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.

Vince & Sons Co. and Jo Mo Enterprises, Inc. d/b/a Vince & Sons Pasta, alter-ego and/or Golden State Successor *and* United Food & Commercial Workers Local 1546. Case 13–CA–123828

March 31, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that Vince & Sons Co. (Respondent Vince & Sons) and Jo Mo Enterprises, Inc. d/b/a Vince & Sons Pasta (Respondent Jo Mo Enterprises), alter-ego and/or *Golden State* Successor (collectively, the Respondent) has withdrawn its answer to the complaint. Upon a charge and an amended charge filed by United Food and Commercial Workers Local 1546 (the Union) on March 5 and April 16, 2014, respectively, the General Counsel issued a complaint and an amended complaint on May 16 and December 4, 2014, respectively, against the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the Act. The Respondent filed answers to the complaint and amended complaint. However, on January 23, 2015, the Respondent filed a motion to withdraw its answers, and on January 26, 2015, the Regional Director granted that motion.

On January 29, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on February 2, 2015, 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.

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 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. In addition, the amended complaint affirmatively stated that unless an answer was received by December 18, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent filed an answer to the complaint on May 30, 2014, and the amended complaint on December 26, 2014, it subsequently withdrew its answers to both the complaint and the amended complaint. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted as true.[1] Accordingly, based on the withdrawal of the Respondent's answers, we deem the allegations in the amended complaint to be admitted as true, and we grant the 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 Vince & Sons, a corporation with an office and place of business in Bridgeview, Illinois, has been engaged in the business of manufacturing pasta and the retail and nonretail sale of pasta.

During the 12-month period ending November 22, 2013, Respondent Vince & Sons, in conducting its business operations described above, sold and shipped from its Bridgeview, Illinois facility goods valued in excess of $50,000 directly to points outside the State of Illinois.

At all material times, Respondent Jo Mo Enterprises, a corporation doing business as Vince & Sons Pasta, with an office and place of business in Bridgeview, Illinois, has been engaged in the business of manufacturing pasta and the retail and nonretail sale of pasta.

During the 12-month period beginning November 22, 2013, at which time Respondent Jo Mo Enterprises commenced its operations, Respondent Jo Mo Enterprises, in conducting its business operations described above, sold and shipped from its Bridgeview, Illinois facility goods valued in excess of $50,000 directly to points outside the State of Illinois.

We find that Respondent Vince & Sons and Respondent Jo Mo Enterprises are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Respondent Vince & Sons and Respondent Jo Mo Enterprises have had substantially identical management, business purpose, operations, equipment, customers, and supervision, shared premises and facilities, and ownership.

About November 22, 2013, Respondent Jo Mo Enterprises was established by Respondent Vince & Sons, as a continuation of Respondent Vince & Sons. Respondent Vince & Sons established Respondent Jo Mo Enterprises

[1] See *Maislin Transport*, 274 NLRB 529 (1985). Indeed, when withdrawing its answers, the Respondent expressly acknowledged that it was "aware that by withdrawing its Answers that all the allegations in the First Amended Complaint shall be deemed to be admitted to be true and shall be so found by the Board."

for the purpose of evading its responsibilities under the Act.

Based on the operations and conduct described above, Respondent Vince & Sons and Respondent Jo Mo Enterprises are, and have been at all material times, alter egos within the meaning of the Act.

In the alternative, about November 22, 2013, Respondent Jo Mo Enterprises purchased the business of Respondent Vince & Sons, and since then has continued to operate the business of Respondent Vince & Sons in basically unchanged form. Before engaging in this conduct, Respondent Jo Mo Enterprises was put on notice of Respondent Vince & Sons' potential liability in Board Case 13–CA–123828 by virtue of the fact that Respondent Jo Mo Enterprises' owner, Michael Okon, was previously employed as Respondent Vince & Sons' director of operations. Based on this conduct and operations, Respondent Jo Mo Enterprises has continued the employing entity with notice of Respondent Vince & Sons' potential liability to remedy its unfair labor practices, and Respondent Jo Mo Enterprises is a successor to Respondent Vince & Sons.

