

Administrative Services of America, Inc. and Teamsters Local Union No. 984, International Brotherhood of Teamsters, AFL-CIO. Case 26-CA-15637

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

Upon a charge filed by the Union June 1, 1993, the General Counsel of the National Labor Relations Board issued a complaint, notice of hearing and compliance specification against Administrative Services of America, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act and setting forth the amount of money owed as a result of the unfair labor practice. On August 2, 1993, the Union filed an amended charge in order to render the allegations in the charge consistent with the allegations in the complaint and compliance specification. Although properly served copies of the charge, amended charge, complaint and compliance specification, the Respondent failed to file an answer.

On August 31, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On September 3, 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.

Ruling on Motion for Summary Judgment

Pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the complaint and compliance specification affirmatively notes 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 Regional Office, by letter dated August 3, 1993, notified the Respondent's registered agent that its answer was due on July 21, 1993, that no answer had been received, and that the time for filing an answer was extended to August 10, 1993. The letter further stated that if no answer was received by that date the Regional Office would seek summary judgment. The Respondent's registered agent responded by letter dated August 4, 1993, stating that he had accepted service of the amended charge but that he does not represent the Respondent or have any other relationship with the Respondent than as a creditor. The Respondent failed to file an answer.¹

¹ Service by mail on the Respondent's registered agent is adequate service and the Respondent cannot defeat the processes of this Agency by failing to provide for receipt of properly addressed mail. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

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

About April 14, 1992, the Respondent assumed the business operations of Mid-America Distribution Centers, Inc. (Mid-America), which has been dissolved, and since then has continued to operate the business of Mid-America in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Mid-America. Based on these operations, the Respondent has continued the employing entity and is a successor to Mid-America.

At all material times, the Respondent, a corporation with an office and place of business in Memphis, Tennessee (the Respondent's facility), has been engaged in the distribution of toys and small appliances. During the 12-month period ending April 7, 1993, the Respondent, in conducting its business operations, derived gross revenues in excess of \$50,000 for transportation of freight in interstate commerce. During this period, the Respondent, in conducting its business operations, purchased and received at its facilities goods valued in excess of \$50,000 from points directly located outside the State of Tennessee. 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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All truckdrivers, fork lift operators, laborers or porters, group leaders and tester repairman employed by Respondent at its Memphis, Tennessee facility excluding all office clerical employees, guards and supervisors as defined in the Act.

From about July 5, 1985, until about April 14, 1992, the Union had been the exclusive collective-bargaining representative of the unit employed by Mid-America, and during that period of time the Union had been recognized as such representative by Mid-America. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from February 11, 1989, to February 10, 1993. Since about April 14, 1992, based on these facts and the facts set forth under the "Jurisdiction" section of this Decision and Order, the Union has been the

designated exclusive collective-bargaining representative of the unit, and the Union was specifically recognized as such representative by the Respondent by letter dated April 14, 1992. At all times since on or about April 14, 1992, the Union by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about April 8, 1993, the Respondent closed its facility and ceased operations. Since on or about April 8, 1993, the Respondent has failed and refused to pay wages as agreed in the collective-bargaining agreement between the parties, for the period April 5-9, 1993. The Respondent engaged in these acts and conduct without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and the effects of such acts and conduct.

CONCLUSIONS OF LAW

1. By the conduct described above, the Respondent failed and refused and is failing and refusing to bargain collectively and in good faith with the representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 8(d) and Section 2(6) and (7) of the Act.

2. The net backpay due the employees is as stated in the complaint and compliance specification.

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.

To remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of termination of its Memphis, Tennessee 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 terminate its Memphis, Tennessee 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 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*, 283 NLRB 1173 (1987).

