

LBE, Inc. and Local 486, International Brotherhood of Teamsters. Case 7–CA–53081

January 31, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE
AND HAYES

The General Counsel seeks default judgment in this case on the ground that the Respondent failed to file an appropriate answer to the complaint. Upon a charge filed by Local 486, International Brotherhood of Teamsters (the Union) on August 6, 2010,¹ the General Counsel issued a complaint on September 24 against LBE, Inc. (the Respondent) alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing to furnish the Union with requested information regarding the shutdown of its operation. Copies of the charge and the complaint were properly served on the Respondent by certified mail and by personal service. On October 8, the Region received the Respondent's apparent response to the complaint. On the same day, the Region notified the Respondent that its letter did not constitute an appropriate answer and, unless the Respondent filed an appropriate answer by October 19, a Motion for Default Judgment would be filed. On October 18, the Region's letter was returned with what appeared to be a nonpostal service sticker stating "Business Closed" and "Return to Sender."

On October 20, the General Counsel filed a Motion for Default Judgment with the Board. On October 21, the Board issued an order transferring the proceeding from the Region to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response to the Motion for Default Judgment or to the Notice to Show Cause. 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 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. The complaint affirmatively stated that an answer was due on or before October 8, and that if no answer was filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that on October 1, the complaint, which had been sent by certified mail, was returned as "refused."

¹ All dates refer to 2010, unless otherwise indicated.

Notwithstanding that refusal, on October 8, the Region received an unsigned letter dated October 5 from the Respondent, apparently acting pro se. The letter stated the following:

Response to complaint.

As a result of DHL terminating its contract with LBE, and permanently doing business in The United States as an Intrastate and Interstate carrier, in March of 2009 it no longer is in business.

All requested material including CERP has been provided to the NLRB. To my knowledge, no other items are outstanding.

At no time was there ever refusal to submit information requested by the NLRB. The allegation is unfounded.

All former employees were discharged according to the terms of the CERP; proof of this was submitted to the NLRB at a hearing in Detroit in July.

Thank you,

The Region thereafter sent a letter to the Respondent indicating that its response did not constitute an appropriate answer and stating that unless the Respondent filed an appropriate answer by October 19, the Region would file a Motion for Default Judgment. The Region received no further response from the Respondent.

We recognize that the Respondent does not appear to have legal representation in this proceeding. In determining whether to grant a Motion for Default Judgment on the basis of a respondent's failure to file a sufficient or timely answer, the Board typically shows some leniency toward respondents who proceed without the benefit of counsel. See, e.g., *Clearwater Sprinkler System*, 340 NLRB 435 (2003). Indeed, "the Board generally will not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer, which can reasonably be construed as denying the substance of the complaint allegations." *Clearwater Sprinkler System*, supra, citing *Harborview Electric Construction Co.*, 315 NLRB 301, 302 (1994). This case, however, is the third time in the last 18 months that the Respondent has faced default judgment on charges of failing to provide the Union with requested information.²

² In the first case, the Board granted the General Counsel's Motion for Default Judgment based on the Respondent's failure to file a sufficient answer to the complaint. *LBE, Inc.*, 354 NLRB 1009 (2009) (the Respondent's handwritten note insufficient as answer under the Board's Rules). In the second case, the Respondent failed to file an answer to

Under the circumstances, the Respondent cannot reasonably claim that it was unfamiliar with its obligation to answer the complaint in this case. We are therefore disinclined to afford the Respondent the kind of leniency typically afforded pro se respondents.

Moreover, the Respondent's lack of representation does not excuse it from its obligation to file an appropriate answer to the complaint. See generally *Newark Symphony Hall*, 323 NLRB 1297 (1997). As set forth above, the Respondent refused service of the complaint,³ failed to file a timely answer to the complaint, and did not provide an explanation for failing to file a timely answer.

In substance, the Respondent's letter to the Region does not constitute an appropriate answer to the complaint. The letter is unsigned and does not reference the specific complaint allegations. Although the Respondent's letter states that the Respondent provided all requested information to the NLRB, it does not claim that it provided any information to the Union, the party that requested the information and to which the Respondent owes a duty to provide relevant information. Moreover, the Respondent's statement that "[t]he allegation is unfounded" appears to refer to a "refusal to submit information requested by the NLRB," an allegation that is not in the complaint. Thus, to the extent that the letter states a general denial, it does not deny any allegations actually in the complaint.

In sum, the Respondent failed to file any document, timely or untimely, that could reasonably be construed as an answer to the complaint. Accordingly, and in the absence of good cause being shown for the failure to file a timely answer, 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, the Respondent, a corporation with an office in Saginaw, Michigan, has been engaged in providing freight pickup and delivery services for DHL Express (USA), Inc.

During the 2009 calendar year, a representative period, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$100,000, and provided service in excess of \$50,000 to DHL Express

(USA), Inc., which itself, during the same period of time, derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Michigan directly to 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, and 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, Tony Lander has held the position of the Respondent's president and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and 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:

All full-time and regular part-time drivers and dock employees employed by Respondent located in the DHL Express (USA), Inc., distribution facility located at 8015 Garfield Road, Freeland, Michigan, but excluding all office clerical employees and guards and supervisors as defined in the Act.

Since about 2005, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit and has been so recognized by the Respondent. This recognition has been embodied in a collective-bargaining agreement which is effective from January 1, 2007, through January 1, 2010. 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 about July 27, the Union, by email, regular mail, certified mail, and fax, requested that the Respondent provide a copy of the "contract employee retention program" (CERP) payment paid to the Respondent's employees, and copies of all the CERP checks issued to the Respondent's employees as provided in the Transition and Termination Agreement between DHL Express (USA), Inc. and the Respondent.

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

Since about July 27, the Respondent has failed and refused to furnish the Union with the information described above.

the complaint. *LBE, Inc.*, 354 NLRB No. 125 (2010) (not reported in Board volumes).

³ It is well settled that a respondent's failure or refusal to accept certified mail cannot serve to defeat the purposes of the Act. *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), citing *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986), enf. mem. sub nom. *NLRB v. Shabazz*, 869 F.2d 1492 (6th Cir. 1989).

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its unit employees within the meaning of Section 8(d) and in violation of Section 8(a)(5) and (1) of the Act, and has thereby 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 to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with necessary and relevant information, we shall order the Respondent to provide the Union with the information requested on about July 27.

ORDER⁴

The National Labor Relations Board orders that the Respondent, LBE, Inc., Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the Union, Local 486, International Brotherhood of Teamsters, with information that is necessary for and relevant to the 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 drivers and dock employees employed by Respondent located in the DHL Express (USA), Inc., distribution facility located at 8015 Garfield Road, Freeland, Michigan, but excluding all office clerical employees and 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 about July 27, 2010.

(b) Within 14 days after service by the Region, post at its Saginaw, Michigan facility, copies of the attached

⁴ Consistent with our recently issued decision in *J. Picini Flooring*, 356 NLRB 11 (2010), we have ordered the Respondent to distribute the notice electronically if it is customarily communicating with employees by such means.

notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, 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. 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 July 27, 2010.

(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.

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, Local 486, International Brotherhood of Teamsters, with information that is necessary for and relevant to the per-

⁵ 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."

formance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers and dock employees employed by us located in the DHL Express (USA), Inc., distribution facility located at 8015 Garfield Road, Freeland, Michigan, but excluding all office clerical employees and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested on about July 27, 2010.

LBE, INC.