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**L.T.M. Value Plus, Inc. a/k/a Supreme Card Co.  
and Local 413, United Paperworkers Inter-  
national Union, AFL-CIO. Case 29-CA-19068**

January 31, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Upon a charge filed by the Union on April 10, 1995, the General Counsel of the National Labor Relations Board issued a complaint on May 30, 1995, against L.T.M. Value Plus, Inc. a/k/a Supreme Card Co., 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,<sup>1</sup> the Respondent failed to file an answer.

On December 4, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On December 6, 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.

**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, by letter dated June 22, 1995, notified the Respondent that unless an answer were received by June 28, 1995, a Motion for Summary Judgment would be filed.<sup>2</sup>

<sup>1</sup>On May 30, 1995, the complaint was served by certified mail upon the Respondent at its last known business address. The Respondent did not accept delivery, and the envelope was returned by the United States Postal Service as "unclaimed." A copy of the complaint was also served by certified mail upon the Respondent's president, Baruch Grunfeld, at his residence. The Respondent's president did not accept delivery at his residence, and the envelope was returned by the United States Postal Service as "refused." Failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Therefore, we find that the Respondent was properly served the charge and the complaint.

<sup>2</sup>Again, although a copy of this letter was sent to the Respondent by certified mail, along with a copy of the complaint, and a copy was also mailed to the Respondent's president at his residence, the

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**

The Respondent, a New York corporation with its principal office and place of business located at 880 Dean Street, Brooklyn, New York, is engaged in the manufacture and nonretail sale of sample cards and related services and products. During the year preceding issuance of the complaint, a representative period, in the course and conduct of its business operations, the Respondent purchased and received at its Brooklyn, New York facility, goods valued in excess of \$50,000 directly from enterprises located outside the State of New York, and from other enterprises located inside the State of New York, each of which other enterprises, in turn, purchased said goods directly from 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**

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

All production, maintenance, shipping and delivery employees employed by the Respondent at its Brooklyn facility, excluding all office clerical employees, sales employees, guards and supervisors as defined in the Act.

Since about July 1, 1994, the Union has been the exclusive representative of the Respondent's unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and has been recognized as such representative by the Respondent. Such recognition has been embodied in a collective-bargaining agreement covering the Respondent's unit employees, which is effective by its terms from July 1, 1994, through June 30, 1997.

At all times since about July 1, 1994, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the Respondent's unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment,

Respondent did not accept delivery, and the envelope was returned by the United States Postal Service as "unclaimed." As indicated above, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, supra.

and other terms and conditions of employment of the unit employees.

About April 3, 1995, the Respondent laid off all its unit employees and closed its Brooklyn facility. About April 3, 1995, by verbal request, and about April 4, 1995, by letter, the Union requested that the Respondent meet and bargain collectively with the Union with respect to the effects of the closing of the Respondent's Brooklyn facility on the Respondent's unit employees. Since about April 3, 1995, the Respondent has failed and refused to meet and bargain collectively with the Union with respect to the effects of the closing of the Respondent's Brooklyn facility on the Respondent's unit employees. This subject relates to the rates of pay, wages, hours of work, and other terms and conditions of employment of the Respondent's unit employees and is a mandatory subject for the purpose of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of the closing of the Respondent's facility on its unit employees.

#### CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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. Specifically, as a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close its Brooklyn facility, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. 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 effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and 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 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 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; and (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).

In view of the fact that the Respondent's facility is currently closed, 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, L.T.M. Value Plus, Inc. a/k/a Supreme Card Co., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively with Local 413, United Paperworkers International Union, AFL-CIO, with respect to the effects of the April 3, 1995 closing of the Respondent's Brooklyn facility on the Respondent's unit employees:

All production, maintenance, shipping and delivery employees employed by the Respondent at its Brooklyn facility, excluding all office clerical em-

ployees, sales employees, 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) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision.

(b) Upon request, bargain collectively and in good faith with the Union with respect to the effects on the unit employees of its decision to close its Brooklyn facility, and reduce to writing any agreement reached as a result of such bargaining.

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

(d) Mail an exact copy of the attached notice marked "Appendix"<sup>3</sup> to Local 413, United Paperworkers International Union, AFL-CIO, and to all unit employees who were employed at its Brooklyn facility. Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 31, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>3</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 United States Court of Appeals Enforcing an Order of the 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to meet and bargain collectively with Local 413, United Paperworkers International Union, AFL-CIO, with respect to the effects of the April 3, 1995 closing of our Brooklyn facility on our unit employees:

All production, maintenance, shipping and delivery employees employed by us at our Brooklyn facility, excluding all office clerical employees, sales employees, 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 guaranteed you by Section 7 of the Act.

WE WILL pay our unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

WE WILL, on request, bargain collectively and in good faith with Local 413, United Paperworkers International Union, AFL-CIO, with respect to the effects on our unit employees of our decision to close our Brooklyn facility, and reduce to writing any agreement reached as a result of such bargaining.

L.T.M. VALUE PLUS, INC. A/K/A SUPREME CARD CO.