

**Charles D. Bonanno Linen Service, Inc. and Teamsters Local Union No. 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 1-CA-12958**

17 January 1984

### DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

Upon a charge filed on 5 April 1977 by Teamsters Local Union No. 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Charging Party or the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint on 19 May 1977 against Charles D. Bonanno Linen Service, Inc., herein called the Respondent. The complaint alleges that the Respondent engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the National Labor Relations Act. The Respondent filed an answer to the complaint in which it admitted certain of the allegations, but denied the commission of any unfair labor practices.

On 30 August 1977 the Respondent, the Charging Party, and the General Counsel entered into a stipulation of facts and filed a motion to transfer this proceeding directly to the Board. All parties to the stipulation waived the usual proceedings before an administrative law judge, agreed that the stipulation of facts and the exhibits attached thereto would constitute the entire record herein, and requested the Board to make findings of facts and conclusions of law and to issue an appropriate Decision and Order.

The motion to transfer the proceeding to the Board further requested the Board to defer its Decision and Order pending a decision by the United States Court of Appeals for the First Circuit on a petition for review of the Board's Order in *Charles D. Bonanno Linen Service*, 229 NLRB 629 (1977), and a cross-petition for enforcement. On 12 September 1980 the court of appeals, in *NLRB v. Charles D. Bonanno Linen Service*, 630 F.2d 25, enforced the Board's Order in 229 NLRB 629, as supplemented in 243 NLRB 1093 (1979). Thereupon, on 7 October 1980 the General Counsel filed a "Renewal of Motion To Transfer Proceeding to the Board." On 14 October 1980 the Respondent filed an opposition to the General Counsel's renewal of motion. The Respondent stated that it would file a petition for writ of certiorari in the United States Supreme Court and argued that the Board

should continue its deferral of this case pending Supreme Court review.

On 12 January 1982 the United States Supreme Court affirmed the United States Court of Appeals for the First Circuit in *Charles D. Bonanno Linen Service v. NLRB*, 450 U.S. 979. On 17 June 1982 the Board issued an order which transferred the proceeding to the Board, approved the stipulation, and set a date for the filing of briefs by the parties. Thereafter, the Respondent,<sup>1</sup> the Charging Party, and the General Counsel each filed briefs. The Respondent also filed a brief in reply to the brief of the Charging Party.

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

The Board has considered the entire record herein, as stipulated by the parties, including the briefs, and makes the following

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

The Respondent is a Massachusetts corporation engaged in the business of laundering, renting, and distributing linen, uniforms, and related products. Its principal office and place of business is located in Medford, Massachusetts. The Respondent annually receives at its Medford plant from points outside Massachusetts goods and materials valued in excess of \$50,000. The Respondent has annual gross receipts from its operations valued in excess of \$500,000.

We find, on the basis of the foregoing, that the 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 LABOR ORGANIZATION INVOLVED

Teamsters Local Union No. 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Background

For several years prior to 1975, the Respondent was a member of the New England Linen Supply Association (the Group) which had negotiated successive collective-bargaining agreements with the

<sup>1</sup> The Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

Union. In March 1975 the Group and the Union began negotiations for a new contract to succeed the one expiring on 18 April 1975. On 23 June 1975 the Union called a selective economic strike against the Respondent and most of the Group responded by locking out their employees. All 12 of the Respondent's drivers participated in the strike and all of them were permanently replaced prior to 21 November 1975. It was on that date that the Respondent notified the Group that it was withdrawing with respect to negotiations because of impasse with the Union. After the Respondent's withdrawal, the Group and the Union resumed negotiations and reached an agreement on 13 April 1976. On 3 May 1976 the Respondent denied to the Union that it was bound by the agreement and refused to execute it. The Board found that the Respondent's withdrawal from the multiemployer bargaining group on 21 November 1975 was untimely and not justified by a bargaining impasse and that its subsequent refusal on 3 May 1976 to execute the collective-bargaining agreement reached between the Union and the Group constituted a violation of Section 8(a)(5) and (1) of the Act. As indicated above, the First Circuit enforced the Board's Order and the Supreme Court affirmed.

#### B. *Additional Stipulated Facts*

After 21 November 1975 the Respondent continued to hire drivers as permanent replacements for the strikers and between that date and 3 May 1976 hired four such replacements. Between 3 May 1976 and 17 January 1977 the Respondent hired four additional drivers as permanent replacements for the strikers. The Union, on behalf of the striking employees, unconditionally requested their reinstatement to their former positions as driver/salesmen on 1 and 15 February and 18 March 1977.

The complaint alleges that the Respondent's violation of Section 8(a)(5) converted the Union's economic strike into an unfair labor practice strike and that therefore the Respondent's refusal to reinstate the strikers following their unconditional request to return to work violated Section 8(a)(3) of the Act.

