**Island Management Partners, Inc. *and* International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 500, AFL–CIO, CLC.** Case 12–CA–140702

August 4, 2015

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON, AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that Island Management Partners, Inc. (the Respondent) has failed to file an answer to the complaint. Upon a charge filed on November 12, 2014, by International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 500, AFL–CIO, CLC (the Union), the General Counsel issued a complaint on February 27, 2015, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On May 11, 2015, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. Thereafter, on May 14, 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 with the Board. The allegations in the motion are therefore undisputed. However, on May 21, 2015, the Respondent's president, Ian Roberson, filed with Region 12 a letter with a subject line including the case number and the phrase "Response to Complaint."

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 March 13, 2015, 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 letter dated March 26, 2015, notified the Respondent that unless an answer was received by April 2, 2015, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer or a request for an extension of time by April 2, 2015, and for the reasons discussed below, we find that the Respondent has not established good cause to excuse that failure.

The record does not indicate that the Respondent is represented by counsel. Although the Board, unlike the federal courts,[1] has permitted respondent corporations to appear without counsel, through an owner, for example, the Board has consistently held that the choice to forego representation by counsel does not establish good cause for failing to file a timely answer. See, e.g., *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153 (2003); *Sage Professional Painting Co.*, 338 NLRB 1068, 1068 (2003). See also *Starrs Group Home, Inc*., 357 NLRB 1219, 1219 (2011); *Lockhart Concrete*, 336 NLRB 956, 957 (2001). Where a respondent, represented by counsel or not, fails to respond to complaint allegations until after the Notice to Show Cause has issued, despite having been notified in writing that it must do so, and has failed to establish good cause for its failure to do so, subsequent attempts to file an answer will be denied as untimely. *Patrician Assisted Living Facility*, supra, 339 NLRB at 1153–1154, citing *Kenco Electric & Signs*, 325 NLRB 1118, 1118 (1998).

Here, there is no dispute that the Respondent did not answer the complaint until after the Notice to Show Cause had issued on May 14, 2015, despite the General Counsel's repeated directions to do so. In his May 21, 2015 submission purporting to respond to the complaint, Roberson appears to assert that the Respondent has a meritorious defense to the complaint allegations. Roberson further contends, apologizing for the late submission, that "I am a very small company and most of your correspondence sat at the post office while I have been working in the field." He also stated that, until recently, he believed that documents submitted pursuant to the Region's requests constituted responses to the complaint, although he now understands that the complaint required a separate response.

In contrast, the General Counsel submitted a copy of correspondence between the Region and the Respondent regarding the deadline for filing an answer, attached as an exhibit to the motion for default judgment. As noted above, by letter dated March 26, 2015, the General

[1] See *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201–202 (1993) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel."); *Palazzo v. Gulf Oil Corp*., 764 F.2d 1381, 1385 (11th Cir. 1985) ("The rule is well established that a corporation is an artificial entity that can act only through agents, cannot appear pro se, and must be represented by counsel"), cert. denied 474 U.S. 1058 (1986).

Member Johnson does not find it necessary to discuss the general practice of the federal courts with regard to *pro se* litigants in deciding the instant matter.

Counsel warned the Respondent that a motion for summary judgment would be filed if the Respondent failed to file an answer by April 2, 2015 (Exh. 4). In his May 21, 2015 letter to the Region, Roberson acknowledged that his submission was untimely but failed to offer any justification other than the failure to check his mail for several months and the mistaken belief that previously submitted documents constituted an answer to the complaint.

Accordingly, we find that the Respondent has failed to establish good cause for the failure to file a timely answer. Further, regarding the Respondent's claim that it has a meritorious defense, the Board will not address a respondent's assertions that it has a meritorious defense unless good cause has been shown for the failure to file a timely response. *Dong-A Daily North America, Inc*., 332 NLRB 15, 16 (2000).

In the absence of good cause being shown for the failure to file a timely answer, we deem the allegations in 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, the Respondent has been a Delaware corporation with an office and place of business located at 1820 N.E. Jensen Beach Boulevard, Jensen Beach, Florida (the Respondent's facility), and has been engaged in providing stage and display presentation services.

During the 12-month period ending December 31, 2014, the Respondent, in conducting its operations described above, provided services valued in excess of $50,000 in States other than the State of Florida.

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, Ian Roberson held the position of the Respondent's principal 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 stewards, heads of department, leads/requests, stagehand/truck loaders, high end technicians, and workers employed by Respondent doing all carpentry, electrical, lighting, properties, wardrobe, projection, audio-visual, sound, video, curtains, draperies, pipe & drape, platforms, staging, scaffolding and other related work recognized as traditionally falling within the jurisdiction of the Union, including the take-in and take-out, handling, installation, maintenance, repair, assembling and dismantling, the loading and unloading of trucks or vans of any and all equipment used in connection with any show, presentation, meeting, banquet, including rehearsals, and any television or videotaping, and workers operating the following types of equipment: lasers, pyrotechnics, electrical generators, booms, forklifts, high-rise lifts, scissor lifts, follow spots and any other equipment traditionally coming under the jurisdiction of the Union.

On about November 30, 2010, and at all material times, the Respondent recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement between the Respondent and the Union, which was effective by its terms from November 30, 2010, to November 30, 2013.

At all times since November 30, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The collective-bargaining agreement described above contains a provision in article II pursuant to which the Respondent agreed to contact the Union to seek the referral of qualified workers from the Union's exclusive hiring hall to perform the bargaining unit work, as described above in the unit description.