Accordingly, the Respondent shall make whole the employees named below, plus interest accrued to the date of payment, less appropriate payroll deductions, which represents the minimum 2 weeks' backpay due the employees under the *Transmarine* remedy:

Alvin Walton	\$564
William Smith	564
Harvey Wilson	564
Clifton Dandridge	564
Bradley Grimes	564
Ronald K. Oliver	564
Rosie L. Randle	548
Dorothy Hardaway	548
Bettye Turner	640

We will also order the Respondent to bargain with the Union to make whole its employees for its failure

to pay wages for the period of April 5-9, 1993. This obligation will be discharged by payment to the employees named below, and others whose identities are currently unknown, in the amounts set forth below, plus interest accrued to the date of payment, less appropriate payroll deductions:

William Smith	\$282
Harvey Wilson	282
Clifton Dandridge	282
Bradley Grimes	282
Ronald K. Oliver	282
Rosie L. Randle	274
Dorothy Hardaway	274
Bettye Turner	320

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, Administrative Services of America, Inc., Memphis, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of the employees in the unit by closing its facility and ceasing operations or failing and refusing, since April 8, 1993, to pay wages as agreed in the collective-bargaining agreement between the parties, for the period April 5-9, 1993, all without prior notice to the Union and without affording the Union an opportunity to negotiate and bargain as the exclusive representative of its employees with respect to the effects of such acts and conduct. The unit consists of the following employees:

All truckdrivers, fork lift operators, laborers or porters, group leaders and tester repairman employed by Respondent at its Memphis, Tennessee facility excluding all office clerical employees, guards 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) Pay the unit employees their normal wages for the periods set forth in this Decision and Order and make whole the individuals named below, by paying them the amounts opposite their names, with interest to be computed in the manner prescribed in *New Hori-*

zons for the Retarded, supra, minus tax withholdings required by Federal and state laws:

Alvin Walton	\$846
William Smith	846
Harvey Wilson	846
Clifton Dandridge	846
Bradley Grimes	846
Ronald K. Oliver	846
Rosie L. Randle	822
Dorothy Hardaway	822
Bettye Turner	960

(b) On request, bargain collectively with Teamsters Local Union No. 984, International Brotherhood of Teamsters, AFL-CIO, with respect to its failure to pay contractual wages and the effects of such failure, and the effects of the closure of its Memphis, Tennessee facility, and reduce to writing any agreement reached as a result of such bargaining.

(c) 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 amount of further backpay due under the terms of this Order.

(d) Mail an exact copy of the attached notice marked "Appendix"² to all employees of the unit who were employed by the Respondent at its Memphis, Tennessee facility. Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt thereof as here 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.

Dated, Washington, D.C. September 30, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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.

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 fail and refuse to bargain collectively and in good faith with the exclusive collective-bargaining representative of our employees in the unit by closing our Memphis, Tennessee facility and ceasing operations or by failing and refusing, since April 8, 1993, to pay wages as agreed in the collective-bargaining agreement, for the period April 5 through 9, 1993, all without prior notice to the Union or without affording the Union an opportunity to negotiate and bargain as the exclusive representative of our employees with respect to such acts and conduct and the effects of such acts and conduct. The unit consists of the following employees:

All truckdrivers, fork lift operators, laborers or porters, group leaders and tester repairman em-

ployed by us at our Memphis, Tennessee facility excluding all office clerical employees, guards 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 by Section 7 of the Act.

WE WILL pay our unit employees who were employed at the Memphis, Tennessee facility their normal wages for the periods required by the National Labor Relations Board, including paying the following individuals the amounts opposite their names, plus interest accrued to the date of such payment:

Alvin Walton	\$846
William Smith	846
Harvey Wilson	846
Clifton Dandridge	846
Bradley Grimes	846
Ronald K. Oliver	846
Rosie L. Randle	822
Dorothy Hardaway	822
Betty Turner	960

WE WILL, on request, bargain collectively with Teamsters Local Union No. 984, International Brotherhood of Teamsters, AFL-CIO, with respect to our failure to pay contractual wages and the effects of such failure and the effects of our closure of our Memphis, Tennessee facility, and reduce to writing any agreement reached as a result of such bargaining.

ADMINISTRATIVE SERVICES OF AMERICA,
INC.