

The Lowell Press, Inc. and Communications Workers of America, AFL-CIO, Local 6325. Case 17-CA-17569

March 30, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge filed on August 23, 1994, by Communications Workers of America, AFL-CIO, Local 6325, the Union, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on February 10, 1995, against The Lowell Press, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 6, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On March 7, 1995, 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 Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the 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 notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region informed the Respondent that a Motion for Summary Judgment would be filed if no answer were filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Kansas City, Missouri, has been engaged in business as a commercial printer. During the 12-month period ending June 30, 1994, the Respondent, in conducting its business

operations, purchased and received at its Kansas City, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri, and also sold and shipped from the facility goods valued in excess of \$50,000 directly to points outside the State of Missouri. 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

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 employees employed by Respondent in the composing room of the facility, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and 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 July 19, 1992, to April 30, 1995. 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 June 30, 1994, the Respondent closed its facility. The Respondent failed to give timely notice to the Union of its decision to close the facility and failed to afford the Union a meaningful opportunity to bargain about the effects of its decision to close the facility on unit employees.

CONCLUSION OF LAW

By closing its facility without giving timely notice to the Union and without affording the Union a meaningful opportunity to bargain about the effects of the closure on unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 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.

To remedy the Respondent's unlawful failure to give the Union timely notice and a meaningful opportunity to bargain with the Union about the effects of the deci-

sion to close its facility on unit employees, we shall order it to bargain with the Union, on request, over the effects of that decision. To ensure that meaningful bargaining occurs and to effectuate the policies of the Act, we shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations 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 terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after 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 closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, 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; provided, however, that 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 terminated 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 for the Retarded*, 283 NLRB 1173 (1987).

Finally, in view of the Respondent's closure of its facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, The Lowell Press, Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to give Communications Workers of America, AFL-CIO, Local 6325, timely notice of its

decision to close its facility and a meaningful opportunity to bargain about the effects of that decision on the unit employees. The bargaining unit consists of:

All employees employed by Respondent in the composing room of the facility, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

(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 with the Union over the effects on unit employees of the closure of its facility, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay limited backpay to the unit employees in the manner set forth in the remedy section of this Decision and Order.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail signed and dated copies of the attached notice marked "Appendix,"¹ to the Union and to all unit employees employed as of the date the Respondent closed its facility. Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt by the Respondent to the last known address of each employee.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to give Communications Workers of America, AFL-CIO, Local 6325, timely notice of

¹ 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."

our decision to close our facility and a meaningful opportunity to bargain about the effect of that decision on unit employees. The bargaining unit is:

All employees employed by us in the composing room of the facility, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union over the effects of the closure of our facility on the unit employees, and put in writing any agreement reached as a result of such bargaining.

WE WILL pay limited backpay to the unit employees as required by the Board's order.

THE LOWELL PRESS, INC.