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Goodman Logistics, LLC; Goodman Tank Lines, Inc.; Goodman Holding Company, Ltd.; and Stowe Leasing, Inc., a single employer and Jeffrey Szucs. Case 08–CA–159343

April 29, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondents have failed to file an answer to the consolidated complaint and compliance specification. Upon a charge filed on September 3, 2015, and amended on November 24, 2015, by employee Jeffrey Szucs, the General Counsel issued a consolidated complaint and compliance specification on December 29, 2015, against Goodman Logistics, LLC (Respondent Goodman Logistics), Goodman Tank Lines, Inc. (Respondent Goodman Tank Lines), Goodman Holding Company, Ltd. (Respondent Goodman Holding Company), and Stowe Leasing, Inc. (Respondent Stowe) (collectively, the Respondents), alleging that they have violated Section 8(a)(1) of the National Labor Relations Act. The Respondents failed to file an answer.

On February 17, 2016, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on February 18, 2016, 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 Respondents 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 of service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that unless an answer was received by January 19, 2016, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compliance specification are true. Further, the undisputed alle-

gations in the General Counsel's motion disclose that the Region, by facsimile transmission dated January 29, 2016, advised the Respondents that unless an answer was received by February 5, 2016, a motion for default judgment could be filed. Nevertheless, the Respondents 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 consolidated complaint and compliance specification 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, Respondent Goodman Logistics, a Pennsylvania limited liability company with a place of business located in Stowe, Pennsylvania, has been engaged in the business of providing payroll services.

At all material times, Respondent Goodman Tank Lines, a Pennsylvania corporation with a place of business located in Stowe, Pennsylvania, has been engaged in the business of transporting petroleum products.

At all material times, Respondent Goodman Holding Company, a Pennsylvania corporation with a place of business located in Stowe, Pennsylvania, has been the parent corporation of Respondent Goodman Tank Lines and Respondent Goodman Logistics.

At all material times, Respondent Stowe, a Pennsylvania corporation with a place of business located in Stowe, Pennsylvania, has been in the business of leasing property.

At all material times, the Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with a common business purpose of transporting petroleum products; and have held themselves out to the public as a single-integrated business enterprise.

Based on their operations described above, the Respondents constitute a single-integrated business enterprise and are a single employer within the meaning of the Act.

Since about May 29, 2015, Respondent Goodman Tank Lines and Respondent Stowe have been debtors-in-possession with full authority to continue their operations

and to exercise all powers necessary to administer their businesses.¹

In conducting their business operations described above, annually, the Respondents collectively derived gross revenues in excess of \$50,000 for the transportation of freight from the States of Pennsylvania, New York, and New Jersey directly to points outside those states.

We find that Respondent Goodman Logistics, Respondent Goodman Tank Lines, Respondent Goodman Holding Company, and Respondent Stowe are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, D. Craig Goodman held the position of the Respondents' President, and has been a supervisor of the Respondents within the meaning of Section 2(11) of the Act, and an agent of the Respondents within the meaning of Section 2(13) of the Act.

At all material times, Dawn McCombs held the position of Employment Manager, Human Relations for Respondent Goodman Logistics, and has been a supervisor of Respondent Goodman Logistics within the meaning of Section 2(11) of the Act, and an agent of Respondent Goodman Logistics within the meaning of Section 2(13) of the Act.

At all material times since about May 8, 2013, the Respondents have maintained a work rule which states in relevant part:

While employee opinions are important and need to be addressed, Negative and Derogatory comments must not be shared with each other or with customers of the Company.

About February 4, 2015, Jeffrey Szucs engaged in concerted activities with other employees for the purposes of mutual aid and protection by posting a demand for good wages on the Driver Board at the Respondents' Ohio terminal.

About mid- to late April and in early May, Szucs engaged in concerted activities with other employees for the purposes of mutual aid and protection by discussing

and posting on social media about the Respondents' cancellation of health insurance and the Respondents' failure to forward wage garnishments to the appropriate agencies.

About May 4, 2015, the Respondents terminated Szucs.

