

W. C. Dean Trucking, Inc. and Local 445, International Brotherhood of Teamsters, AFL-CIO.
Case 3-CA-17343

February 4, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed September 11, 1992, and an amended charge filed October 22, 1992, by Local 445, International Brotherhood of Teamsters, AFL-CIO (the Union), the General Counsel of the National Labor Relations Board issued a complaint on October 21, 1992, and an amendment to complaint on October 22, 1992, against W. C. Dean Trucking, 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.¹

On January 11, 1993, the General Counsel filed a Motion for Summary Judgment. On January 13, 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 Resident Officer, by letter dated November 23, 1992, notified the Respondent that unless an answer was received by November 30, 1992, a Motion for Summary Judgment would be filed.

¹ By letter dated November 25, 1992 (attached as an exhibit to the Motion for Summary Judgment), the Respondent's counsel advised the Board that the Respondent had filed a bankruptcy petition on October 6, 1992, and that it "would be rather useless for Dean Trucking, which is no longer in operation, to submit an answer to the NLRB complaint."

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 provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

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 New York corporation, has been engaged at its facility in Wappinger, New York, in the intrastate and interstate transportation of household furnishings and goods. Annually, the Respondent, in the course and conduct of its operations, derives gross revenues in excess of \$50,000, of which an amount in excess of \$50,000 is derived from providing services to others directly engaged in interstate commerce, including IBM Corp. 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 of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers, platform men, helpers and mechanics, excluding all office clerical employees and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive bargaining representative of the unit based on Section 9(a) of the Act and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the current term of which is for the period July 1, 1991 to June 30, 1995.

Since on or about June 5, 1992, the Respondent has failed to continue in full force and effect all the terms and conditions of the current collective-bargaining agreement by failing to abide by the following provisions:

Article XI (Vacations)
Article X, Section 3(e)

(All unused personal days must be paid to the employee at the end of the contract year).

These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

CONCLUSION OF LAW

By failing and refusing to bargain collectively with the Union by refusing to comply with the terms of the collective bargaining agreement as it relates to vaca-

tion and personal days for employees, 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.

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 violated Section 8(a)(1) and (5), we shall order the Respondent to make its unit employees whole for any and all losses and expenses resulting from its failure to abide by the vacation and personal days provisions of the collective-bargaining agreement, such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the November 25, 1992 letter from the Respondent's counsel advising that the Respondent is no longer in operation, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, W. C. Dean Trucking, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the Union by refusing to comply with the terms of the collective-bargaining agreement as it relates to vacation and personal days for employees in the following appropriate unit:

All drivers, platform men, helpers and mechanics, excluding all office clerical employees and supervisors as defined in the Act.

(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) Comply with the terms of the collective-bargaining agreement with respect to vacation and personal days for unit employees.

(b) Make the unit employees whole for any and all losses and expenses suffered as a result of the failure to comply with the terms of the collective-bargaining agreement as it relates to vacation and personal days for unit employees as set forth in the remedy section of the decision.

(c) 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 amounts due under this Order.

(d) Mail an exact copy of the attached notice marked "Appendix"² to Local 445, International Brotherhood of Teamsters, AFL-CIO, and to all employees in the unit who were employed by the Respondent at its Wappinger Falls, New York facility. Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt as herein directed.

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

² 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 fail and refuse to bargain collectively with Local 445, International Brotherhood of Teamsters, AFL-CIO by refusing to comply with the terms of the collective-bargaining agreement as it relates to vacation and personal days for employees in the following appropriate unit:

All drivers, platform men, helpers and mechanics, excluding all office clerical employees and supervisors as defined in the Act.

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 comply with the terms of the collective-bargaining agreement with respect to vacation and personal days for unit employees.

WE WILL make our unit employees whole for losses and expenses resulting from our failure to comply with the terms of the collective-bargaining agreement as it relates to vacation and personal days for unit employees, plus interest.

W. C. DEAN TRUCKING, INC.