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Victory Van Corporation and International Union of Operating Engineers, Local 99, AFL-CIO. Case 5-CA-31378

February 17, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on August 5, 2003, the General Counsel issued the complaint on October 27, 2003, against Victory Van Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On December 29, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On January 6, 2004, 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 Judgment

Section 102.20 of the Board's Rules and Regulations provides 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 stated that unless an answer was filed by November 10, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 3, 2003, notified the Respondent that unless an answer was received by December 17, 2003, a motion for default 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 Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with an office and place of business located in Alexandria, Virginia, has been engaged in the business of

providing moving, shipping, receiving and warehousing services to prime contractors for the Department of Housing and Urban Development. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Virginia directly to points located outside the State of Virginia, and performed services valued in excess of \$50,000 in states other than the State of Virginia. 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 International Union of Operating Engineers, Local 99, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Stephen L. Henegar	Senior Vice-President
Michael S. Smith	Chief Financial Officer

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

Included: All full-time and regular part-time moving van drivers, two and one-half ton truck drivers, tractor truck drivers, forklift operators, shipping and receiving clerks, and material handling laborers, employed by the Employer at the HUD Building, 7th and D Streets, S.W., Washington, D.C.

Excluded: All other employees, casual employees, professional employees, office clerical employees, guards and supervisors as defined by the Act.

Since about March 9, 2000, 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 March 9, 2000, through March 8, 2003.

At all times since about March 9, 2000, and at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about February 25, 2003, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement, effective March 9, 2003.

Since about March 12, 2003, the Union has requested that the Respondent execute a written contract containing the agreement described above, and implement the wage increase negotiated as part of that agreement.

Since about March 12, 2003, the Respondent, by Stephen L. Henegar and/or Michael S. Smith, has failed and refused the Union's oral and written requests to execute the agreement.

By letter dated September 9, 2003, the Respondent, by Stephen L. Henegar, states that on February 25, 2003, the Respondent and the Union "did finally mutually agree to the terms and conditions of a new one year contract" and that the Union's August 4, 2003 unfair labor practice charge is based on "our failure to implement the March 9, 2003 negotiated wage increase."

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 within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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 since March 12, 2003, to execute a written contract containing the agreement reached on February 25, 2003, we shall order the Respondent to execute the agreement and give retroactive effect to its terms, including the provision requiring the implementation of a wage increase. We shall also order the Respondent to make the unit employees whole for any losses attributable to its failure to implement the wage increase required by the agreement, as set forth in *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).

ORDER

The National Labor Relations Board orders that the Respondent, Victory Van Corporation, Alexandria, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union of Operating Engineers, Local 99, AFL-CIO, as the exclusive collective-bargaining representative for the unit described below, by failing and refusing to execute a written contract containing the complete agreement reached with the Union regarding the terms and conditions of employment of unit employees. The unit is:

Included: All full-time and regular part-time moving van drivers, two and one-half ton truck drivers, tractor truck drivers, forklift operators, shipping and receiving clerks, and material handling laborers, employed by the Employer at the HUD Building, 7th and D Streets, S.W., Washington, D.C.

Excluded: All other employees, casual employees, professional employees, office clerical employees, guards and supervisors as defined by the Act.

(b) Failing and refusing to implement wage increases required by the agreement.

(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) Execute a written contract containing the agreement reached by the Respondent and the Union on February 25, 2003, containing terms and conditions of employment, give retroactive effect to the agreement, and make unit employees whole for any loss of earnings they have suffered as a result of the Respondent's failure to implement the wage increase required by the agreement, with interest as set forth in the remedy section of this Decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Alexandria, Virginia, copies of the attached notice marked "Appendix".¹ Copies of the notice, on

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 Judge's Order".

forms provided by the Regional Director for Region 5, 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 March 12, 2003.

(d) 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., February 17, 2004

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Ronald Meisburg, 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 Federal labor law and has ordered us to post and obey this notice.

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Union of Operating Engineers, Local 99, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the unit described below, by failing and refusing to execute a written contract containing the complete agreement reached with the Union regarding the terms and conditions of employment of unit employees. The unit is:

Included: All full-time and regular part-time moving van drivers, two and one-half ton truck drivers, tractor truck drivers, forklift operators, shipping and receiving clerks, and material handling laborers, employed by us at the HUD Building, 7th and D Streets, S.W., Washington, D.C.

Excluded: All other employees, casual employees, professional employees, office clerical employees, guards and supervisors as defined by the Act.

WE WILL NOT fail and refuse to implement wage increases required by the agreement.

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 execute a written contract containing the agreement reached by us and the Union on February 25, 2003, containing terms and conditions of employment, WE WILL give retroactive effect to that agreement, and WE WILL make unit employees whole for any loss of earnings they have suffered as a result of our failure to implement the wage increase required by the agreement, with interest.

VICTORY VAN CORPORATION