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**Carl R. Bieber, Inc. and International Brotherhood of Teamsters Local 429.** Case 04–CA–235770

February 4, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN  
AND EMANUEL

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 a charge filed by the International Brotherhood of Teamsters Local 429 (the Union) on February 12, 2019, the General Counsel issued a complaint on May 23, 2019, against Carl R. Bieber, Inc. (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 June 27, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On July 3, 2019, 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.

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 states that unless an answer was received by June 6, 2019, 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 June 10, 2019, notified the Respondent that unless an answer was received by June 17, 2019, 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 lack of a timely answer, we deem the allegations in the complaint to be admitted as true. We therefore grant in part the General Counsel’s Motion for Default Judgment.

We deny, however, the Motion for Default Judgment as to the allegation that the Respondent violated the Act by

failing to remit dues to the Union beginning about October 1, 2018, following the expiration of the parties’ collective-bargaining agreement on March 1, 2018. On December 16, 2019, the Board issued its decision in *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center*, 368 NLRB No. 139 (2019). In *Valley Hospital Medical Center*, the Board overruled *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015), returned to *Bethlehem Steel*, 136 NLRB 1500 (1962),<sup>1</sup> and held that dues-checkoff provisions are “enforceable through Section 8(a)(5) of the Act only for the duration of the contractual obligation created by the parties.” 368 NLRB No. 139, slip op. at 1. The Board also decided to apply the rule of *Valley Hospital Medical Center* retroactively in all pending cases. *Id.*, slip op. at 8. According to the uncontroverted allegations of the General Counsel’s complaint, the Respondent ceased remitting dues to the Union following the expiration of the parties’ collective-bargaining agreement. Under the rule of *Valley Hospital Medical Center*, the General Counsel has not alleged a cognizable claim that the Respondent violated the Act by its failure to remit union dues after the contract expired. We accordingly deny the motion for default judgment with respect to this allegation, which is dismissed.

On the entire record, the Board makes the following

FINDINGS OF FACT

At all material times, the Respondent has been a Pennsylvania corporation with an office located in Kutztown, Pennsylvania, and has been engaged in the interstate transportation of passengers. In conducting its operations during the calendar year ending December 31, 2018, the Respondent performed services valued in excess of \$50,000 in states other than the Commonwealth of Pennsylvania.

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.

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:

Steven G. Haddad	-	President
John Kowals	-	Operations Manager
David Okraska	-	Operations Manager

<sup>1</sup> Remanded on other grounds sub nom. *Marine & Shipbuilding Workers v. NLRB*, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964).

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

All regularly scheduled full-time bus drivers, mechanics, head mechanic, assistant head mechanic, wash crew and head of the wash crew, but excluding all other employees, including but not limited to, dispatchers, office employees, casual employees, guards and supervisors within the meaning of the National Labor Relations Act.

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 March 2, 2014, to March 1, 2018.

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

Since about January and February 2019, more precise dates being presently unknown, the Respondent has failed to pay wages to the unit.

Since about February 9, 2019, the Respondent has failed to pay vacation benefits to 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 the effects of this conduct.

#### CONCLUSIONS OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive bargaining representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices described above 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, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing, since about January and February 2019, to pay wages to the unit, and since about February 9, 2019, to pay vacation benefits to the unit, we shall order the Respondent to make employees whole by paying

them the wages and vacation benefits that have not been paid to them since those respective dates. Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), 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). Additionally, we shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving a lump-sum backpay award in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and to file a report with the Regional Director for Region 4 allocating the backpay award to the appropriate calendar years for each employee in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

#### ORDER

The National Labor Relations Board orders that the Respondent, Carl R. Bieber, Inc., Kutztown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the International Brotherhood of Teamsters Local 429 as the exclusive collective-bargaining representative of the employees in the bargaining unit by unilaterally changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.

(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) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All regularly scheduled full-time bus drivers, mechanics, head mechanic, assistant head mechanic, wash crew and head of the wash crew, but excluding all other employees, including but not limited to, dispatchers, office employees, casual employees, guards and supervisors within the meaning of the National Labor Relations Act.

(b) Rescind the changes in its unit employees' terms and conditions of employment that were unilaterally implemented beginning in or about January 2019.

(c) Make whole the unit employees, with interest, for any loss of earnings and other benefits ensuing from its failure to pay wages and vacation benefits to the unit since

January 2019, in the manner set forth in the remedy section of this decision.

(d) Compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years 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, post at its facility in Kutztown, Pennsylvania, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, 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 January 2019.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 4 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. February 4, 2020

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John F. Ring, Chairman

<sup>2</sup> 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

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Marvin E. Kaplan, Member

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William J. Emanuel, 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 in good faith with the International Brotherhood of Teamsters Local 429 (Union) by changing unit employees' terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

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, before implementing any changes in wages, hours, or other terms and conditions of employment of our unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All regularly scheduled full-time bus drivers, mechanics, head mechanic, assistant head mechanic, wash crew and head of the wash crew, but excluding all other employees, including but not limited to, dispatchers, office

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employees, casual employees, guards and supervisors within the meaning of the National Labor Relations Act.

WE WILL rescind the changes in the unit employees' terms and conditions of employment that were unilaterally implemented beginning in or about January 2019.

WE WILL make unit employees whole, with interest, for any loss of earnings and other benefits ensuing from our failure to pay wages and vacation benefits to the unit since January 2019.

WE WILL compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

CARL R. BIEBER, INC.

The Board's decision can be found at <http://www.nlr.gov/case/04-CA-235770> 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.

