

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

FOOD RESOURCES INC. d/b/a EASTERN MEATS

and

Case No. 29-CA-29158

**UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 342, AFL-CIO**

Brent E. Childerhose, Esq., Counsel
for the General Counsel

DECISION

Statement of the Case

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in New York on December 18, 2008. In this regard I note that the Respondent did not appear in person or by counsel.

The charge in this proceeding was filed on August 18, 2008 and an affidavit of service was signed by Regina Gross showing that the charge was mailed to the Respondent on September 16, 2008.

By letter dated November 21, 2008, one Douglas J. Pick Esq., notified the Regional Office that his firm, Pick & Zabicki LLP, had been retained as counsel and assignee to Food Resources Inc., d/b/a Eastern Meats in a proceeding in New York State Supreme Court. (County of New York, Index No. 51003/08).

A Complaint and Notice of Hearing dated November 19, 2008 was issued by the Director of Region 29 of the National Labor Relations Board. The U.S. Postal Service Return Receipt shows that the Complaint was delivered to the Respondent, by certified mail, on December 1, 2008.

By letter dated December 10, 2008, Counsel for the General Counsel sent a letter to Mr. Pick stating that the Regional Office had issued a Complaint; that he had been served with a copy of the Complaint; that the Respondent was required to file an Answer by December 3, 2008; and that unless an Answer was filed, no later than the close of business on December 17, 2008, the General Counsel would seek a Default Judgment.

No Answer having been filed in this proceeding and the Respondent not having made an appearance in person or by counsel, I hereby make the following

I. Findings of Fact and Conclusions of Law

5 1. The Respondent is a domestic corporation with its principal office and place of business located at 5600 1st Avenue, Building B-10, Brooklyn, New York where it had been engaged in the sale of meats at wholesale.

10 2. During a period of time which is representative of its annual operations generally, from on or about August 15, 2007 until on or about August 15, 2008, when it ceased operations, the Respondent, in the course and conduct of its business operations, purchased and received materials and supplies, valued in excess of \$50,000, at its Brooklyn facility, directly from entities located outside the State of New York.

15 3. At all times material herein, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

20 4. At all material times, the United Food and Commercial Workers Union, Local 342, AFL-CIO, has been a labor organization within the meaning of Section 2(5) of the Act.

25 5. At all material times, Ira Fisher was Respondent's manager and was a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent acting on its behalf.

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

30 All production, shipping, receiving, chauffeur, helper, sales, office and maintenance employees and such other employees performing work incidental thereto, employed by the Respondent in its plant or any and all other plants now operated, or hereafter acquired and operated during the term hereof, by Respondent, located in the State of New York and/or State
35 of New Jersey, excluding non-working supervisors and such other categories as are excluded by the labor Management Relations Act of 1947 and as amended.

40 7. At all material times herein, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in the parties' collective bargaining agreement, the most recent of which was
45 effective from May 9, 2003 through may 9, 2007.

50 8. On June 29, 2007, the Union and the Respondent entered into a Memorandum of Agreement modifying the collective bargaining agreement described above and extending its effective date through June 30, 2008.

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

10. On or about August 15, 2008, the Respondent closed its facility.

5 11. The subject of closing the facility relates to wages, hours and other terms and conditions of employment and is a mandatory subject for the purpose of collective bargaining.

10 12. The Respondent closed the facility without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the effects of the facility's closing.

15 13. By the conduct described above in paragraphs 10 through 12, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the Unit and thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

20 14. The unfair labor practices of the Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Remedy

25 Having determined that the Respondent has violated the Act, I shall recommend the Respondent be ordered to bargain with the Union about the closing of its facility. Additionally, in accordance with *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), I shall recommend that the Respondent make whole the employees for losses suffered
30 as a result of the violation by paying those employees, for a period of not less than two weeks, from 5 days after the date of the Board's Decision until the earliest of the following conditions: (1) the date the Respondent bargains for agreement with the Union on the subject pertaining to the effect of the facility's closing; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the
35 Decision in this case, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount he or she would have earned as wages from August 15, 2008, the date on which the Respondent closed the facility, to the time he or she secured
40 equivalent employment elsewhere, provided however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

45 To the extent that the employees in the Unit suffered any loss of earnings, I shall recommend that they be made whole, for any loss of earnings and other benefits, computed on a quarterly basis from the date of their layoffs, less any net interim earnings, as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In this respect, I
50 reject the General Counsel's contention that interest on any monetary compensation be computed on a compounded quarterly basis. That is not the current law.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ¹

ORDER

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The Respondent, Food Resources Inc., d/b/a Eastern Meats, its officers, agents, and representatives, shall

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1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union, Local 342, AFL-CIO, with respect to the closing of its facility.

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(b) In any like or related manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay the employees in the bargaining unit, with interest, their normal wages for the period set forth in this Decision.

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(b) Upon request, bargain collectively with the United Food and Commercial Workers Union, Local 342, AFL-CIO, with respect to the effect on the bargaining unit employees of its decision to close its facility and reduce to writing any agreement reached as a result of such bargaining.

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(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 any electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

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(d) Within 14 days after service by the Region, duplicate and mail, at its own expense, to all current employees and former employees employed by the Respondents at any time since August 15, 2008, a copy of the attached notice marked "Appendix." ²

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¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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² If this Order is enforced by a Judgment of the 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."

Copies of the notice, on forms provided by the Regional Director for Region 29, shall be signed by the Respondent’s authorized representative.

5 (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., December 8, 2009.

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Raymond P. Green
Administrative Law Judge

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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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with United Food and Commercial Workers Union, Local 342, AFL-CIO, with respect to the closing of our facility

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL upon request, bargain collectively with the United Food and Commercial Workers Union, Local 342, AFL-CIO, with respect to the effect on the bargaining unit employees of its decision to close its facility and reduce to writing any agreement reached as a result of such bargaining.

WE WILL make whole our employees in the manner set forth in the Decision.

FOOD RESOURCES INC. d/b/a EASTERN MEATS

(Employer)

Dated _____

By _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862