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270 NLRB No. 192

D--1748
Lorain, OH

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

MON-YOUGH TRUCKING CO.

and

Case 8--CA--16112

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, TEAMSTERS LOCAL NO. 571

and

UNITED STEELWORKERS OF AMERICA, AFL--CIO--CLC
Party in Interest

DECISION AND ORDER

Upon a charge filed by Teamsters Local 571 (the Teamsters) 27 September 1982, the General Counsel of the National Labor Relations Board issued a complaint 29 September 1983 against Mon-Yough Trucking Co., the Respondent, alleging that it has violated Section 8(a)(1), (2), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On 21 February 1984 the General Counsel filed a Motion for Summary Judgment. On 23 February 1984 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.

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

Ruling on Motion for Summary Judgment

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 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, ''all the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated 13 January 1984, notified the Respondent that unless an answer was received by 25 January 1984, a Motion for Summary Judgment would be filed.

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

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Pennsylvania corporation, is engaged in the interstate hauling of slag and rubbish from its facility in Lorain, Ohio, where it annually provides services valued in excess of $50,000 for Duquesne Slag Corporation, an enterprise within the Commonwealth of Pennsylvania.

Lorain Slag Hauling Company (Lorain Slag), an Ohio corporation, formerly Liberty Vehicle Leasing of Ohio, Inc., is engaged in the interstate hauling of slag and rubbish from its facility in Lorain, Ohio, where it annually provides services valued in excess of $50,000 for United States Steel Corporation, an enterprise within the State of Ohio.

Since on or about mid-May 1982, the Respondent has been engaged in the same business operations, at the same location, performing the same services to substantially the same customers, and has as a majority of its employees

individuals who were previously employees of Lorain Slag. By virtue of the operations described above, the Respondent has continued the employing entity and is a successor of Lorain Slag.

We find that the Respondent and Lorain Slag are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find also that the Teamsters and the United Steelworkers of America, AFL--CIO--CLC (the Steelworkers) are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Unlawful Assistance

On or about 5 April 1982 the Respondent granted recognition to the Steelworkers as the exclusive bargaining representative of the employees of the Respondent in the following unit:

> All truck drivers, production and maintenance employees at the Lorain, Ohio facility, excluding office clerical and professional employees, guards and supervisors as defined in the National Labor Relations Act as amended.

On or about 23 April 1983 the Respondent and the Steelworkers entered into and, since said date, have maintained and enforced a collective-bargaining agreement covering wages, hours of employment, and other terms and conditions of employment of the Respondent's employees in the following unit:

> The Respondent's production employees, maintenance and janitorial employees employed at the Lorain, Ohio facility, but excluding all office, clerical, confidential and professional employees as well as guards and supervisory employees as defined in the National Labor Relations Act as amended.

The Respondent engaged in the conduct described above notwithstanding that it did not employ a representative segment of its ultimate employee complement either on 5 April 1982 or 23 April 1983. Accordingly, the Respondent has rendered, and is rendering, unlawful assistance and support to the Steelworkers in violation of Section 8(a)(2) and (1) of the Act.

B. Refusal to Bargain

Since on or about 3 May 1975 the following employees of Lorain Slag constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of Lorain Slag at its Lorain, Ohio facility, including mechanics and shuttle drivers but excluding all office clericals and professional employees, guards and supervisors as defined in the Act.

At all times since 3 May 1975 the Teamsters, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the above-described unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about mid-May 1982 the Teamsters, by virtue of the Respondent's status as a successor to Lorain Slag, and by virtue of Section 9(a) of the Act, has been, and is the exclusive representative of the Respondent's employees in the above-described unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about mid-May 1982 the Respondent has failed and refused to recognize and bargain with the Teamsters as the exclusive collective-bargaining representative of the above-described unit employees. Accordingly, the Respondent has engaged in conduct in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. By granting recognition to the Steelworkers, and by entering into, maintaining, and enforcing a collective-bargaining agreement with that labor organization when the Respondent did not employ a representative segment of its ultimate employee complement, the Respondent has violated Section 8(a)(2) and (1) of the Act.

