

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.

Colonial Rubber Company and United Steelworkers of America, AFL-CIO, CLC. Case 8-CA-35002-1

September 29, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS 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 the Union on April 21, 2004, the General Counsel issued the complaint on June 30, 2004, against Colonial Rubber Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On August 30, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On September 2, 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 July 14, 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 telephone conversation with the Respondent's controller on August 10, 2004, and by facsimile and certified letter dated August 11, 2004, notified the Respondent that unless an answer was received by August 18, 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, 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, an Ohio corporation with a facility located in Ravenna, Ohio, has been engaged in the manufacture of molded rubber products.

Annually, in the course and conduct of its business operations, as described above, the Respondent sells and ships goods valued in excess of \$50,000 directly to points located outside the State of Ohio.

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, AFL-CIO, CLC, 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:

| | |
|---------------|------------|
| Dale Fosnight | President |
| Alan Fosnight | Controller |

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, maintenance and service employees employed at Ravenna, Ohio, excluding all foremen, full-time supervisors, timekeepers, clerks, office employees and confidential salaried employees.

Since at least 1996 and at all material times thereafter, the Union has been the designated exclusive collective-bargaining representative of the unit and 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 February 1, 2003 through January 31, 2006.

Since about December 19, 2003, the Union, by letter, has requested that the Respondent furnish it with the following financial information:

1. Balance sheets with details as normally prepared by the Company.
2. Income statement with revenue and cost breakdown as follows, for the past 5 years and year to date:

(a) Revenues: Actual sales separated from any other income, such as sales of assets, investment income, etc. When feasible, include data on the number of units of production; units produced, sold and the average selling price per unit if sold.

(b) Costs: This should include a detailed breakdown (such as is normally contained in an auditor's supplementary report) of costs of products sold and administrative and selling expenses. Items to be shown should include: wages paid to members together with all fringe benefit costs, including pensions, insurance, and payroll taxes, salaried employees, plus fringe benefit and payroll tax costs similarly stated.

3. Copies of reports such as MA1000 and MA100 prepared for the U.S. Census Bureau for 2002 and before, which will tend to verify and confirm the revenue and cost data requested in Item 3.

4. Any available operating and financial information and projections for full-year 2003 and a forecast or budget for 2004.

The above information requested by the Union is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since December 19, 2003, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By refusing to furnish Union with the information requested in its December 19, 2003 letter, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit 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 the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested in its letter of December 19, 2003.

ORDER

The National Labor Relations Board orders that the Respondent, Colonial Rubber Company, Ravenna, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish United Steelworkers of America, AFL-CIO, CLC, with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production, maintenance and service employees employed at Ravenna, Ohio, excluding all foremen, full-time supervisors, timekeepers, clerks, office employees and confidential salaried employees.

(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) Furnish the Union with the information it requested by letter dated December 19, 2003.

(b) Within 14 days after service by the Region, post at its facility in Ravenna, Ohio, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 8, 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 December 19, 2003.

¹ 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."

(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.

Dated, Washington, D.C. September 29, 2004

Robert J. Battista, Chairman

Dennis P. Walsh, Member

Ronald Meisburg 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.

WE WILL NOT fail and refuse to furnish United Steelworkers of America, AFL-CIO, CLC, with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production, maintenance and service employees employed at Ravenna, Ohio, excluding all foremen, full-time supervisors, timekeepers, clerks, office employees and confidential salaried 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 furnish the Union with the information it requested by letter dated December 19, 2003.

COLONIAL RUBBER COMPANY