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Keystone Printing, Inc., d/b/a Keystone Millbrook Printing Group and Graphic Communications Conference International Brotherhood of Teamsters Local 25-M of District Council 3. Case 07–CA–246458

February 27, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

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 Graphic Communications Conference International Brotherhood of Teamsters Local 25-M of District Council 3 (the Union) on August 9, 2019,¹ the General Counsel issued a complaint and notice of hearing on October 7 against Keystone Printing, Inc. d/b/a Keystone Millbrook Printing Group (the Respondent), alleging that it had violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On November 25, the General Counsel filed a Motion for Default Judgment with the Board. On November 27, 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.

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations of a 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 received on or before October 21, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true.

¹ All dates are 2019 unless otherwise indicated.

² The complaint was served on the Respondent by certified mail, and the United States Postal Service tracking website shows that it was delivered on October 10. The October 30 letter was served on the Respondent by regular and certified mail. Both copies of the letter were returned, with the certified mail showing the message, “Moved, Left no Address” and the regular mail stamped, “Return to sender. Not deliverable as addressed. Unable to forward.” The November 7 copy of the letter was served on the Respondent’s Chief Operating Officer by email immediately after she sent the Board attorney an email from the same address stating that “as of August 9, 2019, Keystone Millbrook has closed its doors.” The email further noted the upcoming hearing date and asked for the address at which the Respondent received documents. The

Further, the undisputed allegations in the General Counsel’s motion disclose that the Region, by letter dated October 30, with a copy of the complaint attached, advised the Respondent that unless it filed an appropriate answer by November 6, a Motion for Default Judgment would be filed with the Board. A copy of the same letter was served on the Respondent’s Chief Operating Officer on November 7. The Motion for Default Judgment and a Notice to Show Cause were served on the Respondent at its last known address on November 25 and November 27, respectively, and a Second Notice to Show Cause was served on the Respondent on January 14, 2020. Nevertheless, the Respondent failed to file an answer.²

In the absence of good cause shown for the failure to file a timely answer, we grant the General Counsel’s Motion for Default Judgment.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business located at 3540 Jefferson Hwy., Grand Ledge, Michigan (Grand Ledge facility), and has been engaged in providing commercial printing and packaging services.

In conducting its operations during the calendar year ending December 31, 2018, the Respondent derived gross revenues in excess of \$500,000 and purchased and received at its Grand Ledge facility goods valued in excess of \$50,000 directly from points outside the State of Michigan.

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 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.

Respondent failed to reply. Subsequently served documents, including the Motion for Default Judgment, the Notice to Show Cause, and the Second Notice to Show Cause, were served on the Respondent at its last known address but were also returned.

We find service sufficient. Service is accomplished when documents are deposited in the mail to a respondent’s last known address. *Esztergalyos Enterprises, Inc.*, 337 NLRB 72, 74 fn. 2 (2002), citing *National Automatic Sprinklers*, 307 NLRB 481, 482 fn. 1 (1992). Furthermore, the Respondent’s failure or refusal to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. *Spectrum Mechanical Services LLC*, 368 NLRB No. 85 (2019); *Cray Construction Group, LLC*, 339 NLRB 247, 247 fn. 2 (2003).

Timothy Clark – Owner, Chief Executive Officer
 Laura Hall – Chief Operating Officer

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 full-time and regular part-time employees performing work, processes, operations and production directly related to printing; including garment operators, pick-n-pack general employees, floor workers, building maintenance, coatings operators, truck drivers, shipping and receiving, materials and logistics, mailing operators, mailing coordinators, general bindery, bindery operators, prepress assistants, electronic prepress, digital press operators, small press operators 20” and below, press helper, web press operators, press helpers, 2nd pressmen, six up to ten color sheet fed over 29” up to and including 40”, and six color fed up to and including 29” employees employed by Respondent at or out of its Grand Ledge facility; but excluding confidential employees and guards and supervisors as defined in the Act.

Since at least November 11, 2018, the Respondent has recognized the General Communications Conference of the International Brotherhood of Teamsters, Detroit—Toledo—Lansing—Flint Local 2/289 M of the District Council 3 (predecessor Union) as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective November 11, 2018 through November 7, 2021.

About July 1, the predecessor Union merged with another local and became the Union. At all material times since July 1, the Union has been the exclusive bargaining representative of the employees in the unit.

At all material times since at least July 1, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About August 9, the Respondent announced to its unit employees the permanent closure of its Grand Ledge facility and the permanent layoff of its employees in the unit.

The Respondent engaged in the above conduct without prior notice to the Union and without affording the Union a meaningful opportunity to bargain with the Respondent with respect to the effects of this conduct.

