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Enjoi Transportation, LLC *and* Local 243, International Brotherhood of Teamsters. Cases 07–CA–072086 and 07–CA–075061

September 28, 2012

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 failed to file an answer to the consolidated complaint. Upon a charge filed by Local 243, International Brotherhood of Teamsters, the Union, on January 9, and amended on February 13, 2012, and a charge filed by the Union on February 22, 2012, the Acting General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on April 23, 2012, against Enjoi Transportation, LLC, 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 6, 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.[1] 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 consolidated complaint affirmatively stated that unless an answer was received by May 7, 2012, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated June 18, 2012, advised the Respondent that unless an answer was received by June 26, 2012, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

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 has been a Michigan limited liability company with an office and place of business located at 2866 E. Grand Blvd., Detroit, Michigan, and has been engaged in the operation of providing transit and paratransit services to the public.

During the calendar year ending December 31, 2011, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $250,000, and purchased and received at its Detroit, Michigan facility goods and materials valued in excess of $50,000 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 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, 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:

Paulette Hamilton	CEO/Chairman
Gregory Lynn	Vice President of Business Development
Sylvia Tyler	Human Resources Manager

At all material times, Frank Vogel held the position of the Respondent's consultant, and 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:

> All full-time and regular part-time drivers and dispatchers employed by the Respondent at or out of its facility located at 2866 E. Grand Blvd., Detroit, Michigan; but excluding all office clerical employees, managerial employees, confidential employees, professional

[1] The Respondent requested an extension of time to file a response to the Notice to Show Cause. In its request, the Respondent contended that due to economic hardship brought on by the city of Detroit's financial crisis it could not meet financial obligations and could not hire an attorney to respond to the instant charges. On July 25, 2012, the Board granted the Respondent's request. However, despite this extension, the Respondent has failed to file a response to the Notice to Show Cause.

employees, technical employees, and guards and supervisors as defined in the Act.

On October 15, 2010, a Board representation election was conducted among the employees in the unit in Case 07–RC–023375 in which a majority of the employees cast ballots designating the Union as representative of the unit for purposes of collective bargaining.

On October 25, 2010, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since October 15, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Respondent engaged in the following conduct:

1. On about December 27, 2011, the Respondent unilaterally eliminated unit employees' health insurance.

2. About January 2012, the Respondent unilaterally revised its vehicle accident policy for the unit.

3. 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.

4. The Respondent engaged in the conduct described above without affording the Union prior notice and an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct on the unit.

5. At various times from about January 2012, through April 2012, the Respondent and the Union met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

6. During the period described, the Respondent engaged in the following conduct:

(a) Refused to meet at reasonable times for bargaining;

(b) Cancelled bargaining sessions that were previously agreed to for the following dates: January 3, 2012; February 17 and 22, 2012; and

(c) Unilaterally revised its vehicle accident policy for the unit.

7. By its overall conduct, including the conduct described in paragraph 6 above, the Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

1. By the conduct described in paragraphs 1, 2, 4, 6, and 7 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 employees, in violation of Section 8(a)(5) and (1) of the Act.

2. The Respondent's unfair labor practices 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, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees by refusing to meet at reasonable times and cancelling scheduled bargaining sessions while negotiating an initial collective-bargaining agreement, we shall order the Respondent, on request, to meet and bargain in good faith with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

Having further found that the Respondent violated Section 8(a)(5) and (1) by unilaterally eliminating unit employees' health insurance without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct on the employees in the unit, we shall order the Respondent to rescind this action, restore the unit employees' health insurance until such time as the Respondent and the Union have bargained in good faith to an agreement or impasse on the terms and conditions of employment of the unit employees, and make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unilateral change to the health insurance benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 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 as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Further, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally revising its vehicle accident policy for the unit, we shall order the Respondent to rescind this unilateral change and restore the status quo until such time as the Respondent and the Union have bargained in good faith to an agreement or impasse on the terms and conditions of employment of the unit employees. In addition, we shall order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the unlawful change, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed

in *New Horizons for the Retarded,* supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. We shall additionally order the Respondent to remove from its files any reference to the unlawful discipline issued to employees as a result of the revised vehicle accident policy and notify the employees in writing that this has been done and that the discipline will not be used against them in any way.[2]

