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**Brandau Printing, LLC and Graphic Communications International Union, Local No. 521M.**  
Case 26-CA-21605

August 25, 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 consolidated complaint and compliance specification. On a charge and amended charges filed by the Union on March 15 and 19, 2004, and May 14, 2004, respectively, the General Counsel issued the consolidated complaint and compliance specification on May 27, 2004, against Brandau Printing, LLC, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On June 29, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On June 30, 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. 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 June 17, 2004, 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 June 17, 2004, notified the Respondent that a motion for default judgment would be filed with the Board, in light of the Respondent's stated intention not to file an answer.<sup>1</sup>

<sup>1</sup> The Region's June 17 letter also confirmed a telephone conversation between counsel for the General Counsel and Respondent's presi-

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 Tennessee corporation with an office and place of business in Nashville, Tennessee, has been engaged in the business of commercial printing.

During the 12-month period ending February 6, 2004, the Respondent, in conducting its business operations described above, sold and shipped from the Respondent's facility goods valued in excess of \$50,000 directly to points located outside the State of Tennessee, and purchased and received at the Respondent's facility goods valued in excess of \$50,000 directly from points located outside the State of Tennessee.

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 Graphic Communications International Union, Local No. 521M 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:

M. Hayne Hamilton Jr.	Chief Manager
John C. Grooms	Secretary
Terri Abbott	Plant Manager

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

All employees employed by Respondent performing all work, processes, operations, and products directly or indirectly, in whole or in part, incident to, associated with or related to Lithography, Offset (including dry or wet) Photoengraving, Intaglio, Gravure, Bookbinding and Finishing and all other methods or techniques allied to printing, binding and finishing or otherwise reproducing images of all kinds, or any other purpose, including without limitation any computerization, technological or other change, evolution of or substitution for any work, process operation or product now or

dent, Hayne Hamilton, in which Hamilton stated that the Respondent did not intend to file an answer or to contest the charge.

hereinafter utilized in any of the methods or for any of the purposes described above, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

Since about the 1940's and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 15, 2002 through April 14, 2003, and was extended by automatic renewal through April 14, 2004. At all times since about the 1940's, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about February 6, 2004, the Respondent closed its Nashville, Tennessee facility. The Respondent closed its Nashville facility 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 plant closure.

Since about February 6, 2004, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing and refusing to pay vacation pay and severance pay owed to employees under that agreement. The Respondent engaged in this conduct without the Union's consent.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

#### CONCLUSION OF LAW

By closing its Nashville facility without giving the Union prior notice, by failing to give the Union an opportunity to bargain over the effects of the closure, and by unilaterally failing to pay vacation pay and severance pay owed to employees under the parties' collective-bargaining agreement, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, 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.

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 Nashville facility, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. In addition to this bargaining order, the Board's customary remedy for an effects bargaining violation would also include a requirement that the Respondent pay backpay to the terminated unit employees in the manner prescribed in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified in *Melody Toyota*, 325 NLRB 846 (1998). Thus, the Board ordinarily deems it necessary, in order to ensure that meaningful effects bargaining occurs and to effectuate the policies of the Act, to accompany the bargaining order with a limited backpay requirement designed both to offset some of the losses suffered by the employees as a result of the violation and to recreate in some practical manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent.

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 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 of the closing of the Nashville 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 business days after receipt of the Respondent's notice of its desire to bargain; or (4) the Union's subsequent failure to bargain in good faith. 170 NLRB at 390.

Here, however, the General Counsel in the compliance specification seeks as the total amount of backpay only the severance pay and vacation pay due the terminated unit employees under the terms of the parties' collective-bargaining agreement. The General Counsel states in the consolidated complaint and compliance specification that "the obligation of Respondent to make whole employees for the violations alleged in the Complaint will be discharged by payment to them of the amount set opposite their names" in the appendix to the compliance specification. Further, the General Counsel's Motion for Default Judgment requests as a full backpay remedy for the violations only the severance pay and vacation pay amounts set forth in the compliance specification.

The Board has held that severance pay received by employees is a proper deduction from the amount of backpay due them under a *Transmarine* remedy. *W.R.*

*Grace & Co.*, 247 NLRB 698, 699 fn. 5 (1980). The General Counsel has apparently determined that here it is warranted to consider the amounts of contractual severance and vacation pay due the unit employees as a complete offset to the amount of backpay to which the employees would be entitled under a *Transmarine* remedy, and that the payment of the amounts set forth in the compliance specification will satisfy the remedial purposes served by a customary *Transmarine* backpay order.

The Board's power to fashion monetary remedies is broad. *Dallas Times Herald*, 315 NLRB 700 (1994). Thus, the backpay award that we may order to remedy the Respondent's effects bargaining violation is not necessarily limited by the relief sought by the General Counsel. Nevertheless, we find that in the circumstances of this case it is appropriate, in applying *Transmarine*, to award the unit employees the amounts set forth in the consolidated complaint and compliance specification, as requested by the General Counsel. The compliance specification represents the General Counsel's carefully considered determination of how best to make the employees whole for the violations that are alleged in the complaint, taking into account the standard *Transmarine* backpay remedy that would be available in this situation. Absent a contention or evidence to the contrary, we conclude that the amounts set forth in the compliance specification constitute the proper monetary remedy for the Respondent's violations.

