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Tradefair Discount, Inc. d/b/a Mike's #1 and United Food and Commercial Workers, Local 880, a/w United Food and Commercial Workers International Union, AFL-CIO, CLC. Case 8-CA-30460

September 20, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
BRAME

Upon a charge filed by the Union on January 20, 1999, the General Counsel of the National Labor Relations Board issued a complaint on June 28, 1999, against Tradefair Discount Inc. d/b/a Mike's #1, 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 16, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On August 18, 1999, 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 July 23, 1999, notified the Respondent that unless an answer were received by August 6, 1999, 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

At all material times, the Respondent, a corporation, with an office and place of business in Cleveland, Ohio, has been engaged in the operation of a retail food store. During the calendar year preceding the issuance of the complaint, the Respondent, in conducting its business

operations, received revenues valued in excess of \$500,000, and purchased and received at its Cleveland facility goods and materials in unchanged form, valued in excess of \$2000 from other enterprises located within the State of Ohio. Each of these other enterprises had received these goods and materials from points located directly outside the State of Ohio. 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 (Unit A), constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular food store employees in the Respondent's retail store outlet located at 7210 Superior Avenue, Cleveland, Ohio, excluding meat department employees, regular clerical personnel, managers and all professional employees, guards and supervisors as defined in the Act.

The following employees of the Respondent (Unit B), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All of the Respondent's regular meat department and deli employees in its retail store located at 7210 Superior Avenue, Cleveland, Ohio, including meat department heads, first cutters, journeymen meatcutters, meatcutter-counter employees, apprentice meat cutters, meat clerks, head deli clerks, deli clerks, and food service clerks, but excluding grocery department employees, regular clerical personnel, managers and all professional employees, guards and supervisors as defined in the Act.

In or about 1992 the Union was certified as the exclusive collective-bargaining representative of Unit A and Unit B and has been so recognized by the Respondent. Said recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from 1992 to 1995, and which was renewed thereafter on a yearly basis to the present.

At all times since 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in Unit A and Unit B.

On or about November 25, 1998, the Respondent ceased operations at its Cleveland, Ohio facility. On or about December 4 and 7, 1998, the Union requested that the Respondent bargain collectively over the effects of the closing of the Respondent's Cleveland, Ohio facility. Since on or about December 4, 1998, the Respondent has

refused the Union's request, and thus the Respondent has failed and refused to bargain collectively with the Union.

Since on or about December 4 and 7, 1998, the Union has requested that the Respondent furnish the Union with the following information: all documents in its possession or control that relate to the transfer of the merchandise or product to the Woodland Shop-Rite, and any other transfer or disposition of any assets of the Respondent to any other location, person or entity. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of Unit A and Unit B.

Since on or about December 4, 1998, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

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, 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)(1) and (5) by failing to bargain with the Union concerning the effects on unit employees of the termination of its business operations in Cleveland, Ohio, we shall order the Respondent, on request, to bargain with the Union concerning the effects of its decision to close its Cleveland, Ohio facility.

As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close its facility, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining

position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

Further, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive collective bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, Tradefair Discount, Inc. d/b/a Mike's #1, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Local 880, a/w United Food and Commercial Workers International Union, AFL-CIO, CLC, which is the designated exclusive bargaining representa-

tive of the Respondent's employees in the appropriate units, over the effects of its decision to close its Cleveland, Ohio facility. The appropriate units consist of:

Unit A:

All regular food store employees in the Respondent's retail store outlet located at 7210 Superior Avenue, Cleveland, Ohio, excluding meat department employees, regular clerical personnel, managers and all professional employees, guards and supervisors as defined in the Act.

Unit B:

All of the Respondent's regular meat department and deli employees in its retail store located at 7210 Superior Avenue, Cleveland, Ohio, including meat department heads, first cutters, journeymen meatcutters, meatcutter-counter employees, apprentice meat cutters, meat clerks, head deli clerks, deli clerks, and food service clerks, but excluding grocery department employees, regular clerical personnel, managers and all professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to provide necessary and relevant information to the Union, on request.

(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) On request, bargain with the Union concerning the effects on the unit employees of the termination of the Respondent's business operations at its Cleveland, Ohio facility, and the termination of the unit employees.

(b) Pay its former employees in the units described above their normal wages when in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from November 25, 1998, the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week pe-

riod at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy portion of this decision.

(c) Furnish to the Union in a timely manner the information requested by the Union on December 4 and December 7, 1998.

(d) 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 back-pay due under the terms of this Order.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"¹ to the Union and to all current and former unit employees.

(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. September 20, 1999

John C Truesdale,	Chairman
Sarah M. Fox,	Member
J. Robert Brame III,	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 refuse to bargain with United Food and Commercial Workers Local 880, a/w United Food and Commercial Workers International Union, AFL-CIO, CLC, which is the designated exclusive bargaining representative of our employees in the appropriate units, over

¹If 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."

the effects of our decision to close our Cleveland, Ohio facility. The appropriate units consist of:

Unit A:

All regular food store employees in our retail store outlet located at 7210 Superior Avenue, Cleveland, Ohio, excluding meat department employees, regular clerical personnel, managers and all professional employees, guards and supervisors as defined in the Act.

Unit B:

All of our regular meat department and deli employees in our retail store located at 7210 Superior Avenue, Cleveland, Ohio, including meat department heads, first cutters, journeymen meatcutters, meatcutter-counter employees, apprentice meat cutters, meat clerks, head deli clerks, deli clerks, and food service clerks, but excluding grocery department employees, regular clerical personnel, managers and all profes-

sional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to provide necessary and relevant information to the Union, on request.

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, bargain with the Union concerning the effects on the unit employees of the termination of our business operations at our Cleveland, Ohio facility, and the termination of our unit employees.

WE WILL pay our former employees in the units described above their normal wages for the period of time set forth in the decision underlying this notice to employees, with interest.

WE WILL furnish to the Union in a timely manner the information requested by the Union on December 4 and 7, 1998.

TRADEFAIR DISCOUNT, INC. D/B/A MIKE'S #1