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**Corbin, Ltd. and Union of Needletrades, Industrial and Textile Employees, UNITE, AFL-CIO.**  
Case 9-CA-40153

October 31, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS  
SCHAUMBER AND WALSH

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 Union on April 18, 2003, the General Counsel issued the complaint on June 27, 2003, against Corbin, Ltd., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On September 22, 2003, the General Counsel filed a Motion for Default Judgment with the Board and memorandum in support. On September 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 stated that if the Respondent did not file an answer within 14 days from service of the complaint, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated July 21, 2003, notified the Respondent that unless an answer was received by July 30, 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.<sup>1</sup>

<sup>1</sup> The allegations in the Motion for Default Judgment disclose that by letter dated August 21, 2003, the Respondent's bankruptcy attorney notified the Region that the Respondent was in bankruptcy and asserted that the Board proceedings were automatically stayed pursuant to Section 362 of the Bankruptcy Code. It is well established that the institu-

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with offices and places of business in Huntington, West Virginia and Cannonsburg, Kentucky (the Respondent's facilities), has been engaged in the manufacture and distribution of clothing.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, sold and shipped from both of its Huntington, West Virginia and Cannonsburg, Kentucky facilities goods valued in excess of \$50,000 directly to points outside the State of West Virginia and the Commonwealth of Kentucky, respectively.

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 Union of Needletrades, Industrial and Textile Employees, UNITE, AFL-CIO, 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 have held the positions set forth opposite their 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:

David R. Corbin	President
John Karnes	Director of Operations

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

All of the employees of [Respondent] employed at its 1040 Vernon Street, Huntington, West Virginia facility, but excluding executives, supervisory employees, plant and office clerical employees, sales employees, custodians and mechanics; also included as employees are piecegoods department employees, receiving department employees and fabric finishing department employees at [Respondent's] Cannonsburg, Kentucky facility.

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tion of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein. Accord: *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 834-835 (9th Cir. 1991).

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

All of the employees of [Respondent] employed at its Cannonsburg, Kentucky plant, excluding executives, supervisory employees, office clerical employees, sales employees, Golf Division employees, piecegoods department employees, receiving department employees, fabric finishing department employees, custodians and mechanics.

At all material times, the Union has been the designated exclusive collective-bargaining representative of Unit A and Unit B (the Units), and the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 28, 2001 to April 27, 2004.

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

On about March 3 and April 10, 2003, the Union, by letter, requested that the Respondent bargain collectively about the effects of its decision to close its Huntington, West Virginia and Cannonsburg, Kentucky facilities and to lay off the employees in the Units.

Since about April 23, 2003, the Respondent has failed and refused to bargain collectively about the above subject.

The subject set forth above relates to the wages, hours, and other terms and conditions of employment of the Units and is a mandatory subject for the purposes of collective bargaining.

#### CONCLUSION OF LAW

By failing and refusing to bargain with the Union about the effects of its decision to close its Huntington, West Virginia and Cannonsburg, Kentucky facilities, and to lay off the employees in the Units, 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. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its facilities and lay off the employees in the Units, we shall order the Respondent to bargain

with the Union, on request, about the effects of that decision. Because of the Respondent's unlawful conduct, however, the laid-off unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. 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 ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining 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 unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968),<sup>2</sup> as clarified in *Melody Toyota*, 325 NLRB 846 (1998).

Accordingly, the Respondent shall pay its laid-off unit 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 facilities on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which they were laid off 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. However, in no

<sup>2</sup> See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). The complaint and motion are less than clear with respect to whether the Respondent implemented the decision to close its two facilities and to lay off the employees. Thus, we do not know whether, or to what extent, the refusal to bargain about effects had an impact on employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Buffalo Weaving and Belting*, 340 NLRB No. 80 (2003); and *ACS Acquisition Corp.*, 339 NLRB No. 86 (2003).

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 unit 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, because the Respondent's Huntington, West Virginia and Cannonsburg, Kentucky facilities have apparently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent when it closed or announced the closure of its Huntington, West Virginia and Cannonsburg, Kentucky facilities, in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Corbin, Ltd., Huntington, West Virginia and Cannonsburg, Kentucky, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Union of Needletrades, Industrial and Textile Employees, UNITE, AFL-CIO, as the exclusive collective-bargaining representative of employees in the units set forth below, concerning the effects on the unit employees of its decision to close its Huntington, West Virginia and Cannonsburg, Kentucky facilities, and the layoff of unit employees. The bargaining units are:

##### UNIT A

All of the employees of [Respondent] employed at its 1040 Vernon Street, Huntington, West Virginia facility, but excluding executives, supervisory employees, plant and office clerical employees, sales employees, custodians and mechanics; also included as employees are piecegoods department employees, receiving department employees and fabric finishing department employees at [Respondent's] Cannonsburg, Kentucky facility.

##### UNIT B

All of the employees of [Respondent] employed at its Cannonsburg, Kentucky plant, excluding executives, supervisory employees, office clerical employees, sales employees, Golf Division employees, piecegoods department employees, receiving department employees,

fabric finishing department employees, custodians and mechanics.

(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 concerning the effects on the unit employees of the Respondent's decision to close its Huntington, West Virginia and Cannonsburg, Kentucky facilities, and to lay off the unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the unit employees their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the 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 on its unit employees of the decision to close its facilities in Huntington, West Virginia and Cannonsburg, Kentucky; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount they would have earned as wages from the date on which they were laid off 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, with interest, as set forth in the remedy section of this decision.

(c) 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.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of

the attached notice marked "Appendix"<sup>3</sup> to the Union and all unit employees who were employed by the Respondent at the time that it closed or announced the closure of its Huntington, West Virginia and Cannonsburg, Kentucky facilities.

(e) 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.

Dated, Washington, D.C., October 31, 2003

<hr/> Robert J. Battista,	Chairman
<hr/> Peter C. Schaumber,	Member
<hr/> Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

MAILED 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.

<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."

WE WILL NOT fail and refuse to bargain collectively and in good faith with Union of Needletrades, Industrial and Textile Employees, UNITE, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the following units, concerning the effects on the unit employees of our decision to close our Huntington, West Virginia and Cannonsburg, Kentucky facilities, and the layoff of unit employees. The bargaining units are:

UNIT A

All of our employees employed at our 1040 Vernon Street, Huntington, West Virginia facility, but excluding executives, supervisory employees, plant and office clerical employees, sales employees, custodians and mechanics; also included as employees are piecegoods department employees, receiving department employees and fabric finishing department employees at our Cannonsburg, Kentucky facility.

UNIT B

All of our employees employed at our Cannonsburg, Kentucky plant, excluding executives, supervisory employees, office clerical employees, sales employees, Golf Division employees, piecegoods department employees, receiving department employees, fabric finishing department employees, custodians and mechanics.

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 concerning the effects on unit employees of our decision to close our Huntington, West Virginia and Cannonsburg, Kentucky facilities, and to lay off the unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the unit employees limited backpay in connection with our failure to bargain over the effects of our decision to close our Huntington, West Virginia and Cannonsburg, Kentucky facilities, as required by the Decision and Order of the National Labor Relations Board.

CORBIN, LTD.