Sage Professional Painting Co., Inc. *and* Southwest Regional Council of Carpenters, affiliated with United Brotherhood of Carpenters and Joiners of America. Cases 28–CA–17975 and 28–CA–18080

April 30, 2003

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND ACOSTA

The General Counsel seeks a default judgment[1] in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon charges and amended charges filed by Southwest Regional Council of Carpenters, affiliated with United Brotherhood of Carpenters and Joiners of America (the Union), the General Counsel issued a consolidated complaint on September 30, 2002, against Sage Professional Painting Co., Inc. (the Respondent), alleging that it has violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer.

On December 9, 2002, the General Counsel filed motions to transfer and continue matters before the board and for summary judgment. On December 11, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On December 20, 2002, Respondent's attorney filed an entry of appearance, a response to the Notice to Show Cause, and a cross-motion to extend time for filing an answer to the complaint with an answer attached.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

This case involves a pro se litigant's failure to answer multiple complaints. 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 itself states that unless an answer is filed within 14 days, all the allegations in the complaint "shall be considered to be admitted to be true and shall be so found by the Board." An order consolidating cases, consolidated complaint, and notice of hearing were issued with an answer due on September 13, 2002. No answer was filed by that date. An order further consolidating cases, second consolidated complaint, and notice of hearing were issued with an answer due by October 14, 2002. Again, no answer was filed by that date. Further, the undisputed allegations in the Motion for Default Judgment disclose that the Region, by letter dated November 15, 2002, notified Respondent that unless an answer was received by November 29, 2002, a Motion for Default Judgment would be filed. The aforesaid papers were served on Respondent by mail and certified mail, in some cases more than one time.[2] *The second consolidated complaint notified Respondent that a hearing was scheduled to commence on the allegations on December 10, 2002.*

In his December 20, 2002 motion to extend time for filing an answer to the complaint, counsel for the Respondent contends that prior to retaining counsel on December 18, 2002, Respondent was "not aware of its responsibilities to act in this matter, and [of] the consequences of its failure to act in this matter." The Respondent further contends that it has meritorious defenses to the complaint.

We find that the Respondent has not shown good cause for its failure to file a timely answer to the complaint. As noted above, it is undisputed that the Region repeatedly informed the Respondent of its obligation to answer the complaint. In addition, it is undisputed that the Respondent was informed that failure to file a timely answer to the complaint would result in a Motion for Default Judgment being filed.

Although the Board has shown some leniency towards pro se respondents, merely being unrepresented by counsel does not establish a good-cause explanation for failing to file a timely answer. See *Lockhart Concrete*, 336 NLRB 956, 957 (2001). In addition, the Respondent's motion to extend time for filing answer and response to Notice to Show Cause [why default judgment should not be granted] are dated December 20, 2002, more than 3 months after the first complaint and 2 months after the second. They do not establish proper cause to grant an extension of time, or deny the Motion for Default Judgment. Each provides only summary reasons for the Respondent's failure to answer and why the motion should not be granted, without further explanation and support.

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe and shall refer to the General Counsel's motion as a Motion for Default Judgment.

[2] The Respondent did not accept the complaint and letter, which were sent by certified mail. The Respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. *A.S.B. Cloture, Ltd*., 313 NLRB 1012 fn. 1 (1994); *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986), enfd. mem. sub nom. *NLRB v. Shabazz*, 869 F.2d 1492 (6th Cir. 1989). The complaint and letter were also sent by regular mail and were never returned. The failure of the Postal Service to return documents sent by regular mail establishes actual receipt. *Lite Flight*, 285 NLRB 649, 650 (1987), enfd. mem. sub nom. *NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988). Furthermore, the Respondent does not contend in its response to the Notice to Show Cause and its motion to extend time that it did not receive the complaint and letter.

We find, therefore, that the Respondent's contention that it had not retained counsel, and so was unaware of both its responsibility to answer the complaint and the consequences of its failure to do so, does not show good cause for its failure to timely answer the complaint. Absent such a showing, we will not address the Respondent's assertion that it has a meritorious defense to the complaint allegations. See *Lockhart Concrete*, supra.

Accordingly, 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 Nevada corporation, with an office and place of business in Las Vegas, Nevada, has been engaged as a painting and decorating contractor in the construction industry.

During the 12-month period ending May 31, 2002, the Respondent, in conducting its business operations as described above, purchased and received at its Las Vegas facility goods valued in excess of $50,000 directly from points outside the State of Nevada. 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 the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all times material, the following-named persons 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:

Sidney A. Lewis	—	Owner and President
Joaquin Barajas	—	Partner
Elyse Romano	—	Project Manager

In a telephone conversation in or about March 2002,[3] President Lewis interrogated employees about their union membership, activities, and sympathies.

On or about May 16, Project Manager Romano: (1) denied employees and representatives of the Union access to the Cancun Caribe jobsite to discuss the reinstatement of employee Bulmaro Gomez; and (2) interrogated employees about their union membership, activities, and sympathies. On or about the same date, Romano and Respondent's partner, Barajas, engaged in surveillance of employees engaged in union and other concerted activities by taking photographs and making notes on a clipboard at the Cancun Caribe jobsite.

