Labor Source 2000 d/b/a LS2000 Integrated Outsourcing Solutions *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–48935

April 28, 2006

DECISION AND ORDER

BY MEMBERS SCHAUMBER, KIRSANOW, AND WALSH

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 and an amended charge filed by the Union on September 19 and October 3, 2005, respectively, the Acting General Counsel issued the complaint on November 21, 2005, against Labor Source 2000 d/b/a LS2000 Integrated Outsourcing Solutions, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

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

On December 21, 2005, the Acting General Counsel filed a Motion for Default Judgment with the Board. On December 23, 2005, 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 did not file a 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 in 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 filed by December 5, 2005, all the allegations in the complaint would be considered true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated December 6, 2005, advised the Respondent that unless an answer was received by December 13, 2005, 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 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 corporation with its principal office and place of business in Southfield, Michigan, has been engaged in the production of automobile instrument panels at a facility located at 4521 Mt. Hope Road, Lansing, Michigan, also known as the Lansing Cockpit Plant, the only facility involved herein.

During the 12-month period ending April 30, 2005, a representative period, the Respondent, in conducting its operations described above, provided services valued in excess of $50,000 to Delphi Corporation, an enterprise directly engaged in interstate commerce.

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 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Union), and Local 724, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (Local 724), are labor organizations 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:

Sherry Sharpley	President
Robert Sharpley	Vice President
Jocelyn Kooylers	Human Resource Manager
John D. Myers	Senior Operations Manager

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 production employees employed at 4521 Mt. Hope Road, Lansing, Michigan; but excluding all maintenance, office and clerical employees, managers, guards, temporary employees, contract employees, professional employees and supervisors as defined in the Act.

Since December 5, 2002, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit and has been so recognized by the Respondent. This recognition has been embodied in a collective-bargaining agreement which was effective by

its terms from December 5, 2002, to and including June 5, 2005.

At all times since December 5, 2002, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since December 5, 2002, the Union has assigned its representative responsibilities with respect to the unit to Local 724.

About March 1, 2005, the Respondent failed to continue in effect the health, dental, and vision benefits set forth in the agreement described above, while continuing to deduct premiums for those benefits from unit employees' paychecks.

The agreement described above has a grievance procedure, which includes an arbitration provision.

Since about May 10, 2005, the Respondent has failed and refused to arbitrate grievances regarding holiday pay, vacation pay, and tuition reimbursement that were filed and scheduled for arbitration prior to the expiration of the agreement described above.

The subjects described 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.

The Respondent engaged in the conduct described above without the Union's or Local 724's consent, in violation of Section 8(d) of the Act.

About May 3, 2005, the Union requested, in writing, to bargain regarding the effects of the closing of the Lansing Cockpit Plant.

Since about May 9, 2005, the Respondent, through its agents Jocelyn Kooylers and Robert Sharpley, has failed and refused to meet and bargain with the Union regarding the effects of the closing of the Lansing Cockpit Plant.

The subject described above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

CONCLUSION OF LAW

By the 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)(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) of the Act by failing to continue in effect the health, vision, and dental benefits of the collective-bargaining agreement, while continuing to deduct premiums from unit employees' paychecks, we shall order the Respondent to restore those benefits, and to make all required benefit fund payments or contributions, if any, that have not been made since about March 1, 2005, including any additional amounts applicable to such payments or contributions as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).[1] We shall also order the Respondent to reimburse unit employees for any expenses ensuing from the Respondent's failure to continue the benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed 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 for the Retarded,* 283 NLRB 1173 (1987).

In addition, having found that the Respondent has unlawfully failed and refused to comply with the contractual grievance-arbitration procedure by failing to arbitrate grievances regarding holiday pay, vacation pay, and tuition reimbursement that were filed and scheduled for arbitration prior to the June 5, 2005 expiration of the collective-bargaining agreement with the Union, we shall order the Respondent to participate in the arbitration of those grievances.

Further, having found that the Respondent unlawfully failed and refused to bargain with the Union concerning the effects on the unit employees of the closing of the Lansing Cockpit Plant, we shall order the Respondent to bargain with the Union or its designated servicing agent, on request, about the effects of the closing. Because of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative. 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

[1] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

policies of the Act, to accompany our bargaining order with a limited backpay requirement designed to make whole the unit employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining positions are 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).[2]

Thus, the Respondent shall pay the 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 on the unit employees of the closing of the Lansing Cockpit Plant; (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 doing business at the facility 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 as prescribed in *New Horizons for the Retarded*, supra.

