent failed to file an answer.

In its response to the Notice to Show Cause, the Respondent claims that it is now in bankruptcy proceedings; that those proceedings stay the instant proceeding; and that upon the filing of the bankruptcy petition, the Respondent "no longer retained any control of the assets of the Company's estate." The Respondent further asserts that as it relates to Frank Hockman and Frank Dubin, the "Second Amended Complaint makes no specific allegations that speak to acts of Respondents individually that would render them liable."[1] The Respondent further avers that "[t]o the extent there are any such allegations, Respondents would be prepared to respond to those allegations upon receipt of a complaint setting forth same." In addition, the Respondent states that its position with regard to the charge, the first amended charge, and the second amended charge, as previously communicated to the Region and as attached to its response to the Notice to Show Cause, remains unchanged. The Acting General Counsel filed a response.

For the reasons set forth below, we find that the Respondent's arguments do not constitute good cause for failing to file a timely answer to the complaint. Bankruptcy proceedings do not constitute either good cause for failing to file an answer or a basis for denying the Acting General Counsel's motion.[2] 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.[3]

The Respondent also claims that the Motion for Default Judgment should be denied because the complaint does not specifically allege acts that would render Frank Hoffman and Frank Dubin individually liable for any violations that may be established, and because the Respondent has previously communicated its position—which remains unchanged—during the investigation of the unfair labor practice charge and amended charges. Those assertions do not explain why the Respondent failed to file a timely answer to the complaint and do not constitute good cause for failing to file an answer. The complaint alleges that the Respondent refused to provide requested information relevant to the Union's representation of bargaining unit employees with respect to the Respondent's closure and the effects of the closure on

[1] Although the Respondent refers to the second amended complaint, it is clear that it meant to refer to the second amended charge; the complaint in this matter was not amended.

[2] See, e.g., *OK Toilet & Towel Supply, Inc*., 339 NLRB 1100, 1100 (2003) (institution of bankruptcy proceedings does not constitute good cause for the failure to file a timely answer).

[3] See, e.g., *Asher Candy, Inc*., 358 NLRB No. 5, slip op. at 2 fn. 8 (2012); *Cardinal Services*, 295 NLRB 933, 933 fn. 2 (1989). 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 therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992); accord: *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23, 23 (1st Cir. 1983).

employees. The Respondent's response to the Notice to Show Cause focuses on the reasons for the closure and its current financial status. The Respondent, however, fails to explain why it did not answer the complaint or why it withheld the requested information from the Union. Where a respondent, even one proceeding pro se,[4] fails to respond to complaint allegations until after the Notice to Show Cause has issued, despite having been notified in writing that it must do so, and has provided no good cause explanation for its failure to file a timely answer, subsequent attempts to file an answer will be denied as untimely. *Pointing Plus Inc.*, 358 NLRB No. 154, slip op. at 1 (2012). To the extent that the Respondent's response to the Notice to Show Cause is intended to answer the complaint allegations, it is undisputed that it was not filed until after the Notice to Show Cause issued, and no good cause was shown for the failure to file a timely answer.

Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the National Labor Relations Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times until on or about April 10, 2012, the Respondent, a Pennsylvania corporation, was engaged in the sale and distribution of paper products at its plant located at 1910 South Columbus[5] Boulevard, Philadelphia, Pennsylvania.

During the 12-month period ending April 10, 2012, the Respondent, in conducting its business operations described above, sold and shipped goods valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania.

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 the Union, Warehouse Employees Local 169 a/w International Brotherhood of Teamsters, 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 have 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 within the meaning of Section 2(13) of the Act acting on the Respondent's behalf:

Frank Hockman — Vice President
Frank Dubin — Vice President-Secretary

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 regular part-time warehousemen, excluding all other employees, drivers, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period May 1, 2009, through April 30, 2014.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employed by the Respondent.

On or about April 19, 2012, the Union, by letter to the Respondent's counsel, requested that the Respondent furnish the Union with the following information set forth in items 1, 2, 3, and 4 of that letter:

> 1. Audited financial statements and all exhibits for the last 3 fiscal years.
> 2. The most recent unaudited financial statement for the current fiscal year to date.
> 3. Copies of the company's general ledger for the last 3 fiscal years and the current fiscal year to date.
> 4. Copies of corporate tax returns for the last 3 fiscal years.

The April 19, 2012 letter stated that the Union was requesting the information to assist it in negotiations concerning the closing and the effects of the closing of the Respondent's facility.

On or about June 3, 2012, the Union, by email from union counsel to the Respondent's counsel, requested that the Respondent furnish to the Union information showing the quantity and value of the Respondent's inventory.

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

[4] The Respondent here was represented by counsel.

[5] The complaint erroneously lists the Respondent's address as 1910 South Columbia Boulevard. The affidavit of service, however, indicates that the complaint was served at the correct address.

Since about April 19, 2012, the Respondent has failed and refused to furnish the Union with the above-described information requested about April 19, 2012.

Since about June 3, 2012, the Respondent has failed and refused to furnish the Union with the above-described information requested about June 3, 2012.

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, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 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)(5) and (1) by failing to provide relevant and necessary information requested by the Union on or about April 19 and June 3, 2012, we shall order the Respondent to provide the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Dubin Paper Company, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the Union information necessary for and relevant to the Union's performance of its duties as the exclusive bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time warehousemen, excluding all other employees, drivers, guards and supervisors as defined in the Act.

(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 policies of the Act.

(a) Furnish the Union with the information it requested on April 19 and June 3, 2012.

(b) Within 14 days after service by the Region, post at its Philadelphia, Pennsylvania facility copies of the attached notice, marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 4, 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.[7] 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 April 19, 2012.

(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. November 21, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[6] 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."

[7] 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.

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 furnish the Union with requested information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time warehousemen, excluding all other employees, drivers, guards and supervisors as defined in the Act.

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

WE WILL furnish the Union with the information it requested on April 19 and June 3, 2012.

DUBIN PAPER COMPANY