Since about November 10, 2014, the Respondent has stopped seeking employees from the hiring hall operated by the Union for work at the Homestead Speedway in Homestead, Florida, in accordance with the referral provisions set forth in the collective-bargaining agreement described above.

Since about November 10, 2014, the Respondent has subcontracted the work of the unit.

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 engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct.[2]

[2] The complaint includes the statement that the Respondent engaged in this conduct without first bargaining with the Union to an overall good-faith impasse for a successor collective-bargaining agreement. In

## CONCLUSION OF LAW

By the 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, 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 to seek employees from the hiring hall operated by the Union and subcontracting unit work without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct, we shall order the Respondent to bargain with the Union, on request, as the exclusive collective-bargaining representative of the employees in the unit concerning the use of the Union's hiring hall, the subcontracting of unit work, and the effects of the Respondent's conduct.

Further, in order to remedy the Respondent's failure to utilize the Union's hiring hall since about November 10, 2014, as set forth in the November 30, 2010, to November 30, 2013 collective-bargaining agreement, we shall order the Respondent to comply with the Union's hiring hall provisions, offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and to make them whole for any losses suffered by reason of the Respondent's failure to hire them.[3] Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).[4] Employment and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceeding. *J. E. Brown Electric*, supra.

In addition, we shall order the Respondent to compensate the applicants for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each applicant.

## ORDER

The National Labor Relations Board orders that the Respondent, Island Management Partners, Inc., Jensen Beach, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 500, AFL–CIO, CLC as the exclusive collective-bargaining representative of the employees in the following appropriate unit by unilaterally failing to utilize the Union's hiring hall in accordance with the referral provisions set forth in the collective-bargaining agreement and by unilaterally subcontracting unit work:

> All stewards, heads of department, leads/requests, stagehand/truck loaders, high end technicians, and workers employed by Respondent doing all carpentry, electrical, lighting, properties, wardrobe, projection, audio-visual, sound, video, curtains, draperies, pipe & drape, platforms, staging, scaffolding and other related work recognized as traditionally falling within the jurisdiction of the Union, including the take-in and take-out, handling, installation, maintenance, repair, assembling and dismantling, the loading and unloading of trucks or vans of any and all equipment used in connection with any show, presentation, meeting, banquet, including rehearsals, and any television or videotaping, and workers operating the following types of equipment: lasers, pyrotechnics, electrical generators, booms, forklifts, high-rise lifts, scissor lifts, follow spots and

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the motion for default judgment, the General Counsel requests that the Board order the Respondent to, on request, bargain in good faith with the Union for a successor collective-bargaining agreement. We decline to order such a remedy, however, in the absence of a complaint allegation that the Union requested bargaining with the Respondent for a successor agreement and the Respondent refused.

[3] We leave to the compliance stage the determination of which, if any, employees fall into this category.

In this regard, Member Johnson does not now decide issues concerning the validity of *J. E. Brown Electric*, 315 NLRB 620 (1994). For a discussion of the issues involved, see concurring opinion in *Brown*, 315 NLRB at 624 (Members Stephens and Cohen, concurring), and dissenting opinion in *M. J. Wood & Associates, Inc.*, 325 NLRB 1065, 1068 fn. 9 (1998) (Member Hurtgen, dissenting).

[4] In the complaint, the General Counsel requests that applicants be reimbursed for any out-of-pocket expenses incurred while searching for work as a result of the Respondent's unlawful conduct. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *H.O.P.E. Program*, 362 NLRB No. 128 fn. 1 (2015); *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

any other equipment traditionally coming under the jurisdiction of the Union.

(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) On request, bargain in good faith with International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 500, AFL–CIO, CLC as the exclusive collective-bargaining representative of the employees in the unit concerning the use of the Union's hiring hall, subcontracting unit work, and the effects of the Respondent's unlawful conduct.

(b) Comply with the Union's hiring hall provisions, as set forth in the November 30, 2010, to November 30, 2013 collective-bargaining agreement.

(c) Offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's failure to hire them, with interest, in the manner set forth in the remedy section of this decision.

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

(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, post at its facility in Jensen Beach, Florida copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 12, 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. If 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 November 10, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 12 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 bargain collectively and in good faith with International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 500, AFL–CIO, CLC as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit by unilaterally failing to utilize the Union's hiring hall in accordance with the referral provisions set forth in the collective-bargaining agreement and by unilaterally subcontracting unit work:

[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."

> All stewards, heads of department, leads/requests, stagehand/truck loaders, high end technicians, and workers employed by us doing all carpentry, electrical, lighting, properties, wardrobe, projection, audio-visual, sound, video, curtains, draperies, pipe & drape, platforms, staging, scaffolding and other related work recognized as traditionally falling within the jurisdiction of the Union, including the take-in and take-out, handling, installation, maintenance, repair, assembling and dismantling, the loading and unloading of trucks or vans of any and all equipment used in connection with any show, presentation, meeting, banquet, including rehearsals, and any television or videotaping, and workers operating the following types of equipment: lasers, pyrotechnics, electrical generators, booms, forklifts, high-rise lifts, scissor lifts, follow spots and any other equipment traditionally coming under the jurisdiction of 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 in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit concerning the use of the Union's hiring hall, subcontracting unit work, and the effects of our unlawful conduct.

WE WILL comply with the Union's hiring hall provisions, as set forth in the November 30, 2010, to November 30, 2013 collective-bargaining agreement.

WE WILL offer immediate and full employment to those applicants who would have been referred to us for employment by the Union were it not for our unlawful conduct, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of our failure to hire them, with interest.

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

ISLAND MANAGEMENT PARTNERS, INC.

The Board's decision can be found at www.nlrb.gov/case/12-CA-140702 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.