

Crescent Truck Lines, Inc. and Brotherhood of Teamsters, Auto Truck Drivers Local 70, International Brotherhood of Teamsters, AFL-CIO. Case 32-CA-13305

February 7, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon a charge filed by the Brotherhood of Teamsters, Auto Truck Drivers Local 70, International Brotherhood of Teamsters, AFL-CIO (the Union), on July 12, 1993, the General Counsel of the National Labor Relations Board issued a complaint on August 27, 1993, against Crescent Truck Lines, Inc. (the Respondent), alleging that it has violated Section 8(a)(1), (3), 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 December 20, 1993, the Acting General Counsel filed a Motion for Summary Judgment and Memorandum in Support with the Board. On December 22, 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 December 7, 1993, notified the Respondent by facsimile and certified mail that unless an answer was received by close of business on December 10, 1993, 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 Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, the Respondent, a California corporation with an office and place of business in Hayward, California, has been engaged in the transportation of goods and commodities by truck. During the

12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, sold and shipped goods or provided services valued in excess of \$50,000 directly to customers or business enterprises who themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards.

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 full-time and regular part-time local pick-up and delivery drivers, line drivers, dock employees, and shop employees employed by Respondent at its Hayward, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

Since at least 1970, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since that date the Union 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 until March 31, 1994.

At all times since at least 1970, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about July 30, 1993, the Respondent, at its Hayward, California facility, acting through its terminal manager, Chris Stafford, threatened an employee with unspecified retaliation by telling the employee that by asking the Respondent for a day off so he (the employee) could give a statement to the Board in connection with an unfair labor practice charge filed by the Union against the Respondent, he was just digging his grave "deeper and deeper."

On or about July 29, 1993, the Respondent issued a written disciplinary warning to its employee Alwyn Martin because he joined or assisted the Union or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

On or about June 9, 1993, the Respondent, at its Hayward, California facility, acting through its president and owner, Frank Warn, informed employees who had been designated by the Union to be its shop stew-

ards at the Respondent's Hayward facility that the Respondent would not meet with either them or another named union official concerning union-management issues unless yet another named union official was present.

On or about July 7, 1993, the Respondent, at its Hayward, California facility, acting through Frank Warn and Respondent's vice president, Greg Warn, informed a union official that the Respondent would not meet with him concerning union-management issues unless another named union official was present.

In late July 1993, the Respondent, at its Hayward, California facility, acting through Greg Warn, during the course of an employee meeting, informed employees that their support of the Union and their attempts to enforce the Respondent's contract with the Union, including by filing contractual grievances, would be futile because the Respondent would not settle any grievances, including valid grievances, and would deadlock all grievances and force the Union to take them to the national level, and bypassed the Union and dealt directly with unit employees by negotiating with them about changes in the nature of their work assignments.

CONCLUSIONS OF LAW

By threatening an employee with unspecified reprisal and informing employees that their support for the Union and attempts to enforce the contract would be futile, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By issuing a written disciplinary warning to employee Alwyn Martin, the Respondent has discriminated in regard to the hire and tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby 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.

By informing the Union's shop stewards and other union officials that the Respondent would not meet with them or other union officials unless another union official was present, informing employees that their support of the Union and attempts to enforce the contract would be futile, and bypassing the Union and dealing directly with unit employees, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees, and has thereby engaged in unfair labor practices 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.

ORDER

The National Labor Relations Board orders that the Respondent, Crescent Truck Lines, Inc., Hayward, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with unspecified retaliation for requesting leave to give statements to the Board in connection with unfair labor practice charges filed against the Respondent.

(b) Issuing written disciplinary warnings to employees because they joined or assisted the Brotherhood of Teamsters, Auto Truck Drivers Local 70, International Brotherhood of Teamsters, AFL-CIO, or engaged in other protected concerted activities.

(c) Informing union shop stewards or other union officials that it would not meet with them or other union officials concerning union-management issues unless another union official was present.

(d) Informing employees that their support of the Union and their attempts to enforce the collective-bargaining agreement would be futile because the Respondent would not settle any grievances, including valid grievances, and would deadlock all grievances and force the Union to take them to the national level.

(e) Bypassing the Union and dealing directly with unit employees by negotiating with them about changes in the nature of their work assignments.

(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) Bargain in good faith with the Union as the exclusive bargaining representative of the employees in the following unit:

All full-time and regular part-time local pick-up and delivery drivers, line drivers, dock employees, and shop employees employed by Respondent at its Hayward, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

(b) Remove from its files any reference to the unlawful written warning issued to its employee Alwyn Martin and notify him in writing that it has done so and that it will not use the warning against him in any way.

(c) Post at its facility in Hayward, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 32, 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. February 7, 1994

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ 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 give 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 threaten employees with unspecified retaliation for requesting leave to give statements to the Board in connection with unfair labor practice charges filed against us.

WE WILL NOT issue written disciplinary warnings to employees because they joined or assisted the Brotherhood of Teamsters, Auto Truck Drivers Local 70, International Brotherhood of Teamsters, AFL-CIO, or engaged in other protected concerted activities.

WE WILL NOT inform union shop stewards or other union officials that Owe will not meet with them or other union officials concerning union-management issues unless another union official was present.

WE WILL NOT inform employees that their support of the Union and their attempts to enforce the collective-bargaining agreement would be futile because we would not settle any grievances, including valid grievances, and would deadlock all grievances and force the Union to take them to the national level.

WE WILL NOT bypass the Union and deal directly with unit employees by negotiating with them about changes in the nature of their work assignments.

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 bargain with the Union as the exclusive bargaining representative of the employees in the following unit:

All full-time and regular part-time local pick-up and delivery drivers, line drivers, dock employees, and shop employees employed by us at our Hayward, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL remove from our files any reference to the unlawful written warning issued to employee Alwyn Martin and notify him in writing that we have done so and that we will not use the warning against him in any way.

CRESCENT TRUCK LINES, INC.