NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Micropower USA Corp. *and* Professionals at Micropower New York State United Teachers, AFT, AFL–CIO. Case 02–CA–144773

September 30, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that Micropower USA Corp. (the Respondent) has failed to file an answer to the complaint. Upon a charge filed on January 20, 2015, by Professionals at Micropower New York State United Teachers, AFT, AFL–CIO (the Union), the General Counsel issued a complaint on May 28, 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 July 13, 2015, the General Counsel filed with the National Labor Relations Board a Petition for Default Judgment and Issuance of Decision and Order.[1] Thereafter, on July 15, 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 June 11, 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 sent by email and first class mail on June 12, 2015, advised the Respondent that unless an answer was received by June 19, 2015, 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 an 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, a New York corporation, had an office and place of business located at 137 West 25th Street, Fifth Floor, New York, New York (the Manhattan campus), and was an educational institution providing courses in vocational trades and English as a second language.

At all material times, the Respondent, in conducting its operations described above, annually derived gross revenues in excess of $1 million from performance of services, and annually purchased and received goods, supplies, and materials valued in excess of $5000 directly from points outside the State of New York.

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/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Sam Hiranandaney	President
Lalit Chabria	Vice President

The following employees of the Respondent (the unit) constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time teachers employed by Respondent at its facility located at 137 West 25th Street, New York, New York, excluding all other employees and guards and supervisors as defined in the Act.

On April 14, 2014, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since April 14, 2014, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about August 22, 2014, the Respondent closed the medical and dental assistant programs at its Manhattan campus.

[1] We construe this petition to be a motion for default judgment under Sec. 102.24 of the Board's Rules and Regulations.

On about August 22, 2014, the Respondent laid off bargaining unit employees that worked at the Manhattan campus.

On about January 5, 2015, the Union, by email, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit over the effects of the layoffs.

On about January 6, 2015, the Union, by U.S. certified mail, requested that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit over effects of the layoffs.

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

Since January 5, 2015, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit concerning the effects of the layoffs.

CONCLUSION OF LAW

By the conduct described above the Respondent has been failing and refusing to bargain collectively 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, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to lay off its unit employees at its Manhattan campus, 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 violation 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).

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 the layoff 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 they were laid off 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. 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), and minus tax withholdings required by Federal and State laws.

Additionally, we shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, in view of the General Counsel's uncontested assertion in the motion for default judgment that Respondent's facility closed on October 17, 2014, we shall order the Respondent to mail a copy of the attached notice to the Union and the last known addresses of its for-

mer unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Micropower USA Corp., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Professionals at Micropower New York State United Teachers, AFT, AFL–CIO as the exclusive collective-bargaining representative of its unit employees over the effects of its decision to lay off the unit employees on August 22, 2014. The appropriate unit is:

> All full-time and regular part-time teachers employed by Respondent at its facility located at 137 West 25th Street, New York, New York, excluding all other employees and guards and supervisors as defined in the Act.

(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 collectively and in good faith with the Union concerning the effects of the Respondent's decision to lay off the unit employees at its Manhattan campus on August 22, 2014, 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) Compensate the employees 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.

(d) 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.

(e) 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,"[2] to the Union and to all unit employees who were employed by the Respondent at any time since August 22, 2014.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 2 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 30, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, 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 Professionals at Micropower New York State United Teachers, AFT, AFL–CIO as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit over

[2] 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."

the effects of our decision to lay off our unit employees on August 22, 2014:

> All full-time and regular part-time teachers employed by Respondent at its facility located at 137 West 25th Street, New York, New York, excluding all other employees and guards and supervisors as defined in the Act.

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 lay off our unit employees at our Manhattan campus on August 22, 2014, 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 compensate our unit employees 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.

MICROPOWER USA CORP.

The Board's decision can be found at www.nlrb.gov/case/02–CA–144773 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