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

Robert Okon	Owner
Michael Okon	Director of Operations
Jesse Soto	Production Manager

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Jo Mo Enterprises within the meaning of Section 2(11) of the Act and agents of Respondent Jo Mo Enterprises within the meaning of Section 2(13) of the Act:

Michael Okon	Owner
Jesse Soto	Production Manager

The following events occurred beginning in September 2013.

1. About September 2013, Respondent Vince & Sons, by Bob Okon at the Bridgeview, Illinois facility, threatened employees with unspecified reprisals.

2. About November 21, 2013, the Respondent, by Bob Okon at the Bridgeview, Illinois facility, threatened employees with discharge.[2]

3. About September 9, 2013, Respondent Vince & Sons disciplined Elvia Gutierrez.

4. About September 16, 2013, Respondent Vince & Sons disciplined Elvia Gutierrez and Rosario Diaz.

5. About November 21, 2013, the Respondent discharged Elvia Gutierrez, Rosario Diaz, and Fernando Salazar.

6. The Respondent engaged in the conduct described above in paragraphs 3 through 5 because Elvia Gutierrez, Rosario Diaz, and Fernando Salazar joined the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraph 1, Respondent Vince & Sons 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.

2. By the conduct described above in paragraph 2, 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.

3. By the conduct described above in paragraphs 3, 4, and 6, Respondent Vince & Sons has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

4. By the conduct described above in paragraphs 5 and 6, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) 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 and to take certain affirmative action designed to

[2] Although the amended complaint does not specifically allege that the threats described in pars. 1 and 2 were made because of employees' concerted activity, the amended complaint does allege that this conduct violates Sec. 8(a)(1) of the Act. Accordingly, because we deem all of the allegations in the amended complaint to be true, we conclude that these threats were based on employees' concerted activity.

effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by disciplining and discharging Elvia Gutierrez, Rosario Diaz, and Fernando Salazar, we shall order the Respondent to offer them 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 shall also order the Respondent to make Elvia Gutierrez, Rosario Diaz, and Fernando Salazar whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

In addition, we shall order the Respondent to compensate Elvia Gutierrez, Rosario Diaz, and Fernando Salazar for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

Finally, the Respondent shall also be required to remove from its files any and all references to the unlawful discipline and discharges and to notify Elvia Gutierrez, Rosario Diaz, and Fernando Salazar in writing that this has been done and that the unlawful conduct will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Vince & Sons Co. and Jo Mo Enterprises, Inc. d/b/a Vince & Sons Pasta, alter-ego and/or Golden State Successor, Bridgeview, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with unspecified reprisals or discharge because they engage in concerted activities.

(b) Disciplining or discharging employees because they join the Union and engage in concerted activities or to discourage employees from engaging in these activities.

(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) Within 14 days from the date of this Order, offer Elvia Gutierrez, Rosario Diaz, and Fernando Salazar 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 Elvia Gutierrez, Rosario Diaz, and Fernando Salazar whole for any loss of earnings and other benefits they may have suffered as a result of its unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.

(c) Compensate Elvia Gutierrez, Rosario Diaz, and Fernando Salazar 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.

(d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discipline and discharges of Elvia Gutierrez, Rosario Diaz, and Fernando Salazar and, within 3 days thereafter, notify them in writing that this has been done and that its unlawful conduct will not be used against them in any way.

(e) 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.

(f) Within 14 days after service by the Region, post at its facility in Bridgeview, Illinois, copies of the attached notice marked "Appendix."[3] 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at

[3] 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."

its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 9, 2013.

(g) 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. March 31, 2015

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, 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 unspecified reprisals or discharge because they engage in concerted activities.

WE WILL NOT discipline or discharge employees because they join the Union and engage in concerted activities or to discourage employees from engaging in these 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 Elvia Gutierrez, Rosario Diaz, and Fernando Salazar 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 Elvia Gutierrez, Rosario Diaz, and Fernando Salazar whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL compensate Elvia Gutierrez, Rosario Diaz, and Fernando Salazar 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 award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discipline and discharges of Elvia Gutierrez, Rosario Diaz, and Fernando Salazar, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful conduct will not be used against them in any way.

VINCE & SONS CO. AND JO MO ENTERPRISES, INC. D/B/A VINCE & SONS PASTA, ALTER-EGO AND/OR GOLDEN STATE SUCCESSOR

The Board's decision can be found at www.nlrb.gov/case/13-CA-123828 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273–1940.