

Grand Central Produce, Inc. and Wholesale and Retail Food Distribution, Teamsters Local No. 63, International Brotherhood of Teamsters, AFL-CIO. Case 31-CA-19056

May 29, 19982

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union on September 20, 1991 (amended on October 11, 1991), the General Counsel of the National Labor Relations Board issued a complaint against Grand Central Produce, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), 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 April 28, 1992, the General Counsel filed a Motion for Summary Judgment. On April 30, 1992, 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 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of 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 by letter dated March 9, 1992, counsel for the General Counsel notified the Respondent that unless an answer was received by the close of business on March 23, 1992, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

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 California corporation with an office and principal place of business located in San Bernardino, California, is engaged in business as a wholesale produce distributor. In the course and conduct of its operations, the Respondent annually sells goods or services valued in excess of \$50,000 to customers or business enterprises within the State of California, which customers or business enterprises in turn meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standard. We find that the Respondent 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

On or about September 5, 1972, the Union, pursuant to a Board-conducted election held on August 25, 1972, in Case 31-RC-2154, was certified as the collective-bargaining representative of the Respondent's employees in the following bargaining unit described as Unit A:

Unit A

All repack employees of Respondent employed at its 635 South I Street San Bernardino, California location, including, but not limited to, trimmers, pickers, baggers, dock truckers, wrappers, salad makers and janitors; excluding truck drivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

At all times since August 25, 1972, the Union has been the exclusive bargaining representative of the employees in Unit A by virtue of Section 9(a) of the Act, and has, since then, been recognized as such by the Respondent with such recognition having been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period April 1, 1990, through March 31, 1991.

Also, in or around October 1976, the Union was designated as the exclusive collective-bargaining representative by a majority of the Respondent's employees in the following appropriate bargaining unit described as Unit B:

Unit B

All truck drivers, warehouse employees, and working foremen of Respondent employed at its 635 South I Street, San Bernardino, Califor-

nia, excluding all repack employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since in or around October 1976, and continuing to date, the Union has been the exclusive bargaining representative of the employees in Unit B by virtue of Section 9(a), and has, since then, been recognized as such by the Respondent. Such recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is effective by its terms for the period April 1, 1990, through March 1991.

Beginning on or about August 2, 1991, and at all times thereafter, the Respondent repudiated the above-mentioned collective-bargaining agreements and unilaterally discontinued benefits and abrogated the contractual provisions previously maintained on behalf of employees in the units described above by, among other things, ceasing to make trust fund contributions, abolishing a loader/packer position, reassigning packer bargaining unit work to the truckdrivers unit, terminating warehouseman Lupe Leon who had been performing loader/packer work, and refusing to accept and process grievances.

By engaging in such conduct, without providing the Union with notice and an opportunity to bargain over such changes, the Respondent has refused and is refusing to bargain collectively with the Union, and has violated Section 8(a)(1) and (5) of the Act, as alleged.

On or about September 16, 1991, the Respondent discharged employee Jose Jimenez because he joined or assisted the Union or engaged in other protected concerted activities for the purposes of collective bargaining or other mutual aid or protection and has, since then, failed and refused to reinstate him to his former position. We find that by engaging in such conduct, the Respondent has violated Section 8(a)(1) and (3) of the Act, as alleged.

We further find that the Respondent violated Section 8(a)(1) of the Act when, on separate occasions on or about September 9 and 13, 1991, the Respondent's president, Brent Wilson, threatened employees with layoff if they did not resign from the Union, when its corporate financial officer, Jeff Lerner, told employees on or about September 9, 1991, that the Respondent would close its business and terminate employees if they did not resign their union membership, and when on September 10 and 16, 1991, Lerner interrogated employees concerning the Respondent's demand that they resign from the Union.¹

¹ Wilson and Lerner are supervisors and agents of the Respondent within the meaning of Sec. 2(11) and (13) of the Act.

CONCLUSIONS OF LAW

1. By repudiating its collective-bargaining agreements with the Union and unilaterally discontinuing benefits and abrogating contractual provisions previously maintained on behalf of employees in the bargaining units by, among other things, ceasing to make trust fund contributions, abolishing a loader/packer position, reassigning packer bargaining unit work to the truckdrivers unit, terminating warehouseman Lupe Leon who had been performing loader/packer work, and refusing to accept and process grievances, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

2. By discharging and failing and refusing to reinstate employee Jose Jimenez to his former position because he joined or assisted the Union or engaged in other protected concerted activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

3. By threatening employees with discharge, and telling them it would close its business and terminate employees if they did not resign from the Union, and by interrogating employees concerning the Respondent's demand that they resign from the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(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.

We shall order the Respondent to bargain, on request, with the Union, and to abide by all the terms of its collective-bargaining agreements with the Union including, among other things, making all payments to the trust fund that have not been made since on or about August 2, 1991,² reinstating the loader/packer position, reassigning to the packer bargaining unit work that was unlawfully transferred to the truckdrivers unit, and accepting and processing any grievances filed.

