

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

MICROPOWER USA CORP.

and

Case No. 02-CA-144773

**PROFESSIONALS AT MICROPOWER
NEW YORK STATE UNITED TEACHERS
AFT, AFL-CIO**

**MEMORANDUM IN SUPPORT OF PETITION
FOR DEFAULT JUDGMENT
AND ISSUANCE OF DECISION AND ORDER**

Pursuant to Section 102.24(b) of the Rules and Regulations of the National Labor Relations Board (Rules and Regulations), Counsel for the General Counsel (General Counsel) submits this memorandum in support of the Petition for Default Judgment and Issuance of Decision and Order (the Petition). As set forth below, General Counsel respectfully submits that the pleadings herein and exhibits attached to the Petition establish that there exist no genuine issues of fact as to any allegation set forth in the Complaint, and that therefore, as a matter of law, an Order granting Default Judgment and remedying the violation as alleged in the Complaint should issue.

I. STATEMENT OF THE CASE

On January 20, 2015,¹ a charge was filed by Professionals at Micropower, New York State United Teachers (the Union) against Micropower USA Corp. (Respondent). (Exhibit A).² The charge was served on Respondent on January 21. (Exhibits B). The charge alleged that Respondent did not respond to the Union's request to bargain over the effects of Respondent's layoff of teachers in its medical assistant and dental assistant programs, in violation of § 8(a)(5) and (1) of the National Labor

¹ All dates hereafter are in 2015, unless otherwise indicated.

² References to Exhibits are to the exhibits attached to the Petition.

Relations Act (the Act). Based on this charge, a Complaint was issued on May 28. (Exhibit C). The Complaint was served on Respondent by regular and certified mail. (Exhibits D and E).

Respondent did not file an Answer within fourteen days of service of the Complaint, as required by Section 102.20 and 102.21 of the Rules and Regulations. On June 12, the General Counsel, by email and first class mail, notified Respondent that it had not filed an Answer to the Complaint. (Exhibits F and G). The letter provided Respondent an additional opportunity to file an Answer by no later than June 19. Respondent was further advised that, if it failed to file an Answer by that date, the General Counsel would take appropriate action, including file a petition for default judgment. Respondent did not file an Answer to the Complaint by June 19. To date, Respondent has failed to file an Answer to the Complaint.³

II. ARGUMENT

Point 1: There Are No Genuine Issues of Fact Which Warrant a Hearing.

Respondent has failed to file an Answer to the Complaint and Notice of Hearing. The Board has consistently held, and its Rules and Regulations require, that if a party charged with an unfair labor practice, upon receipt of the Complaint and Notice of Hearing, fails to file an Answer within the time and in the manner prescribed by Section 102.20 et. seq. of the Rules and Regulations, all allegations in the Complaint shall be deemed admitted to be true, and may be so found by the Board, and judgment may be rendered on the basis of the Complaint alone. Board's Rules and Regulations, Section 102.20; *Electra-Cal Contractors*, 339 NLRB 370 (2003); *Contractors Excavating, Inc.*, 270 NLRB 1189 (1984); *Clean and Shine*, 255 NLRB 1144 (1981); *Galesburg Construction Co., Inc.*, 259 NLRB 722 (1981). Thus, by the failure of Respondent to file an Answer as required by the Board's Rules and Regulations, all of the allegations of the Complaint are deemed to be admitted as true and there are no factual disputes which warrant a hearing.

³ On March 31, 2015, the Board issued a Decision and Order in *Micropower USA Corp.*, 362 NLRB No. 63, Case No. 02-CA-130858, et al. Therein, the Board granted the General Counsel's Motion for Default Judgment against Respondent where, as here, Respondent failed to file an Answer to an unfair labor practice Complaint.

Point 2: Respondent’s Alleged Conduct Violates Section 8(a)(5) and (1) of the Act.

The Complaint alleges all of the elements necessary to establish that Respondent violated § 8(a)(5) and (1) of the Act.⁴ Under § 8(a)(5) of the Act, it is an unfair labor practice for an employer to refuse to bargain collectively with the representative of its employees.⁵ Section 8(d) of the Act defines the duty to bargain collectively as “the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment”

During the course of the investigation of the underlying unfair labor practice charge, evidence was gathered showing that, in or around the second week of August 2014, Respondent closed the medical assistant and dental assistant programs at its Manhattan facility, Micropower Career Institute, following a decision of the Department of Education not to approve or fund the two programs. After this closure, on January 5 and 6, the Union submitted a written request to Respondent’s President and Vice President, via email and certified mail, to bargain over the effects of the layoff of teachers in the medical assistant and dental assistant programs. Thereafter, the Union received no response to its request.

It is well-established that an employer is not obligated to bargain over an economically-motivated decision to close a part of his business. *First Nat’l Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). However, it is equally well-established that, in such circumstances, a union “must be given a significant opportunity to bargain about matters of job security as part of the ‘effects’ bargaining mandated by Section 8(a)(5).” *Id.* at 681. Further, “bargaining over the effects of a decision must be conducted in a meaningful manner and at a meaningful time, and the Board may impose sanctions to insure its adequacy.” *Id.* at 681-682.

⁴ The Complaint also contains the necessary allegations concerning filing and service of the charge, the supervisory and/or agency status of Respondent representatives and the Union’s labor organization status, and establishing the Board’s jurisdiction in this matter. (Exhibit C, ¶¶ 1-5).

⁵ Section 8(a)(5) is, by its own terms, subject to the provisions of § 9(a) of the Act. Section 9(a) affords exclusive representative status to “representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes.” As set forth in the Complaint, the Board certified the Union on April 14, 2014 as the § 9(a) exclusive collective-bargaining representative of a unit of all full-time and regular part-time teachers employed by Respondent at its facility located at 137 West 25th Street, New York, New York. (Exhibit C, ¶ 6).

Here, after closing its medical and dental assistant programs, Respondent outright ignored the Union's requests to engage in effects bargaining. Respondent has therefore not met its obligation to bargain collectively with the Union, in violation of Section 8(a)(5) and (1) of the Act. Accordingly, the Complaint contains the allegations necessary for finding that Respondent violated Section 8(a)(5) and (1) of the Act, and for ordering appropriate remedial action.

III. CONCLUSION

As all Complaint allegations are deemed admitted due to the failure of Respondent to file an Answer, there exist no factual issues to be litigated before the Board, and no hearing is warranted. Further, as the Complaint states a legally cognizable violation of Section 8(a)(5) and (1) of the Act, the General Counsel respectfully asserts that granting this Motion for Default Judgment is appropriate.

IV. REMEDY

Should the Board grant this motion for Default Judgment and find that Respondent engaged in an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act, it is respectfully requested that the Board issue a Decision and Order against Respondent, containing findings of fact and conclusions of law in accordance with the allegations of the Complaint and remedying the unfair labor practice.

Dated: July 13, 2015
New York, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Berger", is written over a horizontal line.

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