Cannon Valley Woodwork, Inc. *and* International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL–CIO. Case 25–CA–27188–1

April 6, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND WALSH

On a charge filed by the Union on July 28, 2000, the General Counsel of the National Labor Relations Board issued a complaint on October 30, 2000, against Cannon Valley Woodwork, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 20, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On February 22, 2001, 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 Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide 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 notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 22, 2001, notified the Respondent that unless an answer were received by February 1, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Kokomo, Indiana, has been engaged in the manufacture and distribution of unfinished kitchen cabinets and related products. During the 12 months preceding the filing of the charge on July 28, 2000, the Respondent, in conducting its business operations described above, sold and shipped from its Kokomo, Indiana facility goods valued in excess of $50,000 directly to points outside the State of Indiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act and that 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 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.

Matthew Prettyman	Chief Executive Officer/President
Tom Maun	Chief Financial Officer

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:

> All production and maintenance employees at Respondent's Kokomo, Indiana facility; BUT EXCLUDING all office and clerical employees and all supervisory employees, with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

Since an unknown date prior to December 16, 1998, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit set forth above, 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 December 16, 1998, to December 16, 1999. At all times since an unknown date prior to December 16, 1998, the Union has been the exclusive collective-bargaining representative of the unit, based on Section 9(a) of the Act.

On about May 22, 2000, the Respondent ceased operations at its Kokomo, Indiana 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 this conduct. This subject relates to the wages, hours, and other terms and conditions of employment of the unit, and is a mandatory subject for the purposes of collective bargaining.

On about June 12, 2000, the Union requested that the Respondent bargain collectively about the effects of the Respondent's shutdown of its Kokomo, Indiana facility.

Since at least May 22, 2000, the Respondent has failed and refused to bargain collectively about the effects of its shutdown of its Kokomo, Indiana facility.[1]

CONCLUSION OF LAW

By the acts and 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)(1) and (5) 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 to bargain with the Union concerning the effects on the unit employees of the shutdown of the Respondent's Kokomo, Indiana facility, we shall order the Respondent, on request, to bargain with the Union concerning the effects of the decision to cease these operations. In addition, we shall accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses they may have suffered as a result of the failure to bargain about these effects 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 employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).[2] Backpay shall be 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).[3]

ORDER

The National Labor Relations Board orders that the Respondent, Cannon Valley Woodwork, Inc., Kokomo, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL–CIO, as the exclusive representative of the employees in the bargaining unit set forth below by refusing to bargain with the Union concerning the effects on the unit employees of the Respondent's cessation of operations at its facility in Kokomo, Indiana.

> All production and maintenance employees at Respondent's Kokomo, Indiana facility; BUT EXCLUDING all office and clerical employees and all supervisory employees, with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

(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 concerning the effects on the unit employees of the Respondent's cessation of its operations at its facility in Kokomo, Indiana.

(b) Pay the employees in the unit described above their normal wages when in the Respondent's employ from 5 days after the date of this decision 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 shutdown of its Kokomo, Indiana facility; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 business days after receipt of this decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;[4] or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from about May 22, 2000, when the Respondent ceased

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[1] Although pars. 5(f) and 7 of the complaint appear to allege a separate violation of Sec. 8(a)(5) of the Act by the Respondent's failure to notify the Union and bargain about the *decision* to close the facility, the bare assertions of the complaint do not support a cause of action given the Supreme Court's decision in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). Accordingly, we deny the Motion for Summary Judgment and dismiss the complaint to the extent that it alleges a decision bargaining violation (as opposed to an effects bargaining violation).

[2] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). In *Transmarine*, the Board ordered an employer that had unlawfully refused to bargain over the effects of its plant closure decision to, inter alia, pay unit employees at their normal rate of pay beginning 5 days after the Board's decision until the first of four events: (1) an effects bargaining agreement was reached; (2) a bona fide bargaining impasse was reached; (3) the union failed to timely request or commence bargaining; or (4) the union failed to bargain in good faith. Id. The Board further specified 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." Id.

[3] In the complaint, the General Counsel seeks an order requiring the Respondent "to reimburse all members of the unit entitled to a monetary award in this case for any extra federal and/or state income taxes that would or may result from the lump sum payment of the award." This aspect of the General Counsel's proposed Order would involve a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1985), enfd. 762 F.2d 990 (2d Cir. 1985). In light of this, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB No. 126, fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order here.

[4] *Melody Toyota*, 325 NLRB 846 (1998).

operations at its Kokomo, Indiana facility, to the time he or she secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; 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, with interest, as set forth in the remedy portion of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records 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, copies of the attached notice marked "Appendix"[5] to all employees who were employed by the Respondent when it ceased operations at its Kokomo, Indiana facility on about May 22, 2000.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 25 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. April 6, 2001

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, 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 the National Labor Relations Act and has ordered us to mail and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL–CIO as the exclusive representative of the employees in the bargaining unit set forth below by refusing to bargain with the Union concerning the effects on the unit employees of the cessation of operations at our facility in Kokomo, Indiana, on about May 22, 2000.

> All production and maintenance employees at our Kokomo, Indiana facility; BUT EXCLUDING all office and clerical employees and all supervisory employees, with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

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 concerning the effects on the unit employees of the cessation of our operations at our facility in Kokomo, Indiana.

WE WILL pay limited backpay to the unit employees in connection with our failure to bargain with the Union over the effects of our shutdown of the Kokomo facility.

CANNON VALLEY WOODWORK, INC.

[5] 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."