

**Tower Lines, Inc. a/k/a K.E.G. Transport, Inc. and
General Teamsters, Chauffeurs, Warehouse-
men and Helpers, Local Union No. 697 a/w
International Brotherhood of Teamsters, AFL-
CIO. Case 6-CA-25665**

October 29, 1993

DECISION AND ORDER

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

Upon a charge filed by the Union on July 14, 1993, the General Counsel of the National Labor Relations Board issued a complaint on August 25, 1993, against Tower Lines, Inc. a/k/a K.E.G. Transport, 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 failed to file an answer.

On September 24, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On September 28, 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

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide 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. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 13, 1993, notified the Respondent that unless an answer were received by the close of business on the third business day following receipt of the letter or unless an extension of time for filing an answer were granted, a Motion for Summary Judgment would be filed. No answer or request for extension of time has been received from 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 West Virginia corporation with an office and place of business located in Wheeling, West Virginia, has been engaged in the interstate and intrastate transportation of freight. During the 12-

month period ending June 30, 1993, the Respondent in conducting its business operations derived gross revenues in excess of \$50,000 for the transportation of freight from the State of West Virginia directly to points outside the State of West Virginia. 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 employees of the Respondent described in the collective-bargaining agreement between the Respondent and the Union, described below and herein called the Mail-Haul Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The employees of the Respondent described in the collective-bargaining agreement between the Respondent and the Union, described below and herein called the Yellow Division Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The employees of the Respondent described in the collective-bargaining agreement between the Respondent and the Union, described below and herein called the Iron and Steel Division Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all times material herein, the Union has been the designated exclusive collective-bargaining representative of the Mail-Haul Unit and has been recognized as such by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from July 1, 1991, to June 30, 1993, as extended by the parties indefinitely thereafter, and hereafter called the Mail-Haul agreement. At all times material herein, the Union has been the designated exclusive collective-bargaining representative of the Yellow Division Unit and has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from February 1, 1991, to January 31, 1994. At all times material herein the Union has been the designated exclusive collective-bargaining representative of the Iron and Steel Division Unit and has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from April 1, 1991, to March 31, 1994.

At all times material herein the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive collective-bargaining representative of the Mail-Haul

Unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. At all times material herein the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive collective-bargaining representative of the Yellow Division Unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. At all times material herein the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive collective-bargaining representative of the Iron and Steel Division Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

On various dates since May 1993, the Union, by its representative, Ray Bauer Jr., has orally requested, and on June 30 and August 6, 1993, by letters, the Union requested, that the Respondent meet with the Union for the purpose of negotiating the terms and conditions of the Mail-Haul agreement and to discuss employee grievances which are pending in the Yellow Division and in the Iron and Steel Division.

On or about July 26, 1993, the Respondent met with the Union for purposes of negotiating the terms and conditions of the Mail-Haul agreement. On about July 27, 1993, Respondent, acting through Kirk E. Guisti, the Respondent's president, a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act, canceled the meeting with the Union previously scheduled for that date for the purpose of continuing the Mail-Haul agreement negotiations and/or discussing the grievances referred to above.

Since about July 27, 1993, the Respondent has failed and refused to meet and negotiate with the Union regarding the subjects set forth above. These subjects relate to the wages, hours, and other terms and conditions of employment of the Mail-Haul, the Yellow Division, and/or the Iron and Steel Division Units and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby 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 de-

signed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to meet and negotiate with the Union regarding the terms and conditions of the Mail-Haul agreement and to discuss employee grievances which are pending in the Yellow Division and in the Iron and Steel Division, we shall order the Respondent to do so on request and, if agreement is reached, reduce such agreement to writing.

ORDER

The National Labor Relations Board orders that the Respondent, Tower Lines, Inc. a/k/a K.E.G. Transport, Inc., Wheeling, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate units by failing and refusing to meet with the Union for the purpose of negotiating the terms and conditions of the Mail-Haul agreement and to discuss employee grievances which are pending in the Yellow Division and in the Iron and Steel Division:

The employees of Respondent described in the collective-bargaining agreement between the Respondent and the Union, effective by its terms for the period from July 1, 1991, to June 30, 1993, as extended by the parties indefinitely (the Mail-Haul Agreement), called the Mail-Haul Unit;

The employees of Respondent described in the collective-bargaining agreement between the Respondent and the Union effective by its terms for the period from February 1, 1991, to January 31, 1994, called the Yellow Division Unit;

The employees of Respondent described in the collective-bargaining agreement between the Respondent and the Union effective by its terms for the period from April 1, 1991, to March 31, 1994, called the Iron and Steel Division Unit.

(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) On request, meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the Mail-Haul Unit over the terms and conditions of the Mail-Haul agreement and, if agreement is reached, reduce such agreement to writing.

(b) On request, meet with the Union as the exclusive collective-bargaining representative of the employees in the Yellow Division Unit and the Iron and Steel Di-

vision Unit to discuss grievances that are pending in those units.

(c) Post at its facility in Wheeling, West Virginia, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 6, 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.

(d) 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. October 29, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹If 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 or refuse to bargain with General Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 697 a/w International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate units by failing and refusing to meet with the Union for the purpose of negotiating the terms and conditions of the Mail-Haul agreement and to discuss employee grievances which are pending in the Yellow Division and in the Iron and Steel Division:

Our employees described in the collective-bargaining agreement between us and the Union, effective by its terms for the period from July 1, 1991, to June 30, 1993, as extended by the parties indefinitely (the Mail-Haul agreement), called the Mail-Haul Unit;

Our employees described in the collective-bargaining agreement between us and the Union effective by its terms for the period from February 1, 1991, to January 31, 1994, called the Yellow Division Unit;

Our employees described in the collective-bargaining agreement between us and the Union effective by its terms for the period from April 1, 1991, to March 31, 1994, called the Iron and Steel Division Unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the Mail-Haul Unit over the terms and conditions of the Mail-Haul agreement and, if agreement is reached, reduce such agreement to writing.

WE WILL, on request, meet with the Union as the exclusive collective-bargaining representative of the employees in the Yellow Division Unit and the Iron and Steel Division Unit to discuss grievances that are pending in the units.

TOWER LINES, INC. A/K/A K.E.G.
TRANSPORT, INC.