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Quantum Hotels, LLC, Metropolitan Lodging, LLC, and Wick Road Hotel Management, LLC, alter egos d/b/a The Metropolitan Hotel, Romulus and Local 24, UNITE HERE!, AFL-CIO. Case 07-CA-090429

June 11, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the consolidated complaint and compliance specification. Upon a charge, first, second, and third amended charges filed by Local 24, UNITE HERE!, AFL-CIO (the Union) on October 1 and 16, December 11, and December 28, 2012, respectively, the Acting General Counsel issued a complaint, compliance specification, and order consolidating complaint and compliance specification on January 31, 2013, against Quantum Hotels, LLC, Metropolitan Lodging, LLC, and Wick Road Hotel Management, LLC, alter egos d/b/a The Metropolitan Hotel, Romulus (collectively, the Respondent) alleging that it violated Section 8(a)(5) and (1) of the Act. On March 5, 2013, the Respondent filed separate answers to the complaint and compliance specification. However, on April 15, 2013, the Respondent withdrew its answers to the complaint and compliance specification.

On April 16, 2013, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 18, 2013, 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 The Respondent filed a response on April 22, 2013, stating that it “agrees that it has withdrawn its answer to the Consolidated Complaint and the Compliance Specification. The Respondent further states the General Counsel’s Motion should be granted.” 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 with 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 February 21, 2013, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compliance specification are true. Although the Respondent filed answers to the complaint and to the compliance specification on March 5, 2013, it subsequently withdrew its answers. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the consolidated complaint and compliance specification must be considered to be admitted as true.¹ 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, Respondent Quantum Hotels, LLC (Respondent Quantum) has been a limited liability company with an office and place of business in Romulus, Michigan, and has been engaged in the operation of the Metropolitan Hotel, Romulus, providing food and lodging.

At all material times, Respondent Metropolitan Lodging, LLC (Respondent Metropolitan Lodging) has been a limited liability company, with an office and place of business in Romulus, Michigan, and has been engaged in the operation of the Metropolitan Hotel, Romulus, providing food and lodging.

At all material times, Respondent Wick Road Hotel Management, LLC (Respondent Wick Road) has been a limited liability company, with an office and place of business in Romulus, Michigan, and has been engaged in the operation of the Metropolitan Hotel, Romulus, providing food and lodging.

At all material times, Respondent Quantum, Respondent Metropolitan Lodging, and Respondent Wick Road have had substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership.

About mid to late 2011, Respondent Metropolitan Lodging was established by Respondent Quantum as a continuation of Respondent Quantum.

About June 9, 2011, Respondent Wick Road was established by Respondent Quantum and Respondent Metropolitan Lodging as a continuation of Respondent Quantum and Respondent Metropolitan Lodging.

¹ See *Maislin Transport*, 274 NLRB 529, 529 (1985).

Based on the operations and conduct described above, Respondent Quantum, Respondent Metropolitan Lodging, and Respondent Wick Road (collectively, the Respondent) are, and have been at all material times, alter egos within the meaning of the Act.

During calendar year 2012, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at the Romulus facility goods and supplies valued in excess of \$50,000 from other enterprises in the State of Michigan, including DTE Energy, which other enterprises received these goods and supplies directly from points outside the State of Michigan.

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:

Remo Polselli	Organizer and Managing Member
Larry Hodge	General Manager

At all material times, Kevin Stubbings has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

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:

Cooks, Pantry Employees, Utility/Stewards, Bar Porters, Banquet Bartenders, Regular Banquet Servers, Banquet Servers, Banquet Bartenders, Dining Room/Bar Personnel, Coffee Break Servers, Lead Room Attendants, Room Attendants, House Persons, General Clean-up Attendants, Laundry/Valet employees, Inspectors, Servers, Room Service Servers, Bus Attendants, Hosts/Cashiers, Cocktail Servers, Baristas, Banquet House Persons, Lead Front Office Agent, Front Office Agent, Auditor, Driver/Guest Service Attendant, and Maintenance employees; employed by Respondent at its Romulus facility; but excluding managers, supervisors, confidential employees, and guards, as defined by the Act.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement which was effective for the period of October 1, 2008, through September 30, 2011.

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

On August 23, 2012, the Respondent closed its Romulus facility. Since August 23, 2012, the Respondent, pursuant to closing its Romulus facility, failed to pay employees accrued vacation; failed to pay employees accrued personal days; failed to pay employees 3 days' wages in lieu of proper layoff notification; and used nonunit workers to perform housekeeping/cleaning work typically performed by unit employees.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above since August 23, 2012, without prior notice to the Union and without providing the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.²

By letter dated December 3, 2012, the Respondent bypassed the Union and dealt directly with the employees in the unit by requesting, among other things, that they enter into an agreement that could waive their rights to matters pending before the Board.

