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270 NLRB No. 40

D--1699
St. Louis, MO

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL MERCANTILE AND HARDWARE COMPANY

and

Case 14-CA-16627

TEAMSTERS LOCAL UNION NO. 688, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed by the Union 12 April 1983¹ and an amended charge filed 16 May, the General Counsel of the National Labor Relations Board issued a complaint 19 May and issued an amended complaint 28 July against the Company, the Respondent, alleging that it has violated Section 8(a)(5), (3), and (1) and Section 2(6) and (7) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, complaint, and amended complaint, the Company has failed to file an answer.

On 15 August the General Counsel filed a Motion for Summary Judgment. On 19 August 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.

¹ All subsequent dates refer to 1983 unless otherwise indicated.

- 3 In granting the General Counsel's Motion for Summary Judgment, Chairman
Dotson specifically relies on the total failure of the Respondent to con-
test either the factual allegations or the legal conclusions of the General
Counsel's complainants. Thus, the Chairman regards this proceeding as being
essentially a default judgment which is without precedent value.
- 2 On 13 July the General Counsel also spoke by phone to the Respondent's
representative, who stated that the Respondent would file an answer during
the week of 18 July. On 25 July and 10 August the General Counsel again
spoke by phone to the Respondent's representative and advised that the
General Counsel was still considering moving for summary judgment if no
answer was filed.

On the entire record, the Board makes the following
answer, we grant the General Counsel's Motion for Summary Judgment.
In the absence of good cause being shown for the failure to file a timely
General Counsel would file a Motion for Summary Judgment.
notified the Company that unless an answer was received by noon 22 July, the
Summary Judgment disposes that the General Counsel, by letter dated 13 July,
found by the Board. Further, the undisputed allegations in the Motion for
amended complaint shall be deemed to be admitted to be true and may be so
filed within 10 days of service, all the allegations in the complaint and the
shown. The complaint and the amended complaint state that unless an answer is
filed within 10 days from service of the complaint, unless good cause is
allegations in the complaint shall be deemed admitted if an answer is not
Section 102.20 of the Board's Rules and Regulations provides that the
Ruling on Motion for Summary Judgment

Proceeding to a three-member panel.

The National Labor Relations Board has delegated its authority in this

Findings of Fact

I. Jurisdiction

The Company, a Missouri corporation, is engaged in the nonretail sale and distribution of hardware supplies and related products at its facility in St. Louis, Missouri, where it annually causes to be transported and delivered at its place of business directly from points located outside the State of Missouri hardware supplies and other goods and materials valued in excess of \$50,000, and where it annually sells and distributes at its place of business directly to points located outside the State of Missouri products valued in excess of \$50,000. 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.

II. Alleged Unfair Labor Practices

Since 11 October 1973 the Union has been the certified bargaining representative in an appropriate unit.⁴ About 15 March the Respondent laid off employees Jerry L. Butler, Harold G. Goessling, Mike Raeber, Robert Nesser, and Stanley Perry. About 31 March the Respondent laid off employees James Dunnigan and Jim Floyd. About 17 June the Respondent laid off employees Bruce Shephard and various others. The Respondent laid off these employees because they joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities. By such acts, the Respondent discriminated, and is discriminating, in regard

⁴ The appropriate bargaining unit is:

All warehouse employees in the Respondent's hardware warehouse located in St. Louis, Missouri, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

courage employees from engaging in such activities, the Company has engaged in collective bargaining or other mutual aid or protection, and in order to dis-assisted the Union, and engaged in concerted activities for the purpose of assisting the Union, and engaged in the unit because they joined, supported, or

Conclusions of Law

Act.