#### C. *Contentions of the Parties*

The General Counsel contends that the Union's economic strike was converted to an unfair labor practice strike on 3 May 1976 when the Respondent refused to execute the collective-bargaining agreement reached between the Union and the multiemployer bargaining group. Since the strikers became unfair labor practice strikers on the date of conversion they were entitled, upon their unconditional request to return to work, immediately to replace the four permanent replacements hired be-

tween the date of conversion, 3 May 1976, and the date of the stipulation, 30 August 1977. The remaining reapplying former strikers should be placed on a preferential hiring list to be offered positions as they become available before they are offered to new employees. The General Counsel also argues that the failure to offer the former strikers reinstatement to positions which became available subsequent to the stipulation date constitutes additional violations of Section 8(a)(3) and (1).

The Union contends that the economic strike was converted to an unfair labor practice strike on 21 November 1975 notwithstanding the Board's finding that the 8(a)(5) violation occurred on 3 May 1976. The Union also cites *Harding Glass Industries*, 248 NLRB 902 (1980), in arguing that the Board should infer that the 10 permanent replacements hired within the 2 months preceding 21 November were hired in contemplation of the unlawful withdrawal from multiemployer negotiations and therefore the Board should treat these 10 replacements as replacements for unfair labor strikers.

The Union further contends that the former strikers, following the unconditional offers to return made on their behalf, are entitled to displace any drivers hired after the conversion. As the stipulation shows, eight permanent replacements were hired after 21 November 1975, including four who were hired after 3 May 1976. The Union, noting the stipulation that seven of the permanent replacements were terminated and then themselves replaced, contends that the Board's reinstatement remedy for unfair labor practice strikers applies regardless of whether the employees subject to dismissal are the original striker replacements or, as in this case, replacements for such permanent replacements. In the Union's view, an employer's hiring of permanent replacements during the economic phase of a strike does not insulate it from the consequences of a subsequent unfair labor practice.

The Respondent, emphasizing that the strikers seeking reinstatement were permanently replaced prior to 21 November 1975, at times when they were unquestionably economic strikers, argues that its hiring of permanent replacements was therefore lawful. Such permanently replaced economic strikers are not entitled to displace the employees hired in their place. The Respondent further contends that there is nothing in the record to support the allegation that its unfair labor practice prolonged the strike or in any other way converted it to an unfair labor practice strike. But, continues the Respondent, even assuming a conversion, the reinstatement rights were fixed at the time of replacement and any subsequent conversion would only

entitle the strikers, under *Laidlaw Corp.*, 171 NLRB 1366 (1968), to reinstatement as their former jobs become available after their unconditional application to return to work.

#### D. Analysis and Conclusions

As indicated above, the Board has found, with ultimate Supreme Court affirmance, that the Respondent's unfair labor practice in violation of Section 8(a)(5) occurred on 3 May 1976, the date it refused to sign the contract negotiated between the Union and the multiemployer group.<sup>2</sup> The Respondent's employees continued their strike after 3 May for approximately 9 more months. The stipulated record does not contain direct evidence of a causal link between the unfair labor practice and the continuation of the strike. However, we infer that the economic strike begun in June 1975 in support of the Union's bargaining positions was prolonged by the Respondent's unfair labor practice committed at the time when the Union's economic goals had been satisfied by the April 1976 contract with the Group. Since the economic basis of the strike had been eliminated, we find from the strike's prolongation that the Respondent's misconduct in refusing to sign the contract converted the original economic strike into an unfair labor practice strike. See *Erlich's 814, Inc.*, 231 NLRB 1237 (1977), and *Safeway Trails*, 233 NLRB 1078 (1977).

The stipulation reveals that, within a week of the strike's commencement in June 1975, the Respondent began permanently to replace its work force of 12 employees. Between the end of June 1975 and the conversion date in May 1976, the Respondent hired a total of 17 permanent replacements and terminated 2 of them. Thus, at conversion the Respondent employed 15 employees. Between conversion and the applications for unconditional reinstatement, the Respondent hired four additional permanent replacements while terminating five of the permanent replacements hired prior to 3 May 1976. Thus, when it received the applications from the then unfair labor practice strikers in February and March 1977, the Respondent's work force consisted of 14 permanent replacements, 10 of whom were hired before conversion and 4 afterwards.

The Respondent has admitted in its answer to the complaint that, upon the unfair labor practice strikers' unconditional requests to return to work, it refused to reinstate any of them. We find that the

<sup>2</sup> The issue of whether the Respondent additionally violated Sec. 8(a)(5) by its untimely withdrawal from the multiemployer group on 21 November 1975 was neither alleged nor litigated in the Board's consideration of the 8(a)(5) complaint in 229 NLRB 629, or in the subsequent Board and court proceedings. We are precluded by Sec. 10(b) of the Act from addressing this issue, not asserted by the General Counsel as a basis for the instant complaint, for the first time in the instant proceeding.

Respondent thereby violated Section 8(a)(3) and (1) of the Act as a result of its general disregard of the reinstatement rights of unfair labor practice strikers. *Covington Furniture Mfg. Corp.*, 212 NLRB 214 (1974), and *Gulf Envelope Co.*, 256 NLRB 320 (1981).