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, in violation of Section 8(a)(5) and (1) of the Act, and has thereby

² The consolidated complaint and compliance specification alleges that the Respondent violated the Act by failing to bargain over its decision to close its Romulus facility. Although the consolidated complaint and compliance specification alleges that this decision was a mandatory subject of bargaining, we find that the allegations of the consolidated complaint and compliance specification do not support a cause of action given the Supreme Court's decision in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). Accordingly, we shall deny the motion for default judgment with respect to this allegation and remand it for further appropriate action. Nothing herein will require a hearing if, in the event of the amendment to the consolidated complaint and compliance specification, the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation. In such circumstances, the Acting General Counsel may renew the motion for default judgment with respect to the amended complaint allegation. See *Nick & Bob Partners*, 340 NLRB 1196, 1198 fn. 2 (2003).

engaged in unfair labor practices affecting 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 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) of the Act by repudiating the terms and conditions of the collective-bargaining agreement by, inter alia, failing and refusing since about August 23, 2012, to pay employees accrued vacation, accrued personal days, and 3 days' wages in lieu of proper layoff notification, and by using nonunit workers to perform housekeeping/cleaning work typically performed by unit employees, we shall order the Respondent to make the unit employees whole by paying them the amounts set forth in the compliance specification, plus interest accrued to the date of payment at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1171 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholding required by Federal and State laws.

To remedy the Respondent's unlawful failure to bargain with the Union about the effects of its decision to close its facility, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order both to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed to make whole the unit employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified in *Melody Toyota*, 325 NLRB 846 (1998).

Pursuant to *Transmarine*, the Respondent typically would be required to pay its unit employees backpay at

the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on the unit employees of its decision to close its Romulus facility; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

Transmarine provides that the sum paid to these employees may not exceed the amount they would have earned as wages from the date on which the Respondent closed its Romulus, Michigan facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, *Transmarine* further provides that in no event shall this sum be less than the unit employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay is typically based on earnings that the unit employees would normally have received during the applicable period, less any net interim earnings, and is computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Here, in the circumstances of the Respondent's cessation of operations, the Acting General Counsel in the consolidated complaint and compliance specification seeks only the minimum 2 weeks of backpay due the unit employees under *Transmarine*. Attachments 1 through 6 of the consolidated complaint and compliance specification set forth the amount due each employee. We shall grant the Acting General Counsel's request and order the Respondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment.³

Additionally, in accordance with our recent decision in *Latino Express, Inc.*, 359 NLRB No. 44 (2012), we shall order the Respondent to compensate the unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay

³ Attachment 5 to the consolidated complaint and compliance specification indicates that in addition to the summary of amounts due in attachment 6, set forth below, the amount the Respondent owes for dates nonunit employees worked is \$297.92. Accordingly, we have added this amount to the total amount due.

award to the appropriate calendar quarters for unit employees.

Further, we shall order the Respondent to rescind the December 3, 2012 letter sent to the unit employees and advise them in writing of such rescission and that the Union is the exclusive collective-bargaining representative of the unit.

Finally, in view of the fact that the Respondent has closed its Romulus, Michigan facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent at any time since August 23, 2012, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Quantum Hotels, LLC, Metropolitan Lodging, LLC, Wick Road Hotel Management, LLC, alter egos d/b/a the Metropolitan Hotel, Romulus, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 24, UNITE HERE!, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the following bargaining unit by failing to bargain with the Union over the effects of the Respondent's decision to close its Romulus, Michigan facility:

Cooks, Pantry Employees, Utility/Stewards, Bar Porters, Banquet Bartenders, Regular Banquet Servers, Banquet Servers, Banquet Bartenders, Dining Room/Bar Personnel, Coffee Break Servers, Lead Room Attendants, Room Attendants, House Persons, General Clean-up Attendants, Laundry/Valet employees, Inspectors, Servers, Room Service Servers, Bus Attendants, Hosts/Cashiers, Cocktail Servers, Baristas, Banquet House Persons, Lead Front Office Agent, Front Office Agent, Auditor, Driver/Guest Service Attendant, and Maintenance employees; employed by Respondent at its Romulus facility; but excluding managers, supervisors, confidential employees, and guards, as defined by the Act.

(b) Failing to pay unit employees their accrued vacation, personal days, and 3 days' wages in lieu of proper layoff notification and using nonunit workers to perform housekeeping/cleaning work typically performed by unit employees.

(c) Bypassing the Union and dealing directly with unit employees by requesting that employees enter into an agreement that could waive their rights to matters pending before the Board.

(d) 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) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent's decision to close its Romulus, Michigan facility and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of its failure to pay employees accrued vacation, accrued personal days, and 3 days' wages in lieu of proper layoff notification, and for using nonunit workers to perform housekeeping/cleaning work typically performed by unit employees since August 23, 2012, and for its failure to bargain with the Union concerning the effects on unit employees of its decision to close its Romulus, Michigan facility, by paying the individuals named below the amounts following their names, as well as by paying the amount owed for dates worked by nonunit employees, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra, and minus tax withholdings required by Federal and State laws:

