A & B Hydraulic Co. *and* **Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO.** Case 7–CA–46735

March 31, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

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 Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (Local 155) on October 20, 2003, the General Counsel issued the complaint on December 19, 2003, against A & B Hydraulic Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On March 8, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On March 11, 2004, 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 unless an answer was filed by January 2, 2004, 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 January 9, 2004, notified the Respondent that unless an answer was received by January 16, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer,[1] 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 Michigan corporation with an office and place of business in St. Clair Shores, Michigan, has been engaged in the installation and repair of hydraulic systems.

During calendar year 2002, a representative period, the Respondent, in conducting its hydraulic service operations described above, derived gross revenues in excess of $500,000 and provided services valued in excess of $50,000 for DaimlerChrysler Corporation, an enterprise within the State of Michigan that was directly engaged in interstate commerce during the same period.

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 Local 155 and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the International Union), are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Burnie Pemberton has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The employees described in article 1, section 1 of the most recent collective-bargaining agreement between the Respondent and the International Union constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since at least 1980, and at all material times, the International Union has been the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements.

At all material times since at least 1980, based on Section 9(a) of the Act, the International Union has been the exclusive representative of the unit.

During all times material herein, the International Union has assigned its collective-bargaining representative responsibilities with respect to the unit to Local 155, which acts as its servicing agent.

About June 16, 2003, the Respondent canceled and failed to continue health care benefits as of May 2003 for its unit employees. The Respondent engaged in this con-

[1] The complaint was sent by certified mail to the Respondent's last known address, and the return receipt shows that the complaint was received on December 24, 2003. The January 9 reminder letter was sent by both certified and regular mail to the same address. Although the letter sent by certified mail was returned, showing a new address, the letter sent by regular mail was not returned. The failure of the Postal Service to return documents sent by regular mail indicates actual receipt. See *I.C.E. Electric, Inc.*, 339 NLRB No. 36 fn. 2 (2003), and cases cited there.

duct without giving Local 155 prior notice and an opportunity to bargain about such conduct.

About July 2003, the Respondent closed its business operations at the St. Clair Shores facility without prior meaningful notice to Local 155, and since then has failed and refused to bargain with Local 155 over the effects of closing the St. Clair Shores facility.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith 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)(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, having found that Respondent violated Section 8(a)(5) and (1) by unilaterally canceling and failing to continue health care benefits for unit employees as of May 2003, we shall order the Respondent to restore the unit employees' health care benefits, and to make all required benefit fund payments or contributions, if any, that have not been made as of May 2003, including any additional amounts applicable to such payments or contributions as set forth in *Merriweather Optical Co*., 240 NLRB 1213, 1216 (1979).[2] We shall also order the Respondent to reimburse the unit employees for any expenses ensuing from its failure to continue their health care benefits, as set forth in *Kraft Plumbing &* Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, to remedy the Respondent's unlawful failure and refusal to bargain with Local 155, as the designated servicing agent of the International Union, about the effects of the Respondent's decision to cease doing business at its St. Clair Shores facility, we shall order the Respondent to bargain on request with Local 155 about the effects of that decision. Because of the Respondent's unlawful conduct, however, the unit 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 Local 155. 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 to make whole the unit 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), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).[3]

Thus, the Respondent shall pay its 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 Local 155 on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) Local 155'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 Local 155; or (4) Local 155'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 the Respondent ceased doing business at the facility 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 event shall this sum be less than the employees would have earned for a 2-

[2] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[3] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). The complaint and motion do not specify the actual impact on the unit employees, if any, of the Respondent's decision to cease doing business at its St. Clair Shores facility. Therefore, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Buffalo Weaving & Belting*, 340 NLRB No. 80 fn. 3 (2003); and ACS *Acquisition Corp*., 339 NLRB No. 86 fn. 2 (2003).

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*, supra.

Finally, because the Respondent is no longer doing business at the St. Clair Shores facility, we shall order the Respondent to mail a copy of the attached notice to Local 155 and to the last known addresses of all unit employees employed by the Respondent at any time since May 2003, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, A & B Hydraulic Co., St. Clair Shores, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the designated servicing agent of the International Union, by unilaterally canceling and failing to continue health care benefits for unit employees. The appropriate unit consists of the employees described in article 1, section 1 of the most recent collective-bargaining agreement between the Respondent and the International Union.

(b) Closing its business operations at its St. Clair Shores facility without providing Local 155 prior notice and an opportunity to bargain over the effects of the closing on unit employees.

(c) 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) Restore the unit employees' health care benefits, make all required benefit fund payments or contributions, if any, that have not been made, and reimburse unit employees for any expenses resulting from its unlawful failure to continue health care benefits as of May 2003, with interest, as set forth in the remedy section of this Decision.

(b) On request, bargain with Local 155, as the designated servicing agent of the International Union, concerning the effects on the unit employees of Respondent's decision to cease doing business at its St. Clair Shores facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(c) Pay to unit employees their normal wages for the period set forth in the remedy section of this decision.

(d) 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.

(e) 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"[4] to Local 155 and all unit employees employed by the Respondent at any time since May 2003.

(f) 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. March 31, 2004

Peter C. Schaumber, Member

Dennis P. Walsh, Member

Ronald Meisburg, 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

[4] 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."

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.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the designated servicing agent of the International Union, by unilaterally canceling and failing to continue health care benefits for unit employees. The appropriate unit consists of the employees described in article 1, section 1 of our most recent collective-bargaining agreement with the International Union.

WE WILL NOT close our business operations at our St. Clair Shores facility without providing Local 155 prior notice and an opportunity to bargain over the effects of the closing on unit 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 restore the unit employees' health care benefits, make all required benefit fund payments or contributions, if any, that have not been made, and reimburse unit employees for any expenses resulting from our unlawful failure to continue health care benefits as of May 2003, with interest.

WE WILL, on request, bargain with Local 155, as the designated servicing agent of the International Union, concerning the effects on unit employees of our decision to cease doing business at the St. Clair Shores facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay to unit employees limited backpay in connection with our failure to bargain over the effects of the closing of the St. Clair Shores facility, as required by the Decision and Order of the National Labor Relations Board.

A & B HYDRAULIC CO.