

**Liberty-Pittsburgh Systems, Inc. and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, Local 14034-34.** Case 06-CA-074733

August 22, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES  
AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, Local 14034-34 (the Local Union), on February 17, April 10, and May 16, 2012, respectively, the Acting General Counsel issued the complaint on May 31, 2012, against Liberty-Pittsburgh Systems, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On July 2, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on July 10, 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 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 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 by the Regional Office on or before June 14, 2012. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated June 19, 2012, notified the Respondent that unless an answer were received by the close of the third business day following the Respondent's receipt of the letter, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, 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 Delaware corporation with an office and place of business in Pittsburgh, Pennsylvania, has been engaged in the business of manufacturing tags for the dry cleaning industry. During the 12-month period ending January 31, 2012, the Respondent, in conducting its business operations described above, purchased and received at its Pittsburgh, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania, and sold and shipped from its Pittsburgh, Pennsylvania facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

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 Local Union and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (the International Union) are labor organizations 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:

Kevin Weir	-	Operations Manager
Beryl Zyskind	-	Owner
Tony Alaimo	-	Supervisor

At all material times, the International Union has been the designated exclusive collective-bargaining representative of certain employees of the Respondent (the unit), and has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from May 1, 2006, to April 30, 2009.

The unit as set forth in paragraph 8 of the 2006-2009 collective-bargaining agreement constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.<sup>1</sup>

<sup>1</sup> There is no specific unit description set forth in the complaint. However, in light of the Respondent's failure to file an answer, there is no dispute that the unit described in the parties' 2006-2009 collective-bargaining agreement is appropriate.

At all material times, the International Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive collective-bargaining representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about November 1, 2011, the Respondent ceased providing health insurance benefits to the unit.

On about February 21, March 14 and 27, 2012, the Union<sup>2</sup> requested that the Respondent bargain collectively about the effects of a possible cessation or closure of the Respondent's operations.<sup>3</sup>

Since about February 21, 2012, the Respondent has failed and refused to bargain collectively about the effects of a possible cessation of Respondent's operations.

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 ceased providing health insurance benefits to the unit without prior notice to the Union, without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct, and without first bargaining with the Union to a good-faith impasse.

At various times during the months of December 2011 and January 2012, the Respondent and the Union met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described above. During this time period, the Respondent engaged in the following conduct: cancelled meetings scheduled in December 2011 and on January 3, 2012; limited the meeting times on January 14, 2012, and on about February 2, 2012, to 1 hour and refused to discuss substantive issues during the meeting; and refused to respond to the Union's questions about plant closure.

On October 26, 2011, the Union filed a grievance concerning its contention that a supervisor was performing bargaining unit work.

On December 19, 2011, the Union filed a grievance concerning the Respondent's failure to provide health insurance benefits to the unit.

Since on about October 26, 2011, the Respondent has refused to respond to the grievance concerning bargaining unit work.

Since on about December 19, 2011, the Respondent has refused to respond to the grievance concerning health insurance benefits.

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

#### CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has failed and refused to bargain in good faith with the International Union as the exclusive collective-bargaining representative of the unit.

2. 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.

3. The unfair labor practices of the Respondent 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 effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure to bargain with the Union about the effects of its decision to cease operations at its Pittsburgh, Pennsylvania facility, we shall order the Respondent to bargain with the Union, on request, about the effects of its 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 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

<sup>2</sup> The complaint does not specify whether the International Union or the Local Union made these requests, and further does not specify which entity is referred to by the designation "the Union" in the complaint. However, in light of the Respondent's failure to file an answer, there is no dispute that the Respondent failed to bargain in good faith with the appropriate collective-bargaining representative of the unit, as alleged. Accordingly, we interpret the designation "the Union" as referring to the International Union or its appropriately-designated collective-bargaining agent.

<sup>3</sup> Complaint par. 12 states that the Respondent refused to bargain about the "possible cessation of Respondent's operations." However, the undisputed assertion in the Acting General Counsel's Motion for Default Judgment, p. 2, clarifies that the allegation concerns the effects of the closure of the Respondent's business.