NAME	VACATION PAY	PERSO-NAL PAY	THREE DAYS' WAGES	TRANS-MARINE WAGES	TOTAL
Mike Brylinksky	\$1,278.00	\$429.10	\$257.46	\$ 852.00	\$ 2,816.56
Gloria Chapman	744.80	335.16	223.44	744.80	2,048.20
Gregory Chappell	874.40	349.76	262.32	874.40	2,360.88
Deeshawn Clifton	1,117.20	372.40	223.44	744.80	2,457.84
Kimethia Cummings	186.20	0	111.72	372.40	670.32
Sharonda Davis	186.20	93.10	111.72	372.40	763.42
Earl Denny	916.80	412.56	275.04	916.80	2,521.20
Bob Ellingson	1,435.20	478.40	287.04	956.80	3,157.44
Alicia Farmer	744.80	335.16	223.44	744.80	2,048.20
Robert Gutkowski	752.00	338.40	225.60	752.00	2,068.00
Latina Green	760.00	342.00	228.00	760.00	2,090.00

Jeanen Hancock	279.30	93.10	111.72	374.40	858.52
Sheila Hayes	101.60	0	121.92	406.40	629.92
Kathie Henderson	1,540.80	513.60	308.16	1,027.20	3,389.76
Brenda Hubbart	1,177.20	392.40	235.44	784.80	2,589.84
Margaret Kretschman	1,320.00	127.90	153.48	516.00	2,117.38
Matthew Krzesniak	1,100.40	366.80	220.08	733.60	2,420.88
Otis McFadden	188.00	94.00	112.80	376.00	770.80
Sandra Milan	1,117.20	372.40	223.44	744.80	2,457.84
Nicole Mosley	279.30	93.10	111.72	372.40	856.52
Lynn Muller	252.00	138.00	165.60	552.00	1,107.60
Brandi Nellems	372.40	93.10	111.72	372.40	949.62
Javier Pittman	760.00	342.00	228.00	760.00	2,090.00
Dave Prince	752.00	338.40	225.60	752.00	2,068.00
Mark Rinn	1,512.00	400.20	240.12	804.00	2,956.32
Monique Robinson-Scott	186.20	0	111.72	372.40	670.32
Victoria Skyles	1,117.20	372.40	223.44	744.80	2,457.84
Shawn Smith	327.90	109.30	131.16	437.20	1,005.56
Marty Stafford	880.00	125.10	150.12	500.40	1,655.62
Solomon Wise	1,188.00	396.00	237.60	792.00	2,613.60
TOTAL					\$56,668.00
Nonunit Employee Work					\$ 297.92
TOTAL AMOUNT DUE					\$56,965.92

(d) Rescind the December 3, 2012 letter sent to the unit employees and advise them in writing of this rescission and that the Union is the exclusive collective-bargaining representative of the unit.

(e) Compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each unit employee.

(f) 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.

(g) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent’s authorized representative, copies of the attached notice marked “Appendix”⁴ to the Union and to all unit employees who were employed by the Respondent at the time that it closed its facility on August 23, 2012.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. June 11, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, 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.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Mailed By Order of the National Labor Relations Board” shall read “Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 24, UNITE HERE!, AFL-CIO as the exclusive collective-bargaining representative of our unit employees set forth below by failing to bargain with the Union over the effects of our decision to cease operations of our Romulus, Michigan facility:

Cooks, Pantry Employees, Utility/Stewards, Bar Porters, Banquet Bartenders, Regular Banquet Servers, Banquet Servers, Banquet Bartenders, Dining Room/Bar Personnel, Coffee Break Servers, Lead Room Attendants, Room Attendants, House Persons, General Clean-up Attendants, Laundry/Valet employees, Inspectors, Servers, Room Service Servers, Bus Attendants, Hosts/Cashiers, Cocktail Servers, Baristas, Banquet House Persons, Lead Front Office Agent, Front Office Agent, Auditor, Driver/Guest Service Attendant, and Maintenance employees; employed by us at our Romulus facility; but excluding managers, supervisors, confidential employees, and guards, as defined by the Act.

WE WILL NOT fail to pay employees' accrued vacation, personal days, and 3 days' wages in lieu of proper layoff notification, and WE WILL NOT use nonunit workers to perform housekeeping/cleaning work typically performed by unit employees.

WE WILL NOT bypass the Union and deal directly with unit employees by requesting that employees enter into an agreement that could waive their rights to matters pending before the Board

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, on request, bargain collectively and in good faith with the Union concerning the effects on our unit employees of our decision to close our Romulus, Michigan facility on August 23, 2012, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL make our unit employees whole for any loss of earnings and other benefits suffered as a result of our failure to pay accrued vacation, accrued personal days, and 3 days' wages in lieu of proper layoff notification and as a result of our using nonunit workers to perform housekeeping/cleaning work typically performed by unit employees, and for our failure to bargain with the Union concerning the effects on unit employees of our decision to close our Romulus, Michigan facility, by paying them the amounts specified in the Board's Order, as well as by paying the amount owed for dates worked by nonunit employees, plus interest accrued to the date of payment, minus tax withholdings required by Federal and State laws.

WE WILL rescind the December 3, 2012 letter sent to unit employees and advise them in writing of this rescission and that the Union is the exclusive collective-bargaining representative of the unit.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each unit employee.

QUANTUM HOTELS, LLC, METROPOLITAN LODGING, LLC, WICK ROAD HOTEL MANAGEMENT, LLC, ALTER EGOS D/B/A THE METROPOLITAN HOTEL, ROMULUS