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**JPB Investments VI, LLC d/b/a 601 Direct, LLC and Local 6-505M, Graphic Communication Conference of the International Brotherhood of Teamsters. Case 14-CA-130895**

March 30, 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 the Respondent has failed to file an answer to the complaint. Upon charges filed by Local 6-505M, Graphic Communication Conference of the International Brotherhood of Teamsters (the Union), the General Counsel issued a complaint on October 30, 2014, against JPB Investments VI, LLC d/b/a 601 Direct, LLC (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On January 8, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 22, 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 complaint affirmatively stated that unless an answer was received by November 13, 2014, 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 the Region, by email dated November 18, 2014, and letter dated November 19, 2014, advised the Respondent that unless an answer was received by December 2, 2014, a motion for default judgment would be filed. In a December 9, 2014 email, the Respondent's counsel confirmed to the Region that the Respondent would not file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the

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 until about June 30, 2014, when it ceased operations, the Respondent, a Missouri limited liability company, had an office and place of business located in O'Fallon, Missouri (the O'Fallon facility), and was engaged in the manufacture and non-retail sale of continuous print forms for direct mailings.

In conducting its operations during the 12-month period ending June 30, 2014, the Respondent sold and shipped from the O'Fallon facility goods valued in excess of \$50,000 directly to points outside the State of Missouri.

During the 12-month period ending June 30, 2014, the Respondent purchased and received at the O'Fallon facility goods valued in excess of \$50,000 directly from points outside the State of Missouri.

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:

John Paul Behrens	Manager
Ralph Vaclavik	Chief Financial Officer
Doug Seba	President, until about March 2014
Thomas Salkowski	Inventory Control Manager/ Maintenance Supply Coordinator
Dan Ambrosecchia	Press Supervisor

At all material times, Tanya Salkowski held the position of the Respondent's corporate secretary 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 production and maintenance employees employed at Respondent's O'Fallon, Missouri facility, excluding all office clerical and professional employees, guards, and supervisors as defined in the Act.

Since at least April 1, 2009, and 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 successive collective-bargaining agreements, the most recent of which was effective from November 1, 2013 through October 31, 2016.

At all times since at least April 1, 2009, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The following events occurred beginning about June 5, 2014.

1. About June 5, 2014, the Respondent announced to the Union its decision to close the O'Fallon facility.

2. About June 9, 2014, the Union requested that the Respondent bargain collectively about the effects of the decision to close the O'Fallon facility.

3. From about June 9 through June 30, 2014, the Respondent terminated all of the unit employees and closed the O'Fallon facility.

4. Since about June 9, 2014, the Respondent ceased its past practice of paying terminated employees their accrued vacation pay.

5. Since about June 9, 2014, the Respondent has failed and refused to bargain collectively about the subjects set forth in paragraphs 2, 3, and 4 above. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

6. The Respondent engaged in the conduct set forth in paragraphs 2 and 3 above without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct.

7. The Respondent engaged in the conduct described in paragraph 4 above without prior notice to the Union and/or without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

#### CONCLUSION OF LAW

1. By the conduct described in paragraphs 1–7 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.

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, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of its decision to close the O'Fallon 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 both to make whole the 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 by *Melody Toyota*, 325 NLRB 846 (1998).<sup>1</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 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 of its 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 operations of its O'Fallon, Missouri facility to the time they secured

<sup>1</sup> See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

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. 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 prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Additionally, we shall order the Respondent to compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters for each employee. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, having found that the Respondent violated Section 8(a)(5) and (1) by ceasing its past practice of paying terminated employees their accrued vacation pay, we shall order the Respondent to make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, *supra*, and *Kentucky River Medical Center*, *supra*.

Finally, in view of the fact that the Respondent has ceased operations at the O'Fallon 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 June 9, 2014, in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, JPB Investments VI, LLC d/b/a 601 Direct, LLC, O'Fallon, Missouri, 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 6–505M, Graphic Communication Conference of the International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to the effects of its decision to cease operations at its O'Fallon, Missouri facility:

All production and maintenance employees employed at Respondent's O'Fallon, Missouri facility, excluding all office clerical and professional employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to bargain with the Union by ceasing its past practice of paying terminated employees their accrued vacation pay.

(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) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent's decision to cease operations at its O'Fallon, Missouri 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 whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondent's ceasing its past practice of paying terminated employees their accrued vacation pay, with interest, in the manner set forth in the remedy section of this decision.

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

(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>2</sup> to the Union and to the last known addresses of all unit employees

<sup>2</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"

who were employed by the Respondent at any time since June 9, 2014. In addition to physical mailing 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.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 14 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 30, 2015

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Mark Gaston Pearce, Chairman

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Harry I. Johnson, III, Member

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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 fail and refuse to bargain collectively and in good faith with Local 6-505M, Graphic Communication Conference of the International Brotherhood of Teamsters as the exclusive collective-bargaining representative of our unit employees with respect to the ef-

fects of our decision to cease operations at our O'Fallon, Missouri facility. The bargaining unit is:

All production and maintenance employees employed at Respondent's O'Fallon, Missouri facility, excluding all office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to bargain with the Union by ceasing our past practice of paying terminated employees their accrued vacation pay.

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 of our decision to cease operations at our O'Fallon, Missouri facility, and WE WILL reduce to writing and sign any agreement reached as a result of such bargaining.

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

WE WILL make whole our unit employees for any loss of earnings and other benefits suffered as a result of our ceasing our past practice of paying terminated employees their accrued vacation pay, plus interest.

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

JPB INVESTMENTS VI, LLC D/B/A 601 DIRECT, LLC

The Board's decision can be found at [www.nlrb.gov/case/14-CA-0130895](http://www.nlrb.gov/case/14-CA-0130895) 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.