2. By failing and refusing to recognize and bargain with the Teamsters as the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, the Respondent has violated Section 8(a)(5) and (1) of the Act. The appropriate unit is:

> All employees at Respondent's Lorain, Ohio facility, including mechanics and shuttle drivers but excluding all office clericals and professional employees, guards and supervisors as defined in the Act.

3. The unfair labor practices described in this section 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.

We shall order the Respondent forthwith to recognize, and on request bargain with, the Teamsters in the appropriate unit and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Mon-Yough Trucking Co., Lorain, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and negotiating with the Steelworkers as the exclusive representative of its employees for the purpose of collective bargaining unless and until such labor organization is certified by the Board as the exclusive representative of its employees pursuant to a Board-conducted election among its employees.

(b) Enforcing or giving effect to the collective-bargaining agreement entered into with the Steelworkers on or about 23 April 1983, or any exten-

sion, renewal, or modification thereof or any superseding agreement, unless and until the Steelworkers shall have demonstrated its exclusive majority representative status in the manner prescribed in paragraph 1(a); provided, however, that nothing in this Decision and Order shall require the Respondent to vary or abandon any wage, hour, seniority, or other substantive feature of its relations with its employees which the Respondent has established in the performance of this agreement, or to prejudice the assertion by employees of any rights they may have thereunder.

(c) Refusing to bargain collectively with the Teamsters as the exclusive bargaining representative of all employees in the bargaining unit.

(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 which is deemed necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from the Steelworkers as the exclusive representative of its employees, unless and until said labor organization has been certified by the Board as the exclusive representative of such employees.

(b) Reimburse with interest all present and former employees for all initiation fees, dues, assessments, or any other moneys they may have been required to pay the Steelworkers since 23 April 1983 by reason of the Respondent's maintenance and enforcement of the collective-bargaining agreement with the Steelworkers. Interest shall be computed in the manner set forth in Florida Steel Corp., 231 NLRB 651 (1977).

(c) Recognize and, on request, bargain with the Teamsters as the exclusive representative of the employees in the following appropriate unit on

terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees at Respondent's Lorain, Ohio facility, including mechanics and shuttle drivers but excluding all office clericals and professional employees, guards and supervisors as defined in the Act.

(d) 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 to analyze the amount of dues and any other moneys to be repaid under the terms of this Order.

(e) Post at its facility in Lorain, Ohio, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Respondent's authorized representative, shall be posted by the Respondent immediately upon 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 the notices are not altered, defaced, or covered by any other material.

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[1] 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.''

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

Dated, Washington, D.C. 20 June 1984

Don A. Zimmerman, Member

Robert P. Hunter, Member

Patricia Diaz Dennis, 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT recognize or negotiate with the United Steelworkers of America, AFL--CIO--CLC, as the exclusive representative of our employees for the purpose of collective bargaining unless and until the Steelworkers is certified by the Board as the exclusive representative of our employees pursuant to a Board-conducted election among our employees.

WE WILL NOT enforce or give effect to the collective-bargaining agreement entered into with the Steelworkers on or about 23 April 1983, or any extension, renewal, or modification thereof or any superseding agreement, unless and until the Steelworkers shall have demonstrated its exclusive majority representative status in the manner prescribed above.

WE WILL NOT refuse to bargain collectively with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local No. 571, as the exclusive representative of our employees in the bargaining unit.

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 withdraw and withhold all recognition from the Steelworkers as the exclusive representative of our employees, unless and until the Steelworkers have been duly certified by the Board as the exclusive representative of our employees.

WE WILL reimburse with interest all of our present and former employees for all initiation fees, dues, assessments, or any other moneys they may have been required to pay the Steelworkers since 23 April 1983 by reason of our maintenance and enforcement of the 23 April 1983 collective bargaining agreement with the Steelworkers.

WE WILL recognize and, on request, bargain with Teamsters Local No. 571 as the exclusive representative of our employees in the following bargaining unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All of our employees at our Lorain, Ohio facility, including mechanics and shuttle drivers but excluding all office clericals and professional employees, guards and supervisors as defined in the Act.

MON-YOUGH TRUCKING CO.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Room 1695, Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, Ohio 44199, Telephone 216--522--3733.