In view of the fact that the Lansing Cockpit Plant is apparently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of all unit employees employed by the Respondent at any time since March 1, 2005, in order to inform them of the outcome of this proceeding.

[2] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). The complaint and motion do not specify the actual impact on the unit employees, if any, of the closing of the Lansing Cockpit Plant. Therefore, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Buffalo Weaving & Belting*, 340 NLRB 684, 685 fn. 3 (2003).

ORDER

The National Labor Relations Board orders that the Respondent, Labor Source 2000 d/b/a LS2000 Integrated Outsourcing Solutions, Southfield, 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 the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to continue in effect the health, vision, and dental benefits of the December 5, 2002–June 5, 2005 collective-bargaining agreement. The unit is:

> All full-time production employees employed at 4521 Mt. Hope Road, Lansing, Michigan; but excluding all maintenance, office and clerical employees, managers, guards, temporary employees, contract employees, professional employees and supervisors as defined in the Act.

(b) Failing to continue in effect all the terms and conditions of the December 5, 2002–June 5, 2005 collective-bargaining agreement by failing and refusing to arbitrate grievances that were filed and scheduled for arbitration prior to the expiration of the agreement.

(c) Failing and refusing to bargain collectively and in good faith with the Union concerning the effects on the unit employees of the closing of the Lansing Cockpit Plant.

(d) 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) Restore the unit employees' health, vision, and dental benefits, make all required benefit fund payments or contributions, if any, that have not been made, and reimburse unit employees for any loss of benefits or expenses ensuing from its unlawful failure to continue the benefits since March 1, 2005, with interest, as set forth in the remedy section of this decision.

(b) Participate in the arbitration of grievances that were filed and scheduled for arbitration prior to the expiration of the December 5, 2002–June 5, 2005 collective-bargaining agreement.

(c) On request, bargain with the Union or its designated servicing agent concerning the effects on the unit employees of the closing of the Lansing Cockpit Plant,

and reduce to writing and sign any agreement reached as a result of such bargaining.

(d) Pay the unit employees their normal wages for the period 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, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"[3] to the Union and to all unit employees employed at the Lansing Cockpit Plant on or after March 1, 2005.

(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.

Dated, Washington, D.C. April 28, 2006

Peter C. Schaumber, Member

Peter N. Kirsanow, 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 Federal labor law and has ordered us to mail 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 bargain collectively and in good faith with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit by failing to continue in effect the health, vision, and dental benefits of the December 5, 2002–June 5, 2005 collective-bargaining agreement. The unit is:

> All full-time production employees employed at 4521 Mt. Hope Road, Lansing, Michigan; but excluding all maintenance, office and clerical employees, managers, guards, temporary employees, contract employees, professional employees and supervisors as defined in the Act.

WE WILL NOT fail to continue in effect all the terms and conditions of the December 5, 2002–June 5, 2005 collective-bargaining agreement by failing and refusing to arbitrate grievances that were filed and scheduled for arbitration prior to the expiration of the agreement.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union or its designated servicing agent concerning the effects on the unit employees of the closing of the Lansing Cockpit Plant.

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 restore the unit employees' health, vision, and dental benefits, make all required benefit fund payments or contributions, if any, that have not been made, and reimburse unit employees for any loss of benefits or expenses ensuing from our unlawful failure to continue the benefits since March 1, 2005, with interest.

WE WILL participate in the arbitration of grievances that were filed and scheduled for arbitration prior to the expiration of the December 5, 2002–June 5, 2005 collective-bargaining agreement.

WE WILL, on request, bargain with the Union or its designated servicing agent concerning the effects on the unit employees of the closing of the Lansing Cockpit Plant, and reduce to writing and sign any agreement reached as a result of such bargaining.

[3] 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."

WE WILL pay to unit employees limited backpay in connection with our failure to bargain over the effects on unit employees of the closing of the Lansing Cockpit Plant, as required by the Decision and Order of the National Labor Relations Board.

LABOR SOURCE 2000 D/B/A LS2000 INTEGRATED OUTSOURCING SOLUTIONS