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Smith's Food and Drug Centers, Inc. and Bakery, Confectionery, Tobacco Workers, and Grain Millers, BCTGM Local #351, AFL-CIO-CLC. Case 28-CA-247263

May 6, 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 Smith's Food and Drug Centers, Inc. (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Bakery, Confectionery, Tobacco Workers, and Grain Millers, BCTGM Local #351, AFL-CIO-CLC (the Union) on August 28, 2019, the General Counsel issued a complaint and notice of hearing on January 29, 2020, 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 March 6, 2020, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on March 11, 2020, 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 stated that unless an answer was received by February 12, 2020, 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 February 25, 2020, advised the Respondent that unless an answer was received by March 2, 2020, the Region may pursue a default judgment. 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 Motions to Transfer Case to and Continue Proceedings Before the Board and 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 corporation with offices and places of business in various locations throughout the State of New Mexico (the Respondent's facilities) and has been engaged in the retail sale of groceries, meat, and related products. In conducting its operations during the 12-month period ending August 27, 2019, the Respondent purchased and received at the Respondent's facilities goods valued in excess of \$50,000 directly from points outside the State of New Mexico, and derived gross revenues in excess of \$500,000.

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 has been 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 agents of the Respondent within the meaning of Section 2(13) of the Act:

Elbert Cordova	–Labor Relations Specialist
Cheryl Hedquist	–Human Resources Manager

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 bakery managers, bakers, cake decorators, cake icers, and cake finishers employed by Respondent at its store numbers 423, 427, 432, 439, 443, 446, 448, 450, 459, 463, 485, 494, 496, 498, and 571 in Albuquerque, New Mexico, store number 424 in Edgewood, New Mexico, store number 409 in Farmington, New Mexico, store number 415 in Grants, New Mexico, store number 467 in Los Alamos, New Mexico, store number 414 in Los Luna, New Mexico, store number 413 in Rio Rancho, New Mexico, store number 491 at Santa Fe, New Mexico, store number 499 in Socorro, New Mexico, and store number 426 in Taos, New Mexico; excluding all other grocery and meat department employees, dry goods employees, office clericals, janitors, guards, watchmen, and supervisors as defined by the National Labor Relations Act.

Since about 1980, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and, since then, the Union has been recognized as the representative by the Respondent.

This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 14, 2019, through April 11, 2021.

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

On about July 17, 2019, the Union, in writing, requested that the Respondent furnish the Union with the following information:

- (1) Proof of Brisa Vasquez' current job classification;
- (2) Proof of Brisa Vasquez' current store location;
- (3) Proof of Brisa Vasquez' hire date;
- (4) Proof of Rebecca Tafoya's job classification on the date of her termination (5/27/2019);
- (5) Proof of Krystal Kennedy's job classification on the date of her termination (5/24/2019); and
- (6) Proof of Charmaine Jacquez' job classification of the date of her termination (6/11/2019).

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since July 17, 2019, the Respondent has failed and refused to provide the Union with the requested information.

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. 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 violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with requested information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to provide the Union with the information it requested since about July 17, 2019.

¹ If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus pandemic, the

ORDER

The National Labor Relations Board orders that the Respondent, Smith's Food and Drug Centers, Inc., Albuquerque, Edgewood, Farmington, Grants, Las Alamos, Los Lunas, Rio Rancho, Santa Fe, Socorro and Taos, New Mexico, its officers, agents, successors, and assigns shall:

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Bakery, Confectionery, Tobacco Workers, and Grain Millers, BCTGM Local #351, AFL-CIO-CLC (the Union) as the exclusive collective-bargaining representative of employees in the following unit, by failing and refusing to provide it with the requested information that is necessary and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees. The unit is:

All bakery managers, bakers, cake decorators, cake icers, and cake finishers employed by Respondent at its store numbers 423, 427, 432, 439, 443, 446, 448, 450, 459, 463, 485, 494, 496, 498, and 571 in Albuquerque, New Mexico, store number 424 in Edgewood, New Mexico, store number 409 in Farmington, New Mexico, store number 415 in Grants, New Mexico, store number 467 in Los Alamos, New Mexico, store number 414 in Los Luna, New Mexico, store number 413 in Rio Rancho, New Mexico, store number 491 at Santa Fe, New Mexico, store number 499 in Socorro, New Mexico, and store number 426 in Taos, New Mexico; excluding all other grocery and meat department employees, dry goods employees, office clericals, janitors, guards, watchmen, and supervisors as defined by the National Labor Relations 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) Provide the Union, in a timely manner, with the information requested since July 17, 2019, to the extent that it has not already done so.

(b) Post at its Albuquerque, Edgewood, Farmington, Grants, Las Alamos, Los Lunas, Rio Rancho, Santa Fe, Socorro and Taos, New Mexico facilities at which unit employees are employed copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 28, after being

notices must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of the paper

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 facilities 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 July 17, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 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. May 6, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

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.

notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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

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 Bakery, Confectionery, Tobacco Workers, and Grain Millers, BCTGM Local #351, AFL-CIO-CLC (the Union) as the exclusive collective-bargaining representative of employees in the following unit, by failing and refusing to provide it with the requested information that is necessary and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees. The unit is:

All bakery managers, bakers, cake decorators, cake icers, and cake finishers employed by us at our store numbers 423, 427, 432, 439, 443, 446, 448, 450, 459, 463, 485, 494, 496, 498, and 571 in Albuquerque, New Mexico, store number 424 in Edgewood, New Mexico, store number 409 in Farmington, New Mexico, store number 415 in Grants, New Mexico, store number 467 in Los Alamos, New Mexico, store number 414 in Los Luna, New Mexico, store number 413 in Rio Rancho, New Mexico, store number 491 at Santa Fe, New Mexico, store number 499 in Socorro, New Mexico, and store number 426 in Taos, New Mexico; excluding all other grocery and meat department employees, dry goods employees, office clericals, janitors, guards, watchmen, and supervisors as defined by the National Labor Relations 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 provide the Union, in a timely manner, with the information requested since July 17, 2019, to the extent that it has not already done so.

SMITH'S FOOD AND DRUG CENTERS, INC.

The Board's decision can be found at www.nlrb.gov/case/28-CA-247263 or by using the QR code below. Alternatively, you can obtain a copy 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."

decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

