

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Rosedale Fabricators, LLC and United Steelworkers of America, Local Union No. 250, AFL-CIO, CLC. Case 26-CA-21187

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment¹ in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint and compliance specification. On a charge and an amended charge filed by the Union on April 21 and May 9, 2003, respectively, the General Counsel issued the consolidated complaint and compliance specification on June 30, 2003, against Rosedale Fabricators, LLC (Respondent), alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On August 22, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On August 28, 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. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that unless an answer was filed by July 21, 2003, all the allegations in the consolidated complaint and compliance specification could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 14, 2003,

¹ The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the consolidated complaint and compliance specification. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

notified the Respondent's attorney in bankruptcy, Craig M. Geno, that unless an answer was received by August 18, 2003, a Motion for Default Judgment would be filed.² Nevertheless, the Respondent did not file an answer to the consolidated complaint and compliance specification.

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

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Mississippi limited liability company with an office and place of business in Rosedale, Mississippi, has been engaged in the manufacture of cabinets. During the 12-month period ending December 31, 2002, the Respondent, in conducting its business operations described above, sold and shipped from its Rosedale, Mississippi facility goods valued in excess of \$50,000 directly to points located outside the State of Mississippi. 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 United Steelworkers of America, Local Union No. 250, AFL-CIO, CLC (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 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:

James L. Perry	Owner
Sylvester Jackson	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 production and maintenance employees including truck drivers, lead persons, and regular part-time employees employed at Respondent's Rosedale, Missis-

² The General Counsel's motion indicates that the Respondent has filed a petition for bankruptcy. It is well established that the institution 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. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. 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.*; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

sippi plant, excluding all office clerical employees, shipping clerks, professional employees, technical employees, tool makers, apprentice tool makers, draftsman-chemist, and mold-maker, guards, foremen, assistant foremen, and supervisors as defined by the Act.

Since about December 16, 1974, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then 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 March 5, 2002, through July 30, 2005.

At all times since about December 16, 1974, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

In about November 2002, the Respondent closed its business operations and terminated the employment of all unit employees.

The subject set forth above 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.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct.

CONCLUSION OF LAW

By failing to notify the Union of its decision to close its Rosedale facility, and by failing to give the Union an opportunity to bargain over the effects of that decision, 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 and refusal to notify and bargain with the Union about the effects of the Respondent's decision to close its Rosedale facility, 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 terminated unit employees have been denied an opportunity to bargain through their 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 bargaining power is restored to the Union. A bargaining order alone, therefore, is not 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 Order with a limited backpay requirement designed both to offset some of the losses suffered by the employees 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 unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified in *Melody Toyota*, 325 NLRB 846 (1998).

Pursuant to *Transmarine*, the Respondent normally would be required to pay its terminated 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 Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of the Rosedale facility on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 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.

Transmarine provides that the sum paid to any employee may not exceed the amount the employee would have earned as wages from the date on which the Respondent terminated its operations, to the time the employee secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. But, *Transmarine* further provides that the sum paid to any employee shall not be less than the employee would have earned for a 2-week period at the rate of his normal wages when last in the Respondent's employ. Backpay for these purposes is typically based on earnings which the terminated unit employees would normally have received during the applicable period, less any interim earnings, and is 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).

Here, in view of the Respondent's bankruptcy and cessation of operations, the General Counsel, in the compliance specification seeks only the minimum 2 weeks of backpay due the terminated unit employees under

Transmarine. Appendix A to the compliance specification sets forth the amount due each employee based on 40 hours of work per week. We shall grant the General Counsel's request and order the Respondent to pay the employees the amounts shown in Appendix A to the compliance specification, with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, in view of the fact that the Rosedale 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 the unit employees, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Rosedale Fabricators, LLC, Rosedale, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to give United Steelworkers of America, Local Union No. 250, AFL-CIO, CLC, prior notice of its decision to close its Rosedale facility and an opportunity to bargain over the effects of that decision on the unit employees. The unit consists of the following employees:

All production and maintenance employees including truck drivers, lead persons, and regular part-time employees employed at Respondent's Rosedale, Mississippi plant, excluding all office clerical employees, shipping clerks, professional employees, technical employees, tool makers, apprentice tool makers, draftsman-chemist, and mold-maker, guards, foremen, assistant foremen, and supervisors as defined by 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) On request, bargain with the Union over the effects on unit employees of its decision to close the Rosedale facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Make whole the individuals named in the compliance specification by paying them the amounts specified therein, with interest as prescribed in *New Horizons for the Retarded*, supra, minus tax withholdings required by Federal and State laws. The total amount set forth in the specification is: \$26,396.80.

(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 elec-

tronic 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, signed and dated copies of the attached notice marked "Appendix"³ to the Union and to all unit employees employed at the Rosedale facility on or after November 2002.

(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. September 30, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, 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.

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.

³ 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 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."

WE WILL NOT fail to give United Steelworkers of America, Local Union No. 250, AFL-CIO, CLC, prior notice of a decision to close our facility and an opportunity to bargain over the effects of that decision on the employees in the following unit:

All production and maintenance employees including truck drivers, lead persons, and regular part-time employees employed at Respondent's Rosedale, Mississippi plant, excluding all office clerical employees, shipping clerks, professional employees, technical employees, tool makers, apprentice tool makers, draftsman-chemist, and mold-maker, guards, foremen, assistant foremen, and supervisors as defined by 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, on request, bargain with United Steelworkers of America, Local Union No. 250, AFL-CIO, CLC, over the effects of the closure of our facility on the unit employees, and put in writing and sign any agreement reached as a result of such bargaining.

WE WILL pay unit employees backpay in the amounts set forth next to their names in Appendix A to the compliance specification, plus interest, minus tax withholdings required by Federal and State laws.

ROSEDALE FABRICATORS, LLC