The Respondents engaged in the conduct described above because Szucs engaged in concerted activities with other employees for the purposes of mutual aid and protection and violated the work rule described above, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondents have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondents' unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents violated Section 8(a)(1) by maintaining and enforcing the overbroad work rule prohibiting their employees from sharing any negative or derogatory comments with each other or customers, we shall order the Respondents to rescind the unlawful rule and to advise their employees in writing of such rescission.

Further, having found that the Respondents violated Section 8(a)(1) of the Act by discharging Szucs, we shall order the Respondents to make Szucs whole for any loss of earnings and other benefits suffered as a result of their discrimination against him by paying him the amount set forth in the compliance specification's Exhibit A, attached to this decision, with interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State laws.² In addition, we shall order the Respondents to

¹ It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933, 933 fn. 2 (1989), and cases cited therein. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336 (2d Cir. 1992) (per curiam); *Cardinal Services*, supra; accord *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

² In the complaint and the motion for default judgment, the General Counsel seeks an order requiring reimbursement of all search-for-work and work-related expenses regardless of whether the discriminatee received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel additionally seeks a make whole remedy that includes reasonable consequential damages incurred as a result of the Respondents' unfair labor practices. Because the relief sought would involve a change in Board law, we believe that the appropriateness of these pro-

compensate Szucs for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 8 allocating backpay to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). The remedy for this violation would ordinarily also include an order requiring the Respondents to offer full reinstatement to Jeffrey Szucs within 14 days from the date of our Order. However, in light of the uncontested allegation in the consolidated complaint and compliance specification that the Respondents and debtors-in-possession Respondent Goodman Tanks Lines and Respondent Stowe have sold substantially all of their assets to a buyer in the bankruptcy proceedings, we shall not order the immediate reinstatement of Szucs. Instead, to further effectuate the policies of the Act, we shall order the Respondents, in the event that they resume the same or similar business operations, to offer Szucs full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. The Respondents shall also be required to remove from their files any and all references to the unlawful discharge and to notify Szucs in writing that this has been done and that the unlawful conduct will not be used against him in any way.

Finally, we shall order the Respondents to mail a copy of the attached notice to the last known addresses of all employees who were employed by the Respondents at any time since March 2, 2015, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondents, Goodman Logistics, LLC, Goodman Tank Lines, Inc., Goodman Holding Company, Ltd., and Stowe Leasing, Inc., a single employer, Stowe, Pennsylvania, their officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Maintaining and enforcing the unlawful work rule prohibiting employees from sharing any negative or derogatory comments with each other or customers.

(b) Discharging employees for engaging in concerted activities with other employees for the purposes of mutual aid and protection and violating the unlawful work rule prohibiting them from sharing any negative or derogatory comments with each other or customers.

(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) Rescind the unlawful work rule prohibiting employees from sharing any negative or derogatory comments with each other or customers and furnish employees with written notice that this rule has been rescinded.

(b) In the event that the Respondents resume operations, offer Jeffrey Szucs full reinstatement to his former position or, if his position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Jeffrey Szucs whole for any loss of earnings and benefits suffered as a result of the discrimination against him, by paying him the amount set forth in Exhibit A, attached to this decision, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this Decision. The backpay amount due is \$20,081.

(d) Compensate Szucs for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 8, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(e) Within 14 days from the date of this Order, remove from their files any reference to the unlawful discharge of Szucs, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(f) 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.

(g) Within 14 days after service by the Region, duplicate and mail, at their own expense and after being signed by the Respondents' authorized representative, copies of the attached notice marked "Appendix"³ to all employees who were employed by the Respondents at

posed remedies 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., *The H.O.P.E. Program*, 362 NLRB No. 128, slip op. at 2 fn. 1 (2015); *Ishikawa Gas-ket America, Inc.*, 337 NLRB 175, 176 (2001), enf. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

³ 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."

any time since March 2, 2015. 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 Respondents customarily communicate with their employees by such means.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 8 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. April 29, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

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 maintain or enforce a work rule prohibiting employees from sharing any negative or derogatory comments with each other or customers.