The Respondent will also be ordered to make unit employees whole for any expenses they may have incurred as a result of the Respondent's failure to make the required contributions to the trust

² Any additional amounts applicable to those payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

fund, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and for any losses they may have sustained as a result of its failure to abide by the terms of its collective-bargaining agreements with the Union, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest on such amounts to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall further order the Respondent to offer employees Lupe Leon and Jose Jimenez immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits resulting from their unlawful discharge, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as set forth in *New Horizons for the Retarded*, supra. Finally, the Respondent shall be ordered to remove from its files any references to the unlawful discharges of Lupe Leon and Jose Jimenez, and to notify them that this has been done and that the unlawful terminations will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Grand Central Produce, Inc., San Bernardino, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Wholesale and Retail Food Distribution, Teamsters Local No. 63, International Brotherhood of Teamsters, AFL-CIO, which is the exclusive collective-bargaining representative of the Respondent's employees in the units described below as "Unit A" and "Unit B," by repudiating its collective-bargaining agreements with the Union and unilaterally discontinuing benefits and abrogating provisions previously enjoyed by unit employees by, among other things, ceasing to make trust fund contributions, abolishing a loader/packer position, reassigning packer bargaining unit work to the truckdrivers unit, and refusing to accept and process grievances. The appropriate bargaining units are:

UNIT A

All repack employees of Respondent employed at its 635 South I Street San Bernardino, California location, including, but not limited to, trimmers, pickers, baggers, dock truckers, wrappers, salad makers and janitors;

excluding truck drivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

UNIT B

All truck drivers, warehouse employees, and working foremen of Respondent employed at its 635 South I Street, San Bernardino, California, excluding all repack employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Unilaterally discharging unit employees who performed loader/packer work without providing the Union with notice and a meaningful opportunity to bargain about the discharges, and discharging employees because they joined or assisted the Union or engaged in other protected concerted activities for the purposes of collective bargaining or other mutual aid or protection.

(c) Threatening to discharge employees or to close its business and terminate employees if they did not resign from the Union, and from interrogating employees concerning the Respondent's demand that they resign from the Union.

(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 necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive bargaining representative of its employees in the bargaining units, and comply with all provisions of its collective-bargaining agreements including, among other things, remitting to the Union all trust fund contributions that have not been made since on or about August 2, 1991, reinstating the loader/packer position that was abolished, reassigning to the packer bargaining unit work that was unlawfully transferred to the truckdrivers unit, and accepting and processing grievances that have been filed in accordance with the contracts.

(b) Make whole unit employees for any expenses incurred as a result of the Respondent's failure to make trust fund contributions, and for any losses sustained as a result of its refusal to abide by all terms of its collective-bargaining agreements with the Union, with interest, as set forth in the remedy section of this decision.

(c) Offer employees Lupe Leon and Jose Jimenez immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of

earnings and other benefits suffered as a result of their unlawful terminations as described in the remedy section of this decision.

(d) Remove from its files any reference to the unlawful discharge of Lupe Leon and Jose Jimenez, and notify them, in writing that this has been done and that the discharges will not be used against them in any way.

(e) 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 amounts due under the terms of this Order.

(f) Post at its facility in San Bernardino, 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 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.

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

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."

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 bargain with Wholesale and Retail Food Distribution, Teamsters Local No. 63, International Brotherhood of Teamsters, AFL-CIO, which is the collective-bargaining representative of our employees in the separate units described below as "Unit A" and "Unit B," by repudiating our collective-bargaining agreements and unilaterally discontinuing benefits and abrogating provisions previously enjoyed by unit employees by, among other things, refusing to make trust fund contributions, abolishing a loader/packer position,

reassigning packer bargaining unit work to the truckdrivers unit, and refusing to accept and process grievances. The appropriate bargaining units are:

Unit A

All repack employees of Respondent employed at its 635 South I Street San Bernardino, California location, including, but not limited to, trimmers, pickers, baggers, dock truckers, wrappers, salad makers and janitors; excluding truck drivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

Unit B

All truck drivers, warehouse employees, and working foremen of Respondent employed at its 635 South I Street, San Bernardino, California, excluding all repack employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally discharge unit employees who perform loader/packer work without giving the Union prior notice and an opportunity to bargain about such termination, and WE WILL NOT discharge or otherwise discriminate against our employees because they joined or assisted the Union or because they engaged in other protected concerted activities for the purposes of collective bargaining or mutual aid or protection.

WE WILL NOT threaten to discharge our employees, or threaten to close our plant and terminate all employees, if they did not resign from the Union, nor interrogate them concerning our demand that they resign from the Union.

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, bargain with the Union as the exclusive bargaining representative of our employees in the above-described bargaining units, and WE WILL comply with all terms of our collective-bargaining agreements with the Union by, among other things, remitting all trust fund contributions that have not been made since on or about August 2, 1991, reinstating the loader/packer position, reassigning to the packer bargaining unit work that was unlawfully transferred to the truckdrivers unit, and by accepting and processing all grievances filed in accordance with the contracts.

WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure and refusal to make the trust fund contribu-

tions, and for any losses sustained by them resulting from our failure to abide by all terms of our collective-bargaining agreements, with interest.

WE WILL offer employees Lupe Leon and Jose Jimenez full and immediate reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole

for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with interest.

WE WILL notify Lupe Leon and Jose Jimenez, in writing, that we have removed from our files any reference to their discharges and that the discharges will not be used against them in any way.

GRAND CENTRAL PRODUCE, INC.