

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BIG PINE TRUCKING COMPANY

and

Case 31--CA--13843

MISCELLANEOUS WAREHOUSEMEN, DRIVERS AND
HELPERS, LOCAL UNION NO. 986, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed by the Union 23 January 1984, the General Counsel of the National Labor Relations Board issued a complaint 7 March 1984 against the Company, Big Pine Trucking Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 20 April 1984 the General Counsel filed a Motion for Summary Judgment. On 23 April 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 Company 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 shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letters dated 30 March and 10 April 1984, notified the Company that unless an answer was received immediately 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.¹

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a California corporation, is engaged in the interstate transportation of freight at its facility in Bishop, California, where it annually sells and ships goods or services, valued in excess of \$50,000, directly to customers located outside the State of California. We find that the Company is an employer engaged in commerce within the meaning of Section 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.

¹ In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

II. Alleged Unfair Labor Practices

The Facts

The Union has been and continues to be the designated exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit:

All drivers, repairmen, and helpers as specifically set forth in the agreement between Respondent and the Union, which by its terms is effective from October 1, 1983 through September 30, 1985.

About 25 September 1983 the Union and the Respondent reached full and complete agreement on all terms and conditions of employees in the above-described unit. Since that date the Union has requested the Respondent to execute a written contract embodying the above-described agreement.

Since about 25 September 1983, and more particularly 6 January 1984, the Respondent failed and refused to execute a written contract embodying the terms and conditions of the agreement. We find that the Company has violated Section 8(a)(5) and (1) of the Act by failing and refusing to reduce to writing and execute the collective-bargaining agreement agreed upon by the parties about 25 September 1983.

Conclusion of Law

By failing and refusing to execute the collective-bargaining agreement reached by the parties about 25 September 1983, the Company has 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.

The Remedy

Having found that Respondent has engaged in and is engaging in 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.

The Respondent will be directed to reduce to writing and execute the collective-bargaining agreement, upon the Union's request, and to bargain with the Union as the exclusive representative of the employees in the unit described below. We shall direct the Respondent to comply with the contract retroactively to its effective date, and to make whole any employees who may have sustained monetary losses, with backpay 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 thereon as set forth in Florida Steel Corp., 231 NLRB 651 (1977).²

ORDER

The National Labor Relations Board orders that the Respondent, Big Pine Trucking Company, Bishop, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Miscellaneous Warehousemen, Drivers and Helpers, Local Union No. 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by refusing to execute the written agreement embodying rates of pay, wages, hours of employment, and other terms and conditions of employment agreed upon between the Respondent and the Union about 25 September 1983.

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

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 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 bargain with Miscellaneous Warehousemen, Drivers and Helpers, Local Union No. 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

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, on request of the Union, reduce to writing, execute, and give retroactive effect to the collective-bargaining agreement reached about 25 September 1983, and WE WILL compensate any employees covered by the contract for any monetary losses plus interest, they may have sustained as a result of our refusal to reduce to writing and sign the contract.

WE WILL, on request of the Union, bargain with the Union as the exclusive representative of all the employees in the following unit:

All drivers, repairmen, and helpers as specifically set forth in the agreement between Respondent and the Union, which by its terms is effective from October 1, 1983 through September 30, 1985.

BIG PINE TRUCKING COMPANY

(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, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213--209--7357.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute a written agreement embodying rates of pay, wages, hours of employment, and other terms and conditions agreed upon between the Respondent and the Union about 25 September 1983.

(b) Give retroactive effect to the written agreement referred to above and reimburse employees for any increased wages or benefits owed thereunder as prescribed in Ogle Protection Service, 183 NLRB 682 (1970), plus interest as computed in Florida Steel Corp., 231 NLRB 651 (1977), and pay into employee benefit funds any additional amount as prescribed in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

(c) Upon request, bargain with the Union as the exclusive representative of all the employees in the following unit:

All drivers, repairmen, and helpers as specifically set forth in the agreement between Respondent and the Union, which by its terms is effective from October 1, 1983 through September 30, 1985.

(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 backpay due under the terms of this Order.

(e) Post at its facility in Bishop, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon re-

³ 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."

ceipt 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.

(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.

27 June 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD