

Turner-Brooks of Ohio, Inc. and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 20 a/w International Brotherhood of Teamsters, AFL-CIO. Case 8-CA-24925

March 29, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 20 a/w International Brotherhood of Teamsters, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on November 16, 1992, against Turner-Brooks of Ohio, Inc., the Respondent, alleging that it has violated Section 8(a)(1) 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 February 22, 1993, the General Counsel filed a Motion for Summary Judgment. On February 26, 1993, 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 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 letters dated December 14, 1992, and January 13, 1993, notified the Respondent that unless an answer was received on or before January 4, 1993, and on or before January 29, 1993, respectively, 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, an Ohio corporation, with an office and place of business in Toledo, Ohio, has been engaged in the retail and wholesale sale of carpet and tile products. Prior to ceasing business in July 1992, the Respondent purchased and received at its Toledo, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Respondent is an 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

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

All truck drivers, helpers, and warehousemen employed by the Respondent at its 115 S. Reynolds Road, Toledo, Ohio facility, but excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act and all other employees.

The Union has been the designated exclusive collective-bargaining representative of the unit employees and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from March 1, 1991, to February 28, 1994. Based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees at all material times.

Since about June 22, 1992, the Union, by letter, has requested that the Respondent furnish it with the following information:

1. The name and address of the individual or entity to whom your company is being sold.
2. The reasons why your company is being sold.
3. Whether or not the purchaser will continue to do business at the same location at which your company operates.
4. Whether or not the purchaser will hire the present employees of your company.
5. Whether or not your company, or any part of it, will continue to do business under its current ownership.

6. Whether or not your company, or any part of it, will continue to do business under its current [sic—perhaps other] ownership.

7. The name, address, social security number, date of birth, and date of hire of your company's present employees.

8. The names of any bargaining unit employees who are presently on layoff, the date upon which such employees were laid off and the date such employees will be recalled.

9. The names of any bargaining unit employees for whom you have deducted dues and assessments and have not remitted to the Union.

10. The date upon which you last remitted dues to the Union and the month for which such dues were deducted.

11. Please provide a copy of the current seniority list.

12. The names of any bargaining unit employees who have lost their seniority rights within the last six months, the reasons for which they lost their seniority rights, and the dates upon which such employees lost their seniority rights.

13. The names of any bargaining unit employees who are currently on a leave of absence from the company and the dates upon which such employees commenced his or her leave of absence and the date upon which such employee is scheduled to return to work.

14. The names of any bargaining unit employees who have left the bargaining unit to enter the Armed Forces of the United States and the date upon which such employees left the bargaining unit for such purpose.

15. The names of any bargaining unit employees who are owed back wages, the amount of such wages which are owed, the reasons such wages are owed, and the dates upon which such wages should have been paid.

16. The job classifications of each of the employees mentioned in paragraph 7 above.

17. The names of any employees who are currently apprentices and their date of hire.

18. Whether or not any of the employees referred to in paragraph 7 above are owed holiday pay.

19. Whether or not there are any outstanding grievances and please provide copies of the same.

20. Whether or not any of the employees referred to in paragraph 7 above are owed vacation pay and the names of any employees who are presently on vacation.

21. Whether or not the company is current in its contributions to the Teamsters Local 20 Insurance, Health and Welfare Plan and Trust, the date

the last payment was made to the Teamsters Local 20 Insurance, Health and Welfare Plan and Trust.

22. Whether or not the company is current in its contributions to the Central States Southeast and Southwest Areas Pension Fund, the date the last payment was made to the Central States Southeast and Southwest Areas Pension Fund.

23. Whether or not the purchaser of your company will recognize the Union as the bargaining representative of bargaining unit employees.

24. And, whether or not the purchaser of your company will assume any and all obligations under the current Collective Bargaining Agreement.

With the exception of employees' social security numbers,¹ the information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. Since about June 22, 1992, the Respondent has failed and refused to furnish the Union with the information requested by it.

Since on or about July 1, 1992, the Respondent has failed and refused to honor the terms of its agreement with the Union by failing to make health and welfare and pension contributions and by failing to make vacation payments to, and on behalf of, the unit employees. These subjects relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes 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 the Respondent with respect to this conduct and the effects of this conduct on its unit employees. The Respondent engaged in this conduct without the Union's consent.

