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**Lily Transportation Corp. and International Brotherhood of Teamsters, AFL-CIO, Local 443.**  
Case 34-CA-7104

June 18, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND FOX

Upon a charge and amended charge filed by the Union on June 12 and September 28, 1995, the General Counsel of the National Labor Relations Board issued a complaint on September 29, 1995, against Lily Transportation Corp., 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, amended charge, and complaint, the Respondent failed to file an answer.

Thereafter, on October 31, 1995, the Respondent entered into an informal Board settlement agreement, which was approved by the Regional Director on December 15, 1995. By letters dated January 26 and March 14, 1996, the Respondent was asked to comply with the terms of the settlement agreement and was advised that if it did not comply with those terms by March 21, 1996, the settlement agreement would be revoked and the complaint reissued.

Thereafter, on March 28, 1996, the General Counsel issued an amended complaint and notice of hearing and order vacating settlement agreement alleging that the Respondent had failed to comply with the settlement and realleging that the Respondent had violated Section 8(a)(1) and (5) of the Act.

On May 3, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On May 9, 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 and amended complaint affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the complaint or amended complaint will

be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated October 23, 1995, and April 18, 1996, notified the Respondent that unless an answer were received to the complaint and amended complaint by October 30, 1995, and April 26, 1996, respectively, a Motion for Summary Judgment would be filed. Nevertheless, the Respondent never filed an answer to either the complaint or amended complaint.

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

At all material times, the Respondent, a corporation with its main office in Needham, Massachusetts, and an office and place of business in North Haven, Connecticut, has been engaged in the interstate transportation of freight. During the 12-month period ending February 29, 1996, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 in States other than the State of Massachusetts. 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 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 truck drivers employed by the Respondent at its North Haven, Connecticut facility, but excluding all other employees, all office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

At all material times, the Union has been the exclusive collective-bargaining representative of the unit and has been recognized as the representative by American Truck. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 1992, to December 31, 1994. At all material times, based on Section 9(a) of the Act, the Union was the exclusive collective-bargaining representative of American Truck's employees in the unit.

About April 1, 1994, the Respondent assumed American Truck's business at the North Haven, Connecticut facility, and since then has continued to operate that business in basically unchanged form. Since

April 1, 1994, the Respondent has hired as a majority of its employees in the unit individuals who were previously employed by American Truck in the unit. By virtue of these operations, the Respondent has continued the employing entity and is a successor of American Truck at the North Haven, Connecticut facility. At all times since April 1, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's unit employees.

About August 1994, the Respondent and the Union reached final agreement on the terms of a collective-bargaining agreement effective by its terms from April 1, 1994, through March 31, 1997 (the 1994-1997 agreement). About April 1, 1995, the Respondent failed and refused to pay a 29-cent-an-hour wage increase to each unit employee as required by the 1994-1997 agreement. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording it an opportunity to bargain with the Respondent with respect to this conduct.

Since about May 5, 1995, the Respondent has failed and refused to meet and bargain with the Union with regard to the terms and conditions of employment of the unit employees.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively 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 designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing and refusing, since about April 1, 1995, to pay the unit employees a contractual wage increase, we shall order the Respondent to comply with the 1994-1997 agreement 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 as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has failed and refused, since about May 5, 1995, to meet

and bargain with the Union, we shall order the Respondent, on request, to bargain with the Union as the exclusive collective-bargaining representative of the unit employees and, if an understanding is reached, to embody the understanding in a signed agreement.

#### ORDER

The National Labor Relations Board orders that the Respondent, Lily Transportation Corp., Needham, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to pay a 29-cent-an-hour wage increase to each unit employee as required by the April 1, 1994 through March 31, 1997 collective-bargaining agreement with the International Brotherhood of Teamsters, AFL-CIO, Local 443.

(b) Failing or refusing to meet and bargain with the Union with regard to the terms and conditions of employment of the unit employees.

(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) Comply with the terms of the 1994-1997 collective-bargaining agreement and make the unit employees whole, with interest, for any loss of earnings attributable to its failure to pay the contractual wage increase, in the manner set forth in the remedy section of this decision.

(b) On request, bargain with the Union as the exclusive collective-bargaining representative of the following unit employees and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers employed by the Respondent at its North Haven, Connecticut facility, but excluding all other employees, all office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

(c) Preserve and, within 14 days of a 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.

(d) Within 14 days after service by the Region, post at its facilities in Needham, Massachusetts, and North Haven, Connecticut, copies of the attached notice marked "Appendix.<sup>1</sup> Copies of the notice, on forms

<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."

provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 12, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 18, 1996

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Margaret A. Browning, Member

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Charles I. Cohen, Member

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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 fail or refuse to pay a 29-cent-an-hour wage increase to each unit employee as required by the April 1, 1994 through March 31, 1997 collective-bargaining agreement with the International Brotherhood of Teamsters, AFL-CIO, Local 443.

WE WILL NOT fail or refuse to meet and bargain with the Union with regard to the terms and conditions of employment of the unit employees.

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 comply with the 1994-1997 collective-bargaining agreement and make our unit employees whole, with interest, for any loss of earnings attributable to our failure to pay the contractual wage increase, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our unit employees and, if an understanding is reached, embody the understanding in a signed agreement. The unit is:

All full-time and regular part-time truck drivers employed by us at our North Haven, Connecticut facility, but excluding all other employees, all office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

LILY TRANSPORTATION CORP.