WE WILL NOT discharge employees for engaging in concerted activities with other employees for the purposes of mutual aid and protection and violating the unlawful work rule prohibiting them from sharing any negative or derogatory comments with each other or customers.

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 rescind the unlawful rule prohibiting employees from sharing any negative or derogatory comments with each other or customers and furnish you with written notice that this rule has been rescinded.

WE WILL, in the event that we resume operations, offer Jeffrey Szucs full reinstatement to his former position or, if his position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make whole employee Jeffrey Szucs for any loss of earnings and other benefits suffered as a result of our discrimination against him, plus interest accrued to the date of payment and minus tax withholdings required by Federal and State laws.

WE WILL compensate employee Jeffrey Szucs for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 8, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

GOODMAN LOGISTICS, LLC; GOODMAN TANK LINES, INC.; GOODMAN HOLDING COMPANY, LTD.; AND STOWE LEASING, INC., A SINGLE EMPLOYER

The Board's decision can be found at www.nlr.gov/case/08-CA-159343 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.



EXHIBIT A

NLRB Backpay Calculation

1

Case Name: Goodman Logistics, LLC et al.

Case Number: 8-CA-159343

Claimant:

Backpay period:

5/4/15 - 5/28/15

Interest
calculated to:

5/28/2015

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	- Net Backpay & Expenses
2015	2	4/4				-					
2015	2	4/11				-					
2015	2	4/18				-					
2015	2	4/25				-					
2015	2	5/2				-					
2015	2	5/9	48		21.00	1,008					
2015	2	5/16	48		21.00	1,008					
2015	2	5/23	48		21.00	1,008					
2015	2	5/30	48		21.00	1,008					
2015	2	6/6				-					
2015	2	6/13				-					
2015	2	6/20				-					
2015	2	6/27				-					
2015	2	Total				4,032		4,032	-	-	4,032

Totals 4,032 - - 4,032

Daily Compound Interest 5

Total Backpay, Expenses and Interest 4,037

Notes

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- 2/
- 3/
- 4/
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Exhibit A

NLRB Backpay Calculation

Case Name: Goodman Logistics, LLC et al.

Case Number: 8-CA-159343

Claimant:

Backpay period: 5/29/15 - 9/15/15	Interest calculated to: 11/25/2015
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2015	2	4/4				-					
2015	2	4/11				-					
2015	2	4/18				-					
2015	2	4/25				-					
2015	2	5/2				-					
2015	2	5/9				-					
2015	2	5/16				-					
2015	2	5/23				-					
2015	2	5/30				-					
2015	2	6/6	48		21.00	1,008					
2015	2	6/13	48		21.00	1,008					
2015	2	6/20	48		21.00	1,008					
2015	2	6/27	48		21.00	1,008					
2015	2	Total				4,032		4,032	-	-	4,032
2015	3	7/4	48		21.00	1,008					
2015	3	7/11	48		21.00	1,008					
2015	3	7/18	48		21.00	1,008					
2015	3	7/25	48		21.00	1,008					
2015	3	8/1	48		21.00	1,008					
2015	3	8/8	48		21.00	1,008					
2015	3	8/15	48		21.00	1,008					
2015	3	8/22	48		21.00	1,008					
2015	3	8/29	48		21.00	1,008					
2015	3	9/5	48		21.00	1,008					
2015	3	9/12	48		21.00	1,008					
2015	3	9/19	36		21.00	756					
2015	3	9/26				-					
2015	3	Total				11,844		11,844	-	-	11,844

Exhibit A

File: BackpayTEC_11_6 / Sheet: Hourly Calc

NLRB Backpay Calculation

2

Case Name: Goodman Logistics, LLC et al.

Case Number: 8-CA-159343

Claimant:

Backpay period:
5/29/15 - 9/15/15

Interest
calculated to: 11/25/2015

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
Totals								15,876	-	-	15,876

Daily Compound Interest	168
Total Backpay, Expenses and Interest	16,044

Notes

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- 12/

Exhibit A

File: BackpayTEC_11_6 / Sheet: Hourly Calc