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Southwest Building Center, Inc. and Teamsters Local Union No. 682, affiliated with International Brotherhood of Teamsters, AFL-CIO. Case 14-CA-26010

September 29, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND HURTGEN

Upon a charge filed by the Teamsters Local Union No. 682, affiliated with the International Brotherhood of Teamsters, AFL-CIO, the Union, on April 17, 2000, the General Counsel of the National Labor Relations Board issued a complaint on July 28, 2000, against Southwest Building Center, Inc., 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 30, 2000, the General Counsel filed a Motion for Default Summary Judgment with the Board. On September 1, 2000, 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 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 Default Summary Judgment disclose that the Region, by letter dated August 16, 2000, notified the Respondent that unless an answer were received by August 23, 2000, 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 and distribution of building supplies and related products. During the 12-month period ending June 30, 2000, the Respondent, in conducting its business operations, purchased and received at its St. Louis, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri. During the 12-month period ending December 31, 1999, 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, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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

Since about August 1, 1990 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from August 1, 1996 until July 31, 1999. At all times since about August 1, 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

About April 30, 1999, the Union, by letter, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

At various times during August through December 1999, the Union, by telephone, left messages requesting that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

About January 21, 2000, the Union, in person, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

At various times during February through April 2000, the Union, by telephone and in person, left messages requesting that Respondent bargain collectively with the

Union as the exclusive collective-bargaining representative of the Unit.

About March 30, 2000, the Union, by letter, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

Since about October 18, 1999, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused 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 and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees since October 18, 1999, we shall order it to bargain collectively and in good faith with the Union with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Southwest Building Center, Inc., St. Louis, Missouri its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Teamsters Local Union No. 682, affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

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

(b) 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 as the exclusive representative of the employees in the above-mentioned appropriate unit concerning terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) 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 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 October 18, 1999.

(c) 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 29, 2000

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, 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 and refuse to bargain collectively and in good faith with the Teamsters Local Union No.

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."

682, affiliated with the International Brotherhood of Teamsters, AFL-CIO, as the exclusive collective bargaining representative of our employees in the following appropriate unit:

All drivers, yardmen, and outside laborers employed by us at our St. Louis, Missouri facility. EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

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 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the above-mentioned bargaining unit.

SOUTHWEST BUILDING CENTER, INC.