Within the meaning of Section 8(a)(5) and (l) and Section 2(6) and (7) of the engaged in, and is engaging in, unfair labor practices affecting commerce the Union as the representative of its employees. The Respondent thereby has acts, the Respondent refused, and is refusing, to bargain collectively with to bargain with respect to such acts and the effects of such acts. By such out prior notice to the Union and without affording the Union an opportunity and various others in the unit. The Respondent engaged in the above acts within and story personnel. Since about 15 March the Respondent laid off eight employees selves, displaying merchandise, and assisting warehouse customers) to super-performed by the unit employees (including receiving merchandise, stocking from 2:30 to 11 p.m. About 15 March the Respondent assigned warehouse work concept. About 10 March the Respondent implemented a permanent night shift respondent implemented a change in operations by instituting a cash-and-carry assistanting warehouse customers) to nonunit employees. About 10 March the Respondent employees (including stocking shelves, displaying merchandise, and Further, about 1 March the Respondent assigned warehouse work performed by the unit employees (including stocking shelves, displaying merchandise, and of the Act.

merce within the meaning of Section 8(a)(3) and (l) and Section 2(6) and (7) by has engaged in, and is engaging in, unfair labor practices affecting commerce hereby discouraging membership in a labor organization. The Respondent thereby to the hire or tenure or terms or conditions of employment of its employees,

unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By assigning warehouse work performed by unit employees to nonunit employees or supervisory personnel, by implementing a cash-and-carry concept, by implementing a permanent night shift, and by laying off employees in the unit, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the changes and the effects of the changes, 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.

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.

The affirmative action shall include that, on the Union's request, the Respondent restore the status quo ante and bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment. We shall also order that the Respondent offer unlawfully laid-off employees immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered by payment to them of sums equal to the amounts they normally would have earned as wages from the date of their layoffs to the date of the Respondent's offers of reinstatement, less net earnings, in accordance with the formula set forth in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in Florida Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

for examination and copying, all payroll records, social security payment
(b) Preserve and, on request, make available to the Board or its agents
earnings in the manner set forth in the section herein entitled, "Remedy."
leges previously enjoyed, and make them whole with interest for any loss of
alent jobs, without prejudice to their seniority or other rights and privi-
to their former jobs or, if such jobs no longer exist, to substantially equiva-
(a) Offer unlawfully laid-off employees immediate and full reinstatement
polices of the Act.

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

eradicating employees in the exercise of the rights guaranteed them by Section 7 of
(c) In any like or related manner interfering with, restraining, or co-
to bargain with respect to the changes and the effects of the changes.
out prior notice to the Union and without affording the Union an opportunity
plementing a permanent high shift, and laying off employees in the unit, with
ployees or supervisory personnel, implementing a cash-and-carry concept, im-
(b) Assigning warehouse work performed by unit employees to nonunit em-
ees from engaging in such activities.

gaining or other mutual aid or protection, and in order to discourage employ-
Union, and engaged in concerted activities for the purpose of collective bar-
(a) Laying off employees because they joined, supported, or assisted the

I. Cease and desist from

succesors, and assigns, shall
Merchants and Hardware Company, St. Louis, Missouri, its officers, agents,
The National Labor Relations Board orders that the Respondent, General

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records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) On the Union's request, restore to unit employees the warehouse work previously performed by unit employees that the Respondent assigned to nonunit employees or supervisory personnel, rescind the cash-and-carry concept and the permanent night shift that the Respondent implemented, and bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment.

(d) Post at its facility in St. Louis, Missouri, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed 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.

⁵ 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."

NATIONAL LABOR RELATIONS BOARD

(SEAL)

Patricia Diaz Dennis, Member

Don A. Zimmerman, Member

Donald L. Dotson, Chairman

Dated, Washington, D.C. 30 April 1984

of this Order what steps the Respondent has taken to comply.

(e) Notify the Regional Director in writing within 20 days from the date

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 lay off employees because they joined, supported, or assisted Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities.

WE WILL NOT assign warehouse work performed by unit employees to nonunit employees or supervisory personnel, implement a cash-and-carry concept, implement a permanent night shift, or lay off employees in the unit, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the changes and the effects of the changes.

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 offer unlawfully laid-off employees immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority rights or other rights and privileges previously enjoyed, and make them whole with interest for any loss of earnings.

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, 210 Tucker Boulevard North, Room 448, St. Louis, Missouri 63101, Telephone 314-425-4361.

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

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

(Employer)

GENERAL MERCANTILE AND
HARDWARE COMPANY

We WILL, on the Union's request, restore to unit employees the warehouse work previously performed by unit employees that we assigned to nonunit employees or supervisory personnel, rescind the cash-and-carry concept and the permanent night shift that we implemented, and WE WILL, on the Union's request, bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment.