Unique Services, Inc. and Three Way Corporation, Single Employer *and* Truck Drivers Union, Local 170, a/w International Brotherhood of Teamsters, AFL–CIO. Case 1–CA–29201

December 14, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge and amended charges filed by Truck Drivers Union, Local 170, a/w International Brotherhood of Teamsters, AFL–CIO, the Union, the General Counsel of the National Labor Relations Board issued an amended complaint on September 17, 1992, against Unique Services, Inc. and Three Way Corporation, Single Employer, respectively, Respondent Unique, Respondent Three Way, or collectively, the Respondent, alleging that the Respondent has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charges, and amended complaint, the Respondent has failed to file an answer.

On November 13, 1992, the General Counsel filed a Motion for Summary Judgment. On November 16, 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 amended complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered 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 Region, by letter dated October 8, 1992, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.[1]

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

Respondent Unique, a corporation, has been engaged in the transportation, storage, and distribution of electronics and exhibits at its facility in Millbury, Massachusetts. Respondent Three Way, a corporation, has been engaged in the transportation, storage, and distribution of electronics and exhibits at its facilities in Millbury, Massachusetts, and North Grosvenordale, Connecticut. Respondent Unique and Respondent Three Way have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated enterprises. We find that Respondent Unique and Respondent Three Way constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

During the calendar year ending December 31, 1991, Respondent Unique and Respondent Three Way, collectively, derived gross revenues in excess of $50,000 for the transportation of freight from the Commonwealth of Massachusetts directly to points outside the Commonwealth of Massachusetts. During the calendar year ending December 31, 1991, Respondent Unique and Respondent Three Way, performed services valued in excess of $50,000 in States other than the Commonwealth of Massachusetts. We find that Respondent Unique and Respondent Three Way are a single employer engaged in commerce within the meaning of Section 2(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

About late November 1991, Respondent Unique promised employees it would make it worth their while if they made the Union go away.

The following employees of Respondent Unique constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Drivers, helpers and warehousemen excluding all other employees, guards, and supervisors as defined in the National Labor Relations Act.

Since about 1979, the Union has been the designated exclusive collective-bargaining representative of the

[1] The Respondent, in a letter to the Region, asserted that these proceedings are void due to the automatic stay in bankruptcy proceedings. It is well established, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. Id. and cases cited therein.

employees in the unit and since then the Union has been recognized as the representative by Respondent Unique. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 1, 1990, to March 31, 1993. At all times since 1979, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

About January 1, 1992, Respondent Unique failed to honor all the terms and conditions of the agreement with the Union by failing to pay health and welfare contributions pursuant to article 17 and by failing to pay pension contributions pursuant to article 18. About January 1992, Respondent Unique failed to honor all the terms and conditions of the agreement with the Union by failing to pay vacation pay pursuant to article 14 and failing to pay employees for unused sick days pursuant to article 16. About March 6, 1992, Respondent Unique failed to honor all the terms and conditions of the agreement with the Union by failing to lay off employees in order of seniority pursuant to article 8. These terms and conditions are mandatory subjects for the purpose of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

About March 6, 1992, Respondent Unique relocated operations conducted by employees in the unit from Respondent Unique's Millbury, Massachusetts facility to Respondent Three Way's North Grosvenordale, Connecticut facility. This is a mandatory subject for the purpose of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct. The Respondent engaged in this conduct because the employees of Respondent Unique formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By promising employees it would be worth their while if they made the Union go away, 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.

2. By relocating operations conducted by employees in the unit because the employees of Respondent Unique formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these 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 failing to honor the terms of its collective-bargaining agreement with the Union by failing to pay health and welfare contributions pursuant to article 17, by failing to pay pension contributions pursuant to article 18, by failing to pay vacation pay pursuant to article 14, by failing to pay employees for unused sick days pursuant to article 16, and by failing to lay off employees in order of seniority pursuant to article 8; and by failing to give notice to the Union and an opportunity to bargain with respect to the relocation of operations conducted by employees in the unit, the Respondent 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 Respondent shall be ordered to relocate operations conducted by employees in the unit from Respondent Three Way's North Grosvenordale, Connecticut facility to Respondent Unique's Millbury, Massachusetts facility,[2] to recognize the Union as the exclusive collective-bargaining representative of the unit employees including, on request, bargaining with the Union regarding any decision and the effects of any decision to relocate the operations conducted by the employees of the unit, and to honor and abide by the terms of the collective-bargaining agreement with the Union. The Respondent shall also be ordered to make its unit employees whole for any loss of earnings they have suffered due to the relocation, such amounts 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 prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Additionally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments for health and welfare, pension, vacation pay, and unused sick days, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, and, where funds are involved, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather*

[2] The Respondent, in its letter to the Region, further asserted that it is currently involved in Chapter 7 bankruptcy proceedings. Accordingly, to the extent applicable to the reestablishment remedy, the Respondent may raise this issue in compliance. Of course, a finding at the compliance stage that restoration of the status quo ante is not appropriate would not preclude make-whole relief for any displaced unit employees or their reinstatement at one of the Respondent's other facilities if such facilities exist. See, e.g., *Strawsine Mfg. Co.*, 280 NLRB 553 (1986).