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 employees in the unit in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).<sup>4</sup>

Thus, the Respondent shall 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 of its decision to cease operations at its Pittsburgh, Pennsylvania facility on the unit employees; (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.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased its operations 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, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.<sup>5</sup> Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as

<sup>4</sup> See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). The complaint and motion are less than clear with respect to whether the Respondent implemented the decision to cease operations or laid off the employees. Thus, we do not know whether, or to what extent, the refusal to bargain about the effects of this decision had an impact on the unit employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Fabricating Engineers, Inc.*, 341 NLRB 10, 11 fn. 1 (2004); *Corbin Ltd.*, 340 NLRB 1001, 1002 fn. 2 (2003).

<sup>5</sup> In accordance with his dissenting view in *Kadouri International Foods.*, 356 NLRB 1201, 1201 fn. 1 (2011), Member Hayes would delete that portion of the remedy requiring that the minimum backpay due employees should not be less than 2 weeks' pay, without regard to actual losses incurred, and would limit the remedy only to those employees who were adversely affected by the Respondent's unlawful action.

prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally ceasing to provide health insurance benefits to employees in the unit, we shall order the Respondent to rescind this change and restore the unit employees' health insurance benefits, and make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's failure to continue the unit employees' health insurance benefits since November 1, 2011, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Further, having found that the Respondent violated Section 8(a)(5) and (1) by refusing to respond to the grievances filed by the Union on October 26 and December 19, 2011, we shall order the Respondent, on request, to respond to the grievances filed by the Union.

Finally, in view of the fact that the Respondent has apparently ceased its operations at its Pittsburgh, Pennsylvania facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees who were employed at any time since November 1, 2011, in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Liberty-Pittsburgh Systems, Inc., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (the Union) as the exclusive collective-bargaining representative of the employees in the appropriate unit as described in the parties' collective-bargaining agreement effective from May 1, 2006, to April 30, 2009, about the effects of its decision to cease operations at the Respondent's Pittsburgh, Pennsylvania facility.

(b) Unilaterally ceasing to provide health insurance benefits for employees in the unit.

(c) Failing and refusing to bargain collectively and in good faith with the Union for a successor collective-bargaining agreement by canceling meetings scheduled with the Union; limiting the meeting times to 1 hour;

refusing to discuss substantive issues during the meetings; and refusing to respond to the Union's questions concerning plant closure.

(d) Failing to respond to grievances filed by the Union.

(e) 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 about the effects of its decision to cease operations at its Pittsburgh, Pennsylvania facility, and reduce to writing and sign any agreements 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.

(c) Restore the unit employees' health insurance benefits that the Respondent ceased to provide on November 1, 2011, and make whole the unit employees by reimbursing them for any expenses ensuing from the Respondent's unlawful failure to provide health insurance benefits, in the manner set forth in the remedy section of this decision.

(d) On request, respond to the grievances, including the grievances filed by the Union on October 26 and December 19, 2011, respectively, concerning the Respondent's supervisor performing bargaining unit work, and the Respondent's failure to provide health insurance benefits to the unit employees.

(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, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"<sup>6</sup> to the Union and to all unit employees who were employed by the Respondent at any time since November 1, 2011.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

sponsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

#### APPENDIX

#### NOTICE TO EMPLOYEES MAILED 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 mail 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 bargain collectively and in good faith with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (the Union) as the exclusive collective-bargaining representative of the employees in the appropriate unit as described in our collective-bargaining agreement with the Union, effective from May 1, 2006, to April 30, 2009, about the effects of our decision to cease operations at our Pittsburgh, Pennsylvania facility.

WE WILL NOT unilaterally cease providing health insurance benefits for employees in the unit.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union for a successor agreement by cancelling meetings scheduled with the Union; limiting the meeting times to one hour; refusing to discuss substantive issues during the meetings; and refusing to respond to the Union's questions concerning plant closure.

WE WILL NOT fail and refuse to respond to grievances filed by the Union.

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 about the effects of our decision to cease operations at our Pittsburgh, Pennsylvania, and reduce to writing and sign any agreements reached as a result of such bargaining.

WE WILL pay the unit employees their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

<sup>6</sup> 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 restore our unit employees' health insurance benefits that we ceased to provide on November 1, 2011, and WE WILL make whole our unit employees by reimbursing them for any expenses ensuing from our unlawful failure to provide health insurance benefits, with interest.

WE WILL, on request, respond to grievances, including the grievances filed by the Union on October 26 and December 19, 2011, respectively, concerning our supervisor performing bargaining unit work and our failure to provide health insurance benefits to the unit employees.

LIBERTY-PITTSBURGH SYSTEMS, INC.