Also on or about May 16, Romano, Barajas, and Lewis promulgated an overly broad and discriminatory no-solicitation rule at the Cancun Caribe jobsite by: (1) telling employees not to talk to union representatives; and (2) telling employees to take their lunchbreak inside the building being constructed at the jobsite rather in the parking lot.

From about May to July, on specific dates known to the Respondent, Romano: (1) interrogated employees about their union membership, activities, and sympathies; (2) threatened employees with discharge because of their union membership, activities, and sympathies; and (3) created an impression among its employees that their union activities were under surveillance by Respondent.

On or about May 28, Lewis engaged in surveillance of employees engaged in union and other concerted activities by taking photographs at the Cancun Caribe jobsite.

On or about July 2, at the Cancun Caribe jobsite Romano: (1) interrogated employees about their union membership, activities, and sympathies; (2) promulgated an overly broad and discriminatory no-solicitation rule by telling employees not to talk to union representatives at the jobsite; and (3) threatened employees with discharge if they talked to union representatives at the jobsite.

On or about July 6, certain employees of the Respondent employed at Respondent's Cancun Caribe jobsite, including Jesus Navarro and Clemente Menchaca, ceased work concertedly and engaged in a strike. The strike was caused by Respondent's refusal to distribute the payroll checks of its employees. On or about July 8, the employees who engaged in the strike appeared for work at the Cancun Caribe jobsite and were denied work opportunities by the Respondent because of their strike activities.

On or about July 9, Romano engaged in surveillance of employees engaged in union activities by taking photographs and making notes on a clipboard at the Cancun Caribe jobsite.

On or about July 16, at the Cancun Caribe jobsite, Romano: (1) threatened employees with the loss of continued employment and loss of reinstatement rights because they engaged in union and concerted activities; and (2) disparaged the Union in order to discourage employees from supporting or assisting the Union.

We find that the Respondent violated Section 8(a)(1) of the Act by each of the acts described above.

On or about May 16, the Respondent failed and refused to reinstate employee Gomez, and discharged its

[3] All subsequent dates are in 2002 unless noted otherwise.

employee Oscar Guizar. On or about July 5, the Respondent discharged employees Ben Garcia, Mark Garcia, and Brandon Garcia. The Respondent engaged in the conduct described above because the named employees formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

From about July 9 to about July 16, certain employees of the Respondent employed at Respondent's Cancun Caribe jobsite ceased work concertedly and engaged in a strike. The strike was caused or prolonged by the Respondent's unfair labor practices.

On or about July 16, by letter from the Union, the following employees who engaged in the strike made an unconditional offer to return to their former positions of employment with the Respondent:

Eleazar Arana	Richard Bell
Jason Ardoseh	Clifford Bauste
Thomas Castanon	Manuel Castillo
Ruben Castillo	Scott Dahm
Augustin Flores	Cesar Gonzalez
Donald Gresham	Juan Hernandez
Cesar Iglesias	Cesar Jimenez
Emmet Jones	Danny Kauffman
Emmanuel Madero	Eufrosino Madrigal
Jospeh Malaney	Adan Martinez
Tony Martinez	Clemente Menchaca
Carlos Munoz	Jesus Navarro
Angel Nunez	Javier Pelayo
Octavio Pelayo	Guillermo Perez
Hector Placencia	Juan Ramos
Baudielio Reinoso	Demetrio Rubio
Clyde Smith	Bruce Alva Tilly
Ivan Verdin	

Since on or about July 16, the Respondent has failed and refused to reinstate these employees to their former positions of employment. On or about the same date, Respondent terminated these employees.

The Respondent engaged in the refusals to reinstate and terminations described above because the named employees formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities. We therefore find that each of these acts by Respondent violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Additionally, by failing and refusing to reinstate employees and by terminating employees because they engaged in union and other protected activities, the Respondent discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent 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 violated Section 8(a)(3) and (1) by failing and refusing to reinstate Bulmaro Gomez, and by unlawfully discharging other employees, we shall order the Respondent to offer these employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make the aforementioned employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Having found that the Respondent violated Section 8(a)(1) by denying Jesus Navarro, Clemente Marchaca, and certain other unnamed employees work opportunities because they engaged in a strike, we shall also order the Respondent to make these employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful action.

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). The Respondent shall be required to remove from its files any and all references to the unlawful failure to reinstate Bulmaro Gomez and the unlawful discharges of the above-named employees, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Sage Professional Painting Co., Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership, activities, and sympathies.

(b) Denying employees and representatives of the Union access to the Cancun Caribe jobsite to discuss the reinstatement of an employee.

(c) Engaging in surveillance of its employees who are engaged in union and other concerted activities by taking photographs and/or making notes on a clipboard.

