

**Eazor Express, Inc. and Joseph M. Pantoja. Case
13-CA-21168**

12 September 1983

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon a charge filed on 2 June 1981 by Joseph M. Pantoja, an Individual, and duly served on Eazor Express, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on 9 July 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that since on or about 21 April 1981 Respondent has refused to provide work to its employees Clarence Meitner and John Pantoja because the named employees engaged in union and/or protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, including filing grievances.

On 19 July 1982 Respondent filed with the Regional Director for Region 13 an answer to the complaint and notice of hearing. However, on 10 November 1982 Respondent filed with the Regional Director written request to withdraw its answer to the complaint and, on 10 November 1982, the Regional Director issued an order postponing the hearing indefinitely pending the filing of, and the Board's ruling on, a Motion for Summary Judgment in this proceeding.

Thereafter, on 29 November 1982, counsel for the General Counsel filed directly with the Board a "Motion To Transfer Proceeding to the Board and Motion for Summary Judgment." Subsequently, on 6 December 1982 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter failed to file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that, unless an answer to the complaint was filed within 10 days from the service thereof, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Although Respondent initially filed an answer to the complaint, it subsequently withdrew the answer on or about 10 November 1982. At that time, Respondent advised the Regional Director that it was withdrawing its answer to the complaint with the understanding that the Board would then move for summary judgment in this matter.

The withdrawal of an answer necessarily had the same effect as a failure to file an answer, and thus the allegations of the complaint must be deemed admitted as true as if no answer had ever been filed. No good cause to the contrary having been shown, in accordance with Section 102.20 of the Board's Rules set out above, the allegations in the complaint are deemed admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

At all times material herein, Respondent, a Pennsylvania corporation, has maintained an office and place of business at 5401 West 47th Street, Forest View, Illinois, and has at all times material herein been engaged in the interstate transportation of

freight. During the year ending 31 December 1981, a representative period, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$50,000 for the transportation of freight and commodities from the State of Illinois directly to points outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE UNFAIR LABOR PRACTICES

Since on or about 21 April 1981 Respondent has refused to provide work to its employees Clarence Meitner and John Pantoja. Respondent has refused to provide them work because they engaged in union and/or protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, including filing grievances.

Accordingly, we find that by refusing to provide Meitner and Pantoja with work Respondent discriminated against Meitner and Pantoja in violation of Section 8(a)(3) of the Act. We further find that the same conduct interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, thereby violating Section 8(a)(1) of the Act.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent violated Section 8(a)(3) and (1) of the Act by discriminating against employees Clarence Meitner and John Pantoja because they had engaged in union and/or protected concerted activities. In order to dissipate the effect of these unfair labor practices, we shall order Respondent to offer immediate and full reinstatement

to Meitner and Pantoja to their former positions or, if no longer available, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and make them whole for any loss of earnings or other monetary loss they may have suffered as a result of the discrimination against them, less interim earnings, if any, plus interest. Any backpay due is to be determined in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).¹

We shall also order Respondent to expunge from its records any reference to the unlawful action taken against Meitner and Pantoja, and inform them that this has been done and that this action will not be used as a basis for future personnel actions concerning them.²

CONCLUSIONS OF LAW

1. Eazor Express, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By refusing to provide work to its employees Clarence Meitner and John Pantoja because they engaged in union and/or protected concerted activities, for the purpose of collective bargaining or other mutual aid or protection, including filing of grievances, Respondent violated Section 8(a)(3) and (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Eazor Express, Inc., Forest View, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to provide work for its employees because of their participation in union and/or protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, including filing grievances.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex-

¹ See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

In withdrawing its answer with the understanding that summary judgment would then be sought, Respondent also indicated its further understanding in its letter to the Regional Director "that it is likely judgment will be awarded in an amount of approximately \$1,000." There is no showing in the record concerning the basis, if any, for Respondent's statement. In these circumstances, we enter our usual remedial order, leaving to compliance any questions regarding effectuation of the order.

² *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

ercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Clarence Meitner and John Pantoja immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from its records any reference to the unlawful action taken against Meitner and Pantoja, and notify them in writing that this has been done and that this action will not be used as a basis for future personnel actions concerning them.

(b) Post at its Forest View office copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this

³ In the event that 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."

Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to provide work to our employees because they engaged in union and/or protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, including filing grievances.

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

WE WILL offer Clarence Meitner and John Pantoja immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of earnings they may have suffered, with interest.

WE WILL expunge from our files any references to the discriminatory action taken against Clarence Meitner and John Pantoja, and WE WILL notify them in writing that this has been done and that it will not be used as the basis for future personnel actions against them.

EAZOR EXPRESS, INC.