Optical Co., 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments and for its failure to lay off employees in order of seniority pursuant to article 8 of the agreement, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that Respondent Unique Services, Inc., Millbury, Massachusetts, and Respondent Three Way Corporation, Millbury, Massachusetts, and North Grosvenordale, Connecticut, liable jointly and severally as a single employer within the meaning of the Act, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising employees that it would be worth their while if they made the Union go away.

(b) Relocating operations conducted by employees in the unit because of the employees' union and protected concerted activities and to discourage employees from engaging in these activities.

(c) Refusing to recognize Truck Drivers Union, Local 170, a/w International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of the employees in the unit and refusing to honor the terms of the collective-bargaining agreement with the Union. The unit, which is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act, is as follows:

> Drivers, helpers and warehousemen excluding all other employees, guards, and supervisors as defined in the National Labor Relations Act.

(d) Failing to honor the terms of its collective-bargaining agreement with the Union by failing to pay health and welfare contributions pursuant to article 17, by failing to pay pension contributions pursuant to article 18, by failing to pay vacation pay pursuant to article 14, by failing to pay employees for unused sick days pursuant to article 16, and by failing to lay off employees in order of seniority pursuant to article 8.

(e) Relocating operations conducted by employees in the unit without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct.

(f) 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) Recognize the Union as the exclusive collective-bargaining representative of the employees in the unit and honor all the terms and conditions of the collective-bargaining agreement with the Union.

(b) Relocate the operations conducted by the employees in the unit from Respondent Three Way's North Grosvenordale, Connecticut facility to Respondent Unique's Millbury, Massachusetts facility.

(c) Make the contractually required benefit contributions on behalf of the unit employees and make whole unit employees for any losses in wages or benefits they may have suffered because of the Respondent's refusal to honor the terms of the collective-bargaining agreement and resulting from the relocation of operations, as set forth in the remedy section of this decision.

(d) On request, bargain with the Union, regarding the decision and the effects of the decision to relocate the operations conducted by the employees in the unit.

(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 facilities in Millbury, Massachusetts, and North Grosvenordale, Connecticut, copies of the attached notice marked "Appendix."[3] 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 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.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them in Section 7 of the Act by promising them that it would be worth their while to make the Union go away.

WE WILL NOT refuse to recognize Truck Drivers Union, Local 170, a/w International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

Drivers, helpers and warehousemen excluding all other employees, guards, and supervisors as defined in the National Labor Relations Act.

WE WILL NOT refuse to honor the terms of our collective-bargaining agreement with the Union by failing to pay health and welfare contributions pursuant to article 17, by failing to pay pension contributions pursuant to article 18, by failing to pay vacation pay pursuant to article 14, by failing to pay employees for unused sick days pursuant to article 16, and by failing to lay off employees in order of seniority pursuant to article 8.

WE WILL NOT relocate the operations conducted by our unit employees because of their union or protected, concerted activities or in order to discourage employees from engaging in these activities.

WE WILL NOT relocate the operations conducted by our unit employees without giving the Union notice and an opportunity to bargain about our decision and the effects of our decision on unit employees.

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 reestablish and resume operations at our Millbury, Massachusetts facility in a manner consistent with the level and manner of operation that existed before the operation was transferred to North Grosvenordale, Connecticut, on or about March 6, 1992, and offer reinstatement to their former positions of employment to all employees affected by our transfer of operations.

WE WILL recognize the Union as the exclusive collective-bargaining representative of our employees in the unit and WE WILL honor the terms of our collective-bargaining agreement with the Union.

WE WILL make the contractually required benefit contributions on behalf of our unit employees and WE WILL make whole unit employees for any loss in wages or benefits they may have suffered because of our refusal to honor the terms of our collective-bargaining agreement with the Union and resulting from our unlawful relocation of the operations conducted by our unit employees, with interest.

WE WILL, on request, bargain with the Union about our decision and the effects of our decision to relocate the operations conducted by our unit employees.

UNIQUE SERVICES, INC. AND THREE WAY CORPORATION, SINGLE EMPLOYER