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Supreme Hauling Enterprises, Inc. d/b/a Supreme Trucking Co. and Milverton Watson and Local 282, International Brotherhood of Teamsters, AFL-CIO, Party to the Contract. Case 29-CA-18950

April 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND FOX

Upon a charge and amended charge filed by Milverton Watson, an individual (the Charging Party), on March 2 and May 31, 1995, the General Counsel of the National Labor Relations Board issued a complaint on June 30, 1995, against Supreme Hauling Enterprises, Inc. d/b/a Supreme Trucking Co. (the Respondent) alleging that it has violated Section 8(a)(1), (2), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge,¹ and complaint, the Respondent failed to file an answer.

On March 28, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On March 29, 1996, 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 November 29, 1995, notified the Respondent that unless an answer were received by December 5, 1995, a Motion for Summary Judgment would be filed.

¹ Although the General Counsel's motion indicates the amended charge was served by certified mail but was returned to the Regional Office marked as "refused," failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *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

The Respondent, a New York corporation with its principal office and place of business located at 11 Newark Avenue, Staten Island, New York, has been engaged in the nonretail transportation of building materials. During the 12-month period preceding issuance of complaint, a representative period, the Respondent, in the course and conduct of its business operations, performed services valued in excess of \$50,000 for various enterprises located outside the State of New York and for other enterprises located within the State of New York, each of which other enterprises meets a Board standard for the assertion of jurisdiction other than indirect inflow or indirect outflow. 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 Local 282, International Brotherhood of Teamsters, AFL-CIO (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 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All chauffeurs, Euclid and Turnapull operators employed by the Respondent at its Staten Island facility, excluding all other employees, guards and supervisors as defined in Section 2(11) of the Act.

Since on or before July 1, 1993, the Union has been the designated exclusive collective-bargaining representative of the Respondent's unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and has been designated as such representative by the Respondent. Such recognition has been embodied in a series of collective-bargaining agreements covering the Respondent's unit employees, the most recent of which is effective by its terms from July 1, 1993, through June 30, 1996 (the 1993-1996 agreement). At all material times since at least about July 1, 1993, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit.

The 1993-1996 agreement requires the Respondent to pay wages at the rate of \$22.065 per hour to its

chauffeurs for the period from July 1, 1993, through June 30, 1995. From about September 17, 1994, through about January 27, 1995, the Respondent paid employee Milverton Watson, a chauffeur, at a wage rate below this contractual rate. The Respondent engaged in this conduct without the consent of the Union and because employee Milverton Watson joined, supported, and assisted the Union and attempted to enforce the provisions of the collective-bargaining agreement between the Respondent and the Union, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

From on or before September 17, 1994, and at all material times, including since about December 5, 1994, the Respondent, acting through Dennis Maschietto, operated as the shop steward for the Union with respect to the unit employees. About November 7, 1994, the Respondent informed its employees that they should not have joined the Union.

About January 27, 1995, the Respondent discharged employee Milverton Watson and has failed and refused to reinstate or offer to reinstate him to his former position of employment, all because he joined, supported, and assisted the Union and attempted to enforce the provisions of the collective-bargaining agreement between the Respondent and the Union, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the 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.

2. By operating as the shop steward, the Respondent has been rendering unlawful assistance and support to a labor organization and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(2) and Section 2(6) and (7) of the Act.

3. By paying Milverton Watson at a wage rate below the contractual rate and by discharging him and failing and refusing to reinstate him or offer to reinstate him, the Respondent has been discriminating in regard to the hire and tenure and terms and 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)(3) and Section 2(6) and (7) of the Act.

4. By unilaterally paying Milverton Watson at a wage rate below the contractual rate the Respondent has also been failing and refusing to bargain collectively with the representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(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)(5), (3), and (1) by paying Milverton Watson at a wage rate below the contractual wage rate from about September 17, 1994, through about January 27, 1995, we shall order the Respondent to make him 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), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Watson on January 27, 1995, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Supreme Hauling Enterprises, Inc. d/b/a Supreme Trucking Co., Staten Island, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing its employees that they should not have joined the Union.

(b) Operating as the shop steward for the Union with respect to the following unit employees:

All chauffeurs, Euclid and Turnapull operators employed by the Respondent at its Staten Island facility, excluding all other employees, guards and supervisors as defined in Section 2(11) of the Act.

(c) Paying its employees at a wage rate below the contractual rate without the consent of the Union or because its employees join, support or assist Local 282, International Brotherhood of Teamsters, AFL-CIO, or attempt to enforce the provisions of the collective-bargaining agreement, or in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(d) Discharging its employees or failing or refusing to reinstate or offer to reinstate them to their former positions of employment, because they join, support or assist the Union or attempt to enforce the provisions of the collective-bargaining agreement between the Respondent and the Union, or in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(e) 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) Make Milverton Watson him whole, with interest, in the manner set forth in the remedy section of this Decision, for any loss of earnings attributable to its failure to pay him the contractual wage rate from about September 17, 1994, through about January 27, 1995.

(b) Offer Milverton Watson immediate and full reinstatement to his former job or, if that job no longer exists, to substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this Decision.

(c) Expunge from its files any and all references to the unlawful discharge, and notify the discriminatee in writing that this has been done.

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

(e) Post at its facility in Staten Island, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be

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."

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.

(f) 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. April 29, 1996

William B. Gould IV, Chairman

Charles I. Cohen, Member

Sarah M. Fox, Member

(SEAL) 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 inform our employees that they should not have joined the Union.

WE WILL NOT operate as the shop steward for the Union with respect to the following unit employees:

All chauffeurs, Euclid and Turnapull operators employed by us at our Staten Island facility, excluding all other employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT pay our employees at a wage rate below the contractual rate without the consent of Local 282, International Brotherhood of Teamsters, AFL-CIO, or because our employees join, support, or assist the Union or attempt to enforce the provisions of the collective-bargaining agreement, or in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT discharge our employees or fail or refuse to reinstate or offer to reinstate them to their former positions of employment because they join, support, or assist the Union or attempt to enforce the provisions of the collective-bargaining agreement between us and the Union, or in order to discourage em-

ployees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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 make Milverton Watson whole, with interest, for any loss of earnings attributable to our failure to pay him the contractual rate from about September 17, 1994, through about January 27, 1995.

WE WILL offer Milverton Watson immediate and full reinstatement to his former job or, if that job no longer

exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him.

WE WILL expunge from our files any and all references to the unlawful discharge and notify Milverton Watson in writing that this has been done.

SUPREME HAULING ENTERPRISES, INC.
D/B/A SUPREME TRUCKING CO.