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**Shelbyville Mixing Center, Inc. and General Drivers,  
Warehousemen and Helpers, Local Union No.  
89, affiliated with the International Brotherhood  
of Teamsters, AFL-CIO.** Case 9-CA-39593

May 20, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH  
AND ACOSTA

The General Counsel seeks a default judgment<sup>1</sup> in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on September 11, 2002, the General Counsel issued the complaint on November 26, 2002, against Shelbyville Mixing Center, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On January 22, 2003, the General Counsel filed a Motion for Summary Judgment, and memorandum in support, with the Board. On January 24, 2003, 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 Default Judgment

Section 102.20 of the Board's Rules and Regulations provides 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 General Counsel's motion disclose that the Region, by letter dated January 6, 2003, notified the Respondent that unless an answer were received by January 13, 2003, a Motion for Default Judgment would be 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 Default Judgment.

On the entire record, the Board makes the following

<sup>1</sup> The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in staging and loading new automobiles for shipment throughout the southeastern United States at its facility in Shelbyville, Kentucky.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, provided services valued in excess of \$50,000 for Norfolk and Southern Railway Company, which in turn annually meets the Board's direct inflow and outflow jurisdictional standards. 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

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:

Mike Willis – General Manager and Part Owner  
Mike Ford – Terminal Manager  
Dave Blyth – Supervisor

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 full-time and regular part-time rail loaders, rail unloaders, and switchers employed by Respondent at its Shelbyville, Kentucky location, excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

On May 8, 1998, the Union was certified as the exclusive collective-bargaining representative of the unit. Since the same date, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit for the purposes of collective bargaining.

The parties are currently signatory to a collective-bargaining agreement called the National Master Automobile Transporters Agreement and the Central and Southern Areas Supplemental Agreement through an Addendum (Local Rider) effective from September 4, 1998 to May 31, 2003 (the Agreement). The Agreement contains a grievance/arbitration provision. This subject relates to wages, hours, and other terms and conditions of

employment of the unit and is a mandatory subject for the purposes of collective bargaining.

Since about August 26, 2002, the Respondent failed to continue in effect all the terms and conditions of the Agreement by repudiating the grievance procedure of the contract without the consent of the Union, and by failing and/or refusing to accept, acknowledge or respond to grievances, to participate in the scheduling of arbitrations or to participate in the arbitration of grievances which had been filed prior to August 26, 2002.

#### CONCLUSION OF LAW

By the acts and 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, within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices 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, we shall order the Respondent to comply with the contractual grievance procedure, to process all grievances that have not been processed since August 26, 2002, and to participate in the scheduling of arbitrations and the arbitration of grievances that were filed prior to that date and any other grievances that the Union has appropriately designated for arbitration.

#### ORDER

The National Labor Relations Board orders that the Respondent, Shelbyville Mixing Center, Inc., Shelbyville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the September 4, 1998—May 31, 2003 collective-bargaining agreement with General Drivers, Warehousemen and Helpers, Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL-CIO, by repudiating the grievance procedure of the contract without the Union's consent, and by failing and/or refusing to accept, acknowledge or respond to grievances, participate in the scheduling of arbitrations or participate in the arbitration of grievances. The appropriate unit is:

All full-time and regular part-time rail loaders, rail unloaders, and switchers employed by Respondent at its Shelbyville, Kentucky location, excluding all office clerical employees, and all professional 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) Comply with the contractual grievance procedure, process all grievances that have not been processed since August 26, 2002, and participate in the scheduling of arbitrations and the arbitration of grievances that were filed prior to that date and other grievances that the Union has appropriately designated for arbitration.

(b) Within 14 days after service by the Region, post at its facility in Shelbyville, Kentucky, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, 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 August 26, 2002.

(c) Within 21 days after service by the Region, file with the Regional Director 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.

<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 United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. May 20, 2003

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Robert J. Battista, Chairman

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Dennis P. Walsh, Member

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R. Alexander Acosta, 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 the 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 to continue in effect all the terms and conditions of our September 4, 1998—May 31, 2003 collective-bargaining agreement with General Drivers, Warehousemen and Helpers, Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL–CIO, by repudiating the grievance procedure of the contract without the Union’s consent, and by failing and/or refusing to accept, acknowledge or respond to grievances, participate in the scheduling of arbitrations or participate in the arbitration of grievances. The appropriate unit is:

All full-time and regular part-time rail loaders, rail unloaders, and switchers employed by us at our Shelbyville, Kentucky location, excluding all office clerical employees, and all professional 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 comply with the contractual grievance procedure, process all grievances that have not been processed since August 26, 2002, and participate in the scheduling of arbitrations and the arbitration of grievances that were filed prior to that date and other grievances that the Union has appropriately designated for arbitration.

SHELBYVILLE MIXING CENTER, INC.