It is settled law that where an economic strike is converted to an unfair labor practice strike the economic strikers become unfair labor practice strikers on the date of conversion. They are then entitled, upon their unconditional offer to return to work, to immediate reinstatement unless they were permanently replaced prior to conversion. *Covington Furniture Mfg. Corp.*, supra. Since the Respondent has stipulated that its work force in February and March 1977 contained four permanent replacements hired after the 3 May 1976 conversion, we find that the Respondent's precise violation of Section 8(a)(3) was its refusal to reinstate the four former strikers to the positions held by the post-conversion replacements. The remedy section of this Decision, below, will explicate more fully the Respondent's obligations with respect to the employment rights of all the former strikers who have requested reinstatement.

The Board, upon the basis of the foregoing facts and the entire record, makes the following

#### CONCLUSIONS OF LAW

1. The Respondent's violation of Section 8(a)(5) and (1) converted an economic strike that began on 23 June 1975 into an unfair labor practice strike on 3 May 1976, which strike was prolonged by the Respondent's refusal to execute a collective-bargaining agreement reached between the Union and the multiemployer group from which the Respondent had untimely withdrawn.

2. Notwithstanding unconditional requests for reinstatements made by the Union on behalf of its striking employees during February and March 1977, the Respondent has refused to reinstate them to their former or substantially equivalent positions, thereby engaging in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

3. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

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

Since all employees who participated in the economic strike begun on 23 June 1975 and converted to an unfair labor practice strike by the Respondent's violation of Section 8(a)(5) on 3 May 1976 have requested unconditional reinstatement on various dates in February and March 1977,<sup>3</sup> the Respondent shall immediately reinstate them to their former or substantially equivalent positions without impairment of their seniority and other rights and privileges. In order to make room for them, the Respondent shall dismiss, if necessary, all persons hired after 3 May 1976. Employees subject to dismissal shall include not only those replacements hired between conversion and 30 August 1977, the date of the stipulation, but also any employees hired since that date. If, after such dismissals, there are insufficient positions available for the remaining former strikers, those positions which are available shall be distributed among them without discrimination because of their union membership or activities or participation in the strike, in accordance with seniority or other nondiscriminatory practice utilized by the Respondent. Those former strikers who were permanently replaced prior to conversion and for whom no employment is immediately available shall be placed on a preferential hiring list in accordance with their seniority or other nondiscriminatory practice utilized by the Respondent, and they shall be reinstated before any other persons are hired or on the departure of their preconversion replacements. See *Gulf Envelope Co.*, supra, and *Windham Community Memorial Hospital*, 230 NLRB 1070 (1977).

The employees entitled to immediate reinstatement shall be made whole for any loss of earnings they may have suffered by reason of the Respondent's refusal to reinstate them pursuant to their unconditional requests. Backpay and interest shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

#### ORDER

The National Labor Relations Board orders that the Respondent, Charles D. Bonanno Linen Service, Inc., Medford, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing on request to reinstate employees engaged in an unfair labor practice strike.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action.

(a) Immediately and fully reinstate its employees who participated in the strike which began on 23 June 1975 and who applied unconditionally for reinstatement in February and March 1977 to their former or substantially equivalent positions, if available, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, persons hired after 3 May 1976 in order to make room for them. Make whole these employees for any loss of earnings they may have suffered as a result of the discrimination against them in the manner set forth in the remedy section above. Place the remaining former strikers on a preferential hiring list in accordance with their seniority or other nondiscriminatory practice utilized by the Respondent and offer them employment before any other persons are hired or on the departure of any replacement hired before 3 May 1976.

(b) Preserve and, on 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 and relevant to analyze and compute the amount of backpay due under the terms of this Order.

(c) Post at its Medford, Massachusetts, facility copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt 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 said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> Silvia E. Battelli, Robert R. Taddeo, James H. Halloran, Albert V. Spadaro, Nicholas C. Casaletto, Carmine Sanecchiaro, Vincent Perillo, Gerald Halloran, Gaetano Scalfani, and Richard Leto on 1 February; Thomas F. Cleaves on 15 February; and Kevin J. Lally on 18 March.

<sup>4</sup> 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."

**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 the National Labor Relations Act and has ordered us to post and abide by this notice.

**WE WILL NOT** refuse to reinstate former who striking employees who have applied unconditionally for reinstatement to their former or substantially equivalent jobs.

**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** immediately and fully reinstate all of our employees who participated in the strike which began on 23 June 1976 to their former jobs or, if those positions no longer exist, to substantially equivalent positions if available, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, any person hired by us after 31 May 1976, **WE WILL** make these employees whole for any loss of earnings resulting from their discharge, and **WE SHALL** place any remaining former strikers on a preferential hiring list and offer them reinstatement before any other persons are hired or on the departure of strike replacements hired before 3 May 1976.

**CHARLES D. BONANNO LINEN SERVICE, INC.**