About August 9, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing or refusing to pay unit employees the cash equivalent of any unused vacation earned in the calendar year ending December 31, 2018, and accrued vacation pay earned in the period from January 1

through August 9, as provided in article 26 of the collective-bargaining agreement described above.

The Respondent engaged in this conduct without the Union’s consent, without prior notice to the Union, and without affording the Union a meaningful opportunity to bargain with the Respondent with respect to this conduct and the effects thereof.

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 purposes of collective bargaining.

CONCLUSION OF LAW

By the conduct described above, 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 described above 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. Specifically, to remedy the Respondent’s failure and refusal to bargain with the Union about the effects of closing of its Grand Ledge facility and laying off the employees, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision to close the facility. As a result of the Respondent’s unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation 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 the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB

389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).³

The Respondent shall pay its 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 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 closure on the unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure 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 with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to continue in effect all terms and conditions of employment of its unit employees by failing or refusing to pay them the cash equivalent of any unused vacation earned in the calendar year ending December 31, 2018, and accrued vacation pay earned in the period from January 1 through August 9, as provided in article 26 of the collective-bargaining agreement, we shall order the Respondent to make the unit employees whole by paying them those amounts, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

We shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the

Regional Director for Region 7 allocating the backpay award to the appropriate calendar years for each employee within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Finally, because the Respondent has closed its facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Keystone Printing, Inc., d/b/a Keystone Millbrook Printing Group, Grand Ledge, Michigan, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Graphic Communications Conference International Brotherhood of Teamsters Local 25-M of District Council 3 (the Union) as the exclusive collective-bargaining representative of bargaining unit employees about the effects of its decision to cease operations at its Grand Ledge facility.

(b) Failing to continue in effect all terms and conditions of employment of its unit employees by failing or refusing to pay them the cash equivalent of any unused vacation earned in the calendar year ending December 31, 2018, and accrued vacation pay earned in the period from January 1 through August 9, as provided in article 26 of the collective-bargaining agreement.

(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 as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning the effects of its decision to close the Respondent's Grand Ledge facility and reduce to writing any agreement reached as a result of such bargaining:

All full-time and regular part-time employees performing work, processes, operations and production directly related to printing; including garment operators, pick-n-pack general employees, floor workers, building maintenance, coatings operators, truck drivers, shipping and receiving, materials and logistics, mailing operators, mailing coordinators, general bindery, bindery operators, prepress assistants, electronic prepress, digital press

³ See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

operators, small press operators 20” and below, press helper, web press operators, press helpers, 2nd pressmen, six up to ten color sheet fed over 29” up to and including 40”, and six color fed up to and including 29” employees employed by Respondent at or out of its Grand Ledge facility; but excluding confidential employees and guards and supervisors as defined in the Act.

(b) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Pay the unit employees the cash equivalent of any unused vacation earned in the calendar year ending December 31, 2018, and accrued vacation pay earned in the period from January 1 through August 9, 2019, as provided in the collective-bargaining agreement, with interest.

(d) Compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(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, duplicate and mail, at its own expense and after being signed by the Respondent’s authorized representative, copies of the attached notice marked “Appendix,”⁴ to the Union and to all unit employees who were employed by the Respondent at any time since August 9, 2019.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 7 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. February 27, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, 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 recognize and bargain with Graphic Communications Conference International Brotherhood of Teamsters Local 25-M of District Council 3 as the exclusive collective-bargaining representative of our employees in the bargaining unit by failing and refusing to bargain about the effects of our decision to cease operations at our Grand Ledge, Michigan facility.

WE WILL NOT fail to continue in effect all terms and conditions of employment of our unit employees by failing or refusing to pay them the cash equivalent of any unused vacation earned in the calendar year ending December 31, 2018, and accrued vacation pay earned in the period from January 1 through August 9, 2019, as provided in article 26 of the collective-bargaining agreement.

⁴ 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

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

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning the effects of our decision to close our Grand Ledge facility and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees performing work, processes, operations and production directly related to printing; including garment operators, pick-n-pack general employees, floor workers, building maintenance, coatings operators, truck drivers, shipping and receiving, materials and logistics, mailing operators, mailing coordinators, general bindery, bindery operators, prepress assistants, electronic prepress, digital press operators, small press operators 20" and below, press helper, web press operators, press helpers, 2nd pressmen, six up to ten color sheet fed over 29" up to and including 40", and six color fed up to and including 29" employees employed by us or out of our Grand Ledge facility; but excluding confidential employees and guards and supervisors as defined in the Act.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

KEYSTONE PRINTING, INC., D/B/A KEYSTONE
MILLBROOK PRINTING GROUP

The Board's decision can be found at www.nlr.gov/case/07-CA-246458 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