(d) Promulgating overly broad and discriminatory no-solicitation rules by: (1) telling its employees not to talk to union representatives; (2) telling its employees to take their lunch break inside the building being constructed at the Cancun Caribe jobsite rather in the parking lot; and (3) telling its employees not to talk to union representatives at the jobsite.

(e) Threatening its employees with discharge because of their union membership, activities, and sympathies.

(f) Creating an impression among its employees that their union activities are under surveillance by the Respondent.

(g) Threatening its employees with discharge if they talked to union representatives at the jobsite.

(h) Threatening its employees with the loss of continued employment and loss of reinstatement rights because they engaged in union and concerted activities.

(i) Disparaging the Union in order to discourage employees from supporting or assisting the Union.

(j) Denying work opportunities to employees because they engaged in a strike.

(k) Discriminating against employees because they engaged in union activities by refusing to reinstate them and by discharging them.

(l) 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) Within 14 days from the date of this order, offer to the following employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Eleazar Arana	Jason Ardoseh
Clifford Bauste	Richard Bell
Thomas Castanon	Manuel Castillo
Ruben Castillo	Scott Dahm
Augustin Flores	Cesar Gonzalez
Donald Gresham	Juan Hernandez
Cesar Iglesias	Cesar Jimenez
Emmet Jones	Danny Kauffman
Emmanuel Madero	Eufrosino Madrigal
Jospeh Malaney	Adan Martinez
Tony Martinez	Clemente Menchaca
Carlos Munoz	Jesus Navarro
Angel Nunez	Javier Pelayo
Octavio Pelayo	Guillermo Perez
Hector Placencia	Juan Ramos
Baudielio Reinoso	Demetrio Rubio
Clyde Smith	Bruce Alva Tilly
Ivan Verdin	Bulmaro Gomez
Oscar Guizar	Ben Garcia
Mark Garcia	Brandon Garcia

(b) Make these employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful failure to reinstate Bulmaro Gomez and the unlawful discharges of the other named employees, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(d) Make whole Jesus Navarro, Clemente Menchaca, and other employees denied work opportunities after they engaged in a strike for any loss of earnings and other benefits suffered as a result of their unlawful treatment, with interest, in the manner set forth in the remedy section of this decision.

(e) 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.

(f) Within 14 days after service by the Region, post at its facilities in Las Vegas, Nevada, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 28, 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, Respondent has gone out of business or closed the facility in-

[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."

volved 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 Respondent at any time since March 2002.

(g) 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.

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 interrogate our employees about their union membership, activities, and sympathies.

WE WILL NOT deny our employees and representatives of the Union access to the Cancun Caribe jobsite to discuss the reinstatement of employees.

WE WILL NOT engage in surveillance of our employees who are engaged in union and other concerted activities by taking photographs and/or making notes on a clipboard.

WE WILL NOT promulgate overly broad and discriminatory no-solicitation rules by: (a) telling our employees not to talk to union representatives, (b) telling our employees to take their lunch break inside the building being constructed at the Cancun Caribe jobsite rather in the parking lot, or (c) telling our employees not to talk to union representatives at the jobsite.

WE WILL NOT threaten our employees with discharge because of their union membership, activities and sympathies.

WE WILL NOT create an impression among our employees that we are engaging in surveillance of their union activities.

WE WILL NOT threaten our employees with discharge if they talk to union representatives at the jobsite.

WE WIL NOT threaten our employees with the loss of continued employment and loss of reinstatement rights because they engaged in union and concerted activities.

WE WILL NOT disparage the Union in order to discourage employees from supporting or assisting the Union.

WE WILL NOT deny work opportunities to employees who appear for work at the Cancun Caribe jobsite after engaging in a strike prompted by our refusal to distribute payroll checks.

WE WILL NOT discriminate against employees because they engaged in union activities by refusing to reinstate them and by discharging them.

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, within 14 days from the date of this Order, offer the following employees immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Eleazar Arana	Jason Ardoseh
Clifford Bauste	Richard Bell
Thomas Castanon	Manuel Castillo
Ruben Castillo	Scott Dahm
Augustin Flores	Cesar Gonzalez
Donald Gresham	Juan Hernandez
Cesar Iglesias	Cesar Jimenez
Emmet Jones	Danny Kauffman
Emmanuel Madero	Eufrosino Madrigal
Jospeh Malaney	Adan Martinez
Tony Martinez	Clemente Menchaca
Carlos Munoz	Jesus Navarro
Angel Nunez	Javier Pelayo
Octavio Pelayo	Guillermo Perez
Hector Placencia	Juan Ramos
Baudielio Reinoso	Demetrio Rubio
Clyde Smith	Bruce Alva Tilly
Ivan Verdin	Bulmaro Gomez
Oscar Guizar	Ben Garcia
Mark Garcia	Brandon Garcia

WE WILL make these employees whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL make whole, with interest, Jesus Navarro, Clemente Menchaca, and other employees for denying them work opportunities after they engaged in a strike.

WE WILL, within 14 days from the date of this Order, remove from our files any and all references to the unlawful failure to reinstate or discharges of these employees, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

SAGE PROFESSIONAL PAINTING CO., INC.