ORDER

The National Labor Relations Board orders that the Respondent, Enjoi Transportation, LLC, Detroit, 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 243, International Brotherhood of Teamsters (the Union), as the exclusive collective-bargaining representative of the employees in the unit. The bargaining unit is:

> All full-time and regular part-time drivers and dispatchers employed by the Respondent at or out of its facility located at 2866 E. Grand Blvd., Detroit, Michigan; but excluding all office clerical employees, managerial employees, confidential employees, professional employees, technical employees, and guards and supervisors as defined in the Act.

(b) Unilaterally eliminating the unit employees' health insurance without providing the Union prior notice and the opportunity to bargain.

(c) Unilaterally revising its vehicle accident policy for the unit without providing the Union prior notice and the opportunity to bargain.

(d) Refusing to meet at reasonable times for bargaining.

(e) Cancelling previously agreed upon bargaining sessions.

(f) 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 with the Union as the exclusive collective-bargaining representative of unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Rescind the unilateral cancellation of the employees' health insurance and restore the status quo that existed prior to the cancellation.

(c) Reimburse the unit employees for any expenses resulting from the unilateral cancellation of their health insurance, in the manner set forth in the remedy section of this decision.

(d) Rescind the unilateral change in the vehicle accident policy and restore the status quo that existed prior to the revision.

(e) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondents' unilateral change, in the manner set forth in the remedy section of the decision.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline issued to employees as a result of the revised vehicle accident policy and within 3 days thereafter notify the employees in writing that this has been done and that the unlawful discipline will not be used against them in any way.

(g) 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.

(h) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[3] 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

[2] In his uncontested motion, the Acting General Counsel contends that the Respondent, through its unlawful conduct in the instant matter, breached a formal settlement agreement that initially extended the Respondent's bargaining obligation for a 1-year period. See *Enjoi Transportation, LLC*, Cases 07–CA–053141; 07–CA–053729 (unpublished Decision and Order issued December 30, 2011). Therefore, the Acting General Counsel argues that an additional extension of the certification year is warranted in this case. We find it unnecessary in this proceeding to include that remedy, as it is included in our previous Order, which has been enforced by the court of appeals, and we need not repeat it here. See *Bryan Adair Construction Co.*, 341 NLRB 247, 247 fn. 4 (2004); cf. *Apex Electrical Services,* 350 NLRB 40, 43 fn. 6 (2007).

[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."

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 addition, the Respondent will mail signed copies of the notice at the Respondent's own expense, to all current employees and former employees employed by the Respondent at any time since December 27, 2011.

(i) 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. September 28, 2012

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.

WE WILL NOT fail and refuse to bargain with Local 243, International Brotherhood of Teamsters (the Union) as the exclusive collective-bargaining representative of our employees in the unit. The bargaining unit is:

> All full-time and regular part-time drivers and dispatchers employed by us at or out of its facility located at 2866 E. Grand Blvd., Detroit, Michigan; but excluding all office clerical employees, managerial employees, confidential employees, professional employees, technical employees, and guards and supervisors as defined in the Act.

WE WILL NOT unilaterally eliminate your health insurance without providing the Union prior notice and the opportunity to bargain.

WE WILL NOT unilaterally revise the vehicle accident policy for the unit without providing the Union prior notice and the opportunity to bargain.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union for an initial agreement by refusing to meet at reasonable times for bargaining.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union for an initial agreement by cancelling meetings scheduled with 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 with the Union as your exclusive collective-bargaining representative concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL rescind our unilateral elimination of your health insurance and restore the status quo that existed prior to the cancellation.

WE WILL reimburse you for any expenses resulting from the unilateral cancellation of your health insurance, with interest.

WE WILL rescind our unilateral change to the vehicle accident policy and restore the status quo that existed prior to the unilateral action.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of our unilateral change, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to unlawful discipline issued to employees as a result of our unlawful revision of the vehicle accident policy, and WE WILL, within 3 days thereafter, notify our employees in writing that this has been done and that the discipline will not be used against them in any way.

ENJOI TRANSPORTATION, LLC