The payment of the amounts set forth in the compliance specification also will satisfy the Respondent's obligation to make whole employees for its unlawful failure, since February 6, 2004, to pay its employees the severance pay and vacation pay benefits accrued pursuant to the collective-bargaining agreement. Accordingly, we shall order the Respondent to pay the employees the amounts set forth in the compliance specification, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, inasmuch as the Nashville facility is 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, Brandau Printing, LLC, Nashville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to give Graphic Communications International Union, Local No. 521M prior notice of its decision to close a facility and an opportunity to bargain over the

effects of that decision on the employees in the following unit:

All employees employed by Respondent performing all work, processes, operations, and products directly or indirectly, in whole or in part, incident to, associated with or related to Lithography, Offset (including dry or wet) Photoengraving, Intaglio, Gravure, Bookbinding and Finishing and all other methods or techniques allied to printing, binding and finishing or otherwise reproducing images of all kinds, or any other purpose, including without limitation any computerization, technological or other change, evolution of or substitution for any work, process operation or product now or hereinafter utilized in any of the methods or for any of the purposes described above, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

(b) Failing to pay its unit employees the severance pay and vacation pay benefits owed to them under the Respondent's collective-bargaining agreement with the Union.

(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) On request, bargain with the Union over the effects on unit employees of its decision to close its Nashville, Tennessee facility, and put in writing and sign any agreement reached as a result of such bargaining.

(b) Make whole the individuals named below by paying them the amounts following their names, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

<u>EMPLOYEE NAME</u>	<u>SEVERANCE PAY</u>	<u>VACATION PAY</u>
William Bailey	\$3,426.00	\$2,055.60
Charles Baird	8,720.00	3,488.00
Kevin Blain	9,264.00	3,705.60
Harrison Donnelly	7,132.00	2,852.80
Christopher Elston	823.80	1,098.40
Leslie Gray Jr.	7,132.00	2,852.80
Phill Henderson	7,784.00	3,113.60
Robert Hill	7,988.00	3,195.20
David Holley	4,640.00	1,740.00
William Hopper	9,632.00	3,852.80
Brenda Joslin	5,356.00	(Previously paid)
Samuel Locke	6,900.00	2,760.00

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

William Miller	7,600.00	3,040.00
James Morton	7,096.00	2,838.40
Jeffrey Moseley	1,389.60	1,852.80
Ronald Mummel	10,512.00	4,204.80
Sarah Neighbors	5,356.00	(Previously paid)
Jeffrey Nolen	4,640.00	1,740.00
Bobby Reynolds	10,112.00	4,044.80
<b>TOTAL:</b>	<b>\$125,503.40</b>	<b>\$48,435.60</b>
<b>GRAND TOTAL:</b>	<b>\$173,939.00</b>	

(c) 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"<sup>2</sup> to the Union and to all unit employees employed at the Nashville facility on or after February 6, 2004.

(d) 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., August 25, 2004

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Peter C. Schaumber, Member

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Dennis P. Walsh, Member

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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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

<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."

## 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 give Graphic Communications International Union, Local No. 521M 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 employees employed by us performing all work, processes, operations, and products directly or indirectly, in whole or in part, incident to, associated with or related to Lithography, Offset (including dry or wet) Photoengraving, Intaglio, Gravure, Bookbinding and Finishing and all other methods or techniques allied to printing, binding and finishing or otherwise reproducing images of all kinds, or any other purpose, including without limitation any computerization, technological or other change, evolution of or substitution for any work, process operation or product now or hereinafter utilized in any of the methods or for any of the purposes described above, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to pay our unit employees the severance pay and vacation pay benefits owed to them under our collective-bargaining agreement with the Union.

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 over the effects on unit employees of our decision to close our Nashville, Tennessee facility, and put in writing and sign any agreement reached as a result of such bargaining.

WE WILL make whole the individuals named below by paying them the amounts following their names, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws:

<u>EMPLOYEE</u> <u>NAME</u>	<u>SEVERANCE</u> <u>PAY</u>	<u>VACATION</u> <u>PAY</u>
William Bailey	\$3,426.00	\$2,055.60
Charles Baird	8,720.00	3,488.00
Kevin Blain	9,264.00	3,705.60
Harrison Donnelly	7,132.00	2,852.80
Christopher Elston	823.80	1,098.40

## BRANDAU PRINTING, LLC

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Leslie Gray Jr.	7,132.00	2,852.80	Sarah Neighbors	5,356.00	(Previously
Phill Henderson	7,784.00	3,113.60			paid)
Robert Hill	7,988.00	3,195.20	Jeffrey Nolen	4,640.00	1,740.00
David Holley	4,640.00	1,740.00	Bobby Reynolds	10,112.00	4,044.80
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BRANDAU PRINTING, LLC.