

**Sonya Trucking, Inc. d/b/a Sonya Trucking Company and United Mine Workers of America.**  
Case 9-CA-31634

September 29, 1994

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND COHEN

Upon a charge filed by United Mine Workers of America, the Union, on March 2, 1994, and amended on April 15, 1994, the General Counsel of the National Labor Relations Board issued a complaint on April 15, 1994, against Sonya Trucking, Inc. d/b/a Sonya Trucking Company, 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 August 26, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On September 2, 1994, 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**

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 August 4, 1994, notified the Respondent that unless an answer were received by August 15, 1994, 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, a corporation, has been engaged in the hauling of coal out of its Dorothy, West Virginia facility. During the 12 months preceding issuance of the complaint, the Respondent has derived gross reve-

nues in excess of \$50,000 for transporting coal for Tony's Branch Coal Company, a mining enterprise located within the State of West Virginia which during the same period sold and shipped from its West Virginia facilities goods valued in excess of \$50,000 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 Respondent described in article 1A of District 17 Transportation Agreement of 1990 (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about January 2, 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then has been so recognized by the Respondent. This recognition has been embodied in a collective-bargaining agreement which was effective from January 2, 1991, through February 1, 1993. Since about January 2, 1991, and at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 21, 1993, the Respondent has failed to pay unit employees the overtime, sick, and personal day pay provided for in the 1991-1993 collective-bargaining agreement described above. Although these subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining, the Respondent engaged in the foregoing conduct without prior notice to the Union and without affording the Union opportunity to bargain with the Respondent with respect to this conduct.

About late September 1993, the Respondent bypassed the Union and dealt directly with employees in the unit by soliciting employees' agreement to modify the 1991-1993 collective-bargaining agreement described above regarding overtime pay.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the Union as the exclusive bargaining representative of the unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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)(5) and (1) by failing, since September 21, 1993, to pay unit employees the overtime, sick, and personal day pay provided for in the 1991-1993 agreement, we shall order the Respondent to honor the terms of the agreement, until it bargains to a new agreement or impasse, by making all such payments, and to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Sonya Trucking, Inc. d/b/a Sonya Trucking Company, Dorothy, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Mine Workers of America as the exclusive bargaining representative of the unit employees described in article 1A of District 17 Transportation Agreement of 1990, by unilaterally failing to pay the unit employees the overtime, sick, and personal day pay provided for in the 1991-1993 collective-bargaining agreement.

(b) Dealing directly with the unit employees by soliciting their agreement to modify the 1991-1993 collective-bargaining agreement regarding overtime pay.

(c) 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) Honor the terms of the 1991-1993 collective-bargaining agreement, until it bargains to a new agreement or impasse, by paying the unit employees the overtime, sick, and personal day wages provided for in the collective-bargaining agreement, and make whole the unit employees for any loss of earnings suffered as a result of its unlawful failure to do so since September 21, 1993, as set forth in the remedy section of this decision.

(b) 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 backpay due under the terms of this Order.

(c) Post at its facility in Dorothy, West Virginia, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, 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. September 29, 1994

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William B. Gould IV, Chairman

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James M. Stephens, Member

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Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> 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 with United Mine Workers of America as the exclusive bargaining representative of the unit employees described in article 1A of District 17 Transportation Agreement of 1990, by unilaterally failing to pay the unit employees overtime, sick, and personal day pay provided for in the 1991-1993 collective-bargaining agreement.

WE WILL NOT deal directly with the unit employees by soliciting their agreement to modify the 1991-1993 collective-bargaining agreement regarding overtime pay.

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 honor the terms of the 1991-1993 collective-bargaining agreement, until we bargain to a new agreement or impasse, by paying the unit employees the overtime, sick, and personal day wages provided

for in the collective-bargaining agreement, and WE WILL make whole the unit employees for any loss of earnings suffered as a result of our unlawful failure to do so since September 21, 1993.

SONYA TRUCKING, INC. D/B/A SONYA  
TRUCKING COMPANY