On or about July 1, 1992, the Respondent closed its Toledo, Ohio facility. The effect of the Respondent's closure relates to wages, hours, and other terms and conditions of employment of the unit employees and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without affording the Union an opportunity to bargain with the Respondent with respect to the effects of this conduct.

CONCLUSION OF LAW

By failing to furnish the Union with information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining rep-

¹Included within the request for information was a request for the social security numbers of the Respondent's present employees. The Board has previously held that social security numbers are not presumptively relevant. Accordingly, in the absence of a showing here of their potential or probable relevance, we dismiss the allegation concerning the failure to produce social security numbers. *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991).

representative of the unit employees; by failing to honor the terms of its agreement with the Union by failing to make health and welfare and pension contributions and by failing to make vacation payments to, and on behalf of, unit employees; and by failing to bargain with the Union about the effect of closure of its Toledo, Ohio facility on unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(d) and Section 2(6) and (7) of the Act and in violation of Section 8(a)(1) and (5) 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.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments for pension, health and welfare, and vacation, 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, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather 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, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), 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. 1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, the Respondent shall make whole its unit employees by paying them the vacation pay each is owed, with interest as set forth in *New Horizons for the Retarded*, supra.

Moreover, we shall require the Respondent to provide the Union with the information it requested by letter of June 22, 1992, with the exception of employees' social security numbers. Finally, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of closure of its Toledo, Ohio facility, we shall order it to bargain with the Union, on request, concerning the effects of that decision. Because of the Respondent's unlawful failure to bargain with the Union about the effects of the decision to close its Toledo, Ohio facility, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining

cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practice committed.

Accordingly, we deem it necessary in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to require not only that the Respondent bargain with the Union, on request, about the effects of the closure, but we shall also accompany our order with a limited backpay requirement designed both to make the employees whole for losses as a result of the Respondent's failure to bargain, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by requiring the Respondent to pay backpay to unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

The Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant closure on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within the 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.

In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, supra.

Finally, in view of the Respondent's closure of its facility, we shall order the Respondent to mail copies of the notice to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Turner-Brooks of Ohio, Inc., Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to furnish Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 20 a/w International

Brotherhood of Teamsters, AFL–CIO with information necessary for and relevant to the Union’s performance of its duties as the exclusive collective-bargaining representative of the employees in the unit; failing to honor the terms of its agreement with the Union by failing to make health and welfare and pension contributions and by failing to make vacation payments to, and on behalf of, employees in the unit; and failing to bargain with the Union about the effect of closure of its Toledo, Ohio facility.

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

(a) Furnish the Union with the information it requested by letter of June 22, 1992, with the exception of employees’ social security numbers.

(b) Honor the terms of its contract with the Union by making health and welfare and pension contributions and making vacation payments to, and on behalf of, employees in the unit.

(c) Bargain with the Union regarding the effects of closure of its Toledo, Ohio facility.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, 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 Toledo, Ohio, and mail to all bargaining unit employees, copies of the attached notice marked “Appendix.”² Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent’s authorized representative, shall be mailed to all bargaining unit employees and shall also 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.

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

²If 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 fail to bargain in good faith with Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 20 a/w International Brotherhood of Teamsters, AFL–CIO, the exclusive representative of our employees in the following appropriate bargaining unit:

All truck drivers, helpers, and warehousemen employed at our 115 S. Reynolds Road, Toledo, Ohio facility, but excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act and all other employees.

WE WILL NOT refuse to provide the Union with the relevant information it requested by letter of June 22, 1992.

WE WILL NOT refuse to honor the terms of our contract with the Union by failing to make all contractually required health and welfare and pension contributions and vacation payments.

WE WILL NOT refuse to bargain with the Union about the effects on unit employees of our closure of the Toledo, Ohio facility.

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 provide the Union with the relevant information it requested by letter of June 22, 1992, with exception of employees’ social security numbers.

WE WILL honor the terms of our contract with the Union by making all contractually required health and welfare and pension contributions and vacation payments and WE WILL make our employees whole, with interest, for our failure to make all such contributions as required in the contract.

WE WILL bargain with the Union about the effects on unit employees of our closure of the Toledo, Ohio facility and make our employees whole with interest for our failure to bargain.

TURNER-BROOKS OF OHIO, INC.