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S&J Concrete, Incorporated and Teamsters Local Union No. 682, affiliated with the International Brotherhood of Teamsters, AFL-CIO. Case 14-CA-23644

October 21, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on June 12, 1995, the General Counsel of the National Labor Relations Board issued a complaint on October 5, 1995, against S&J Concrete, Incorporated, 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.

Thereafter, on January 8, 1996, the Regional Director for Region 14 approved an informal settlement agreement entered into by the Respondent and the Union disposing of the allegations in the complaint. However, on February 22, 1996, the Regional Director issued an order revoking the settlement and an amended complaint alleging that the Respondent has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and the amended complaint, the Respondent failed to file an answer.

Thereafter, the parties entered into a second informal settlement agreement, approved by the Regional Director on April 4, 1996, disposing of the allegations of the amended complaint. However, on August 16, 1996, the Union filed an amended charge alleging various 8(a)(1) and (5) violations.

On the charge and amended charge, the General Counsel of the National Labor Relations Board issued a second order revoking settlement, and second amended complaint on August 20, 1996, against S&J Concrete, Incorporated, 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 second amended complaint, the Respondent failed to file an answer.

On September 23, 1996, the General Counsel filed a Motion for Default Summary Judgment with the Board. On September 25, 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 Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in a 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, amended complaint, and second amended complaint affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the respective complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Region, by letter dated September 4, 1996, notified the Respondent that unless an answer were received by September 9, 1996, a Motion for Default 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 Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Missouri corporation, with an office and place of business in St. Louis, Missouri, has been engaged in the nonretail sale of concrete ready mix. During the 12-month period ending July 31, 1996, the Respondent, in conducting its business operations, purchased and received at its St. Louis, Missouri facility goods valued in excess of \$50,000 from other enterprises, located within the State of Missouri, each of which other enterprises had received these goods directly from points outside the State of Missouri. 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 drivers employed by the Respondent at its St. Louis, Missouri facility EXCLUDING all office clerical and professional employees, guards, and supervisors as defined in the Act.

On August 30, 1993, the Union was certified as the exclusive collective-bargaining representative of the unit. At all times since that date, based on Section 9(a)

of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On February 15, 1995, the Respondent and the Union met for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment. During this meeting the Respondent advised the Union that the Respondent would not sign any collective-bargaining agreement with the Union until it had a batch plant of its own.

About January 9, 1996, the Respondent and the Union scheduled a meeting at the Respondent's facility on January 11, 1996, for the purposes of collective bargaining. About January 11, 1996, the Respondent failed to appear for the meeting with the Union. From January 11 through about April 1, 1996, the Respondent failed and refused to meet with the Union for the purposes of collective bargaining.

About June 13, 1996, the Union and the Respondent reached complete agreement on the terms and conditions of employment of the unit to be incorporated into a collective-bargaining agreement. Since about July 1, 1996, the Union has requested that the Respondent execute a written contract containing this agreement, but since that date the Respondent has failed and refused to do so.

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 designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to meet and bargain with the Union and to execute the collective-bargaining agreement reached by the parties about June 13, 1996, we shall order the Respondent to execute the agreement, give retroactive effect to that agreement, and make the unit employees whole for any losses attributable to the Respondent's failure to execute and implement the agreement. 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 1171 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, S&J Concrete, Incorporated, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Advising Teamsters Local Union No. 682, affiliated with the International Brotherhood of Teamsters, AFL-CIO that it will not sign any collective-bargaining agreement with the Union until the Respondent has a batch plant of its own.

(b) Failing or refusing to meet with the Union for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment of the unit:

All drivers employed by the Respondent at its St. Louis, Missouri facility EXCLUDING all office clerical and professional employees, guards, and supervisors as defined in the Act.

(c) Refusing to execute a written contract containing the terms of the agreement reached by the parties.

(d) 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 unit.

(b) Execute the collective-bargaining agreement reached by the parties about June 13, 1996, give retroactive effect to that agreement, and make the unit employees whole for any losses attributable to the Respondent's failure to execute and implement the agreement in the manner set forth in the remedy section of this decision.

(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 facility in St. Louis, Missouri, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in

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."

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. October 21, 1996

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins Jr., 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

WE WILL NOT advise Teamsters Local Union No. 682, affiliated with the International Brotherhood of Teamsters, AFL-CIO that we will not sign any collective-bargaining agreement with them until we have a batch plant of our own.

WE WILL NOT fail or refuse to meet with the Union for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment of our unit employees:

All drivers employed by the Employer at its St. Louis, Missouri facility EXCLUDING all office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT refuse to execute a written contract containing the terms of the agreement reached with the Union.

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, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit.

WE WILL execute the collective-bargaining agreement reached with the Union about June 13, 1996, give retroactive effect to that agreement, and make our unit employees whole for any losses attributable to our failure to execute and implement the agreement, in the manner set forth in a decision of the National Labor Relations Board.

S&J CONCRETE, INCORPORATED

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.