B/E Aerospace and Burns Aerospace Corporation *and* Miscellaneous Warehousemen, Drivers and Helpers Local 986, affiliated with International Brotherhood of Teamsters, AFL–CIO

B/E Aerospace *and* Miscellaneous Warehousemen, Drivers and Helpers Local 986, affiliated with International Brotherhood of Teamsters, AFL–CIO. Cases 31–CA–21954 and 31–CA–22038

April 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On September 30, 1996,[1] the General Counsel of the National Labor Relations Board issued an order consolidating cases, a consolidated complaint and a notice of hearing in this proceeding. The complaint alleges in pertinent part (par. 7 and subpar. 7(a)) that Respondent B/E Aerospace (B/E) and Respondent Burns Aerospace Corporation (Burns) have violated Section 8(a)(5) and (1) of the National Labor Relations Act since on or about February 14 by failing and refusing, and continuing to fail and refuse, to recognize Miscellaneous Warehousemen, Drivers and Helpers Local 986, affiliated with International Brotherhood of Teamsters, AFL–CIO (the Union) as the exclusive representative, under Section 9(a) of the Act, of the employees in the unit, particularly by on or about February 14, March 29, May 2, and August 27 refusing to provide information requested by the Union that is relevant and necessary to the Union's performance of its duties.[2]

Although properly served with a copy of the complaint, Burns has failed to file an answer to it. B/E filed an answer. On January 28, 1997, the General Counsel filed a Motion to Transfer Case to the Board and for Summary Judgment Regarding Respondent Burns. In his motion, the General Counsel asserts that if Burns continues to exist in any form, the Motion for Summary Judgment as to Burns should be granted. On January 30, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. B/E filed a response to the notice to show cause. Burns did not file a response. The General Counsel filed a reply to B/E's response to the notice to show cause.

Ruling on the Motion for Summary Judgment Regarding Respondent Burns

Section 102.20 of the Board's Rules and Regulations states that if an answer to the complaint is not filed within 14 days from the service of the complaint, all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. Additionally, the complaint itself states that if an answer to the complaint is not filed within 14 days from the service of the complaint, all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.

In its response to the notice to show cause, B/E asserts that: (1) it purchased Burns on January 24, at which time Burns "effectively ceased to exist"; (2) Burns exists solely as a "shelf" corporation, and therefore B/E did not file an answer to the complaint on behalf of Burns; (3) Burns has no assets, employees, or active operations; (4) because Burns does not exist, a decision against it would effectively be a decision against B/E; (5) the General Counsel's separating Burns from B/E for purposes of summary judgment is impossible, because B/E purchased Burns; and (6) accordingly, the Motion for Default Summary Judgment should be denied and the Respondents (i.e., B/E and Burns) should be given the opportunity to provide information to the General Counsel regarding Burns' nonexistence.

In his reply to B/E's response to the Notice to Show Cause, the General Counsel responds to B/E's argument that a decision against Burns would effectively be a decision against B/E by noting that most of B/E's potential liability in this consolidated proceeding is independent of, and not derivative of, Burns' liability, and that the only substantive unfair labor practice allegation directed against both Burns and B/E is failure and refusal to provide information requested by the Union. The other substantive unfair labor practice allegations are directed only against B/E. The General Counsel also reiterates that he is seeking summary judgment only against Burns, not B/E. The General Counsel notes that B/E has not denied the General Counsel's assertion in his Motion for Summary Judgment that Burns continues to exist as a corporation in Delaware and California, and appears still to use registered corporate agents in those States. In sum, the General Counsel asserts that B/E's response to the Notice to Show Cause reveals that Burns still exists as a passive rather than active corporation and notes that neither Burns itself nor B/E acting on Burns' behalf has filed an answer to the complaint for Burns. Consequently, the General Counsel urges the Board to grant the Motion for Summary Judgment as to Burns only.

In view of Burns' failure to file an answer to the complaint, and in the absence of good cause having been shown for that failure, we grant the General

[1] All dates are 1996, unless otherwise stated.

[2] The complaint also alleges that B/E additionally violated the Act by other conduct not at issue in this summary judgment proceeding against Burns. The complaint does not allege any other unlawful conduct by Burns.

Counsel's Motion for Summary Judgment regarding Respondent Burns.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, and until January 24, Burns was a corporation engaged in the reconditioning and assembly of airline seats at its Inglewood, California facility. Prior to January 24, Burns, in the course and conduct of its business operations located in Inglewood, California, annually sold and shipped goods or provided services in excess of $50,000 directly to customers located outside the State of California. We find that at all material times Burns has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times prior to 1996, Burns was engaged in the business of reconditioning and assembling airline seats at its Inglewood, California facility. At all material times, the Union and Burns had in effect a collective-bargaining agreement, which was effective by its terms from June 1, 1993, to May 31, 1996, and which concerns the rates of pay, wages, hours of employment, and other terms and conditions of employment of Burns' employees in the following unit, which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The unit is:

> *Included*: All truck drivers, shipping/receiving clerks, foam cutters, plastic fabrication employees, mechanical assemblers, general helpers, sewing machine operators, general plastics workers, fabric cutters, painters, foam bonders, maintenance mechanics and stockroom attendants, employed at the 502 North Oak Street, Inglewood, California location.
>
> *Excluded*: All other employees, including all office clerical employees, professional employees, guards and supervisors, as defined in the Act.

With respect to Burns, at all times since at least from June 1, 1993, to January 24, the Union, based on Section 9(a) of the Act, has been and is the exclusive representative of the employees in the unit described above for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. On or about January 24, B/E purchased the business of Burns. Commencing on or about February 14 and continuing to date, and more particularly on February 14, March 29, May 2, and August 27, the Union has requested and is requesting Burns to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive collective-bargaining representative of the employees in the unit described above. Since on or about February 14, and continuing to date, Burns has failed and refused, and continues to fail and refuse, to recognize the Union as the exclusive Section 9(a) representative of the employees in the unit described above, by on or about February 14, March 29, May 2, and August 27 refusing to provide information requested by the Union that is relevant and necessary to the Union's performance of its duties.

CONCLUSION OF LAW

By the acts and conduct described above, Burns has failed and refused to bargain collectively and in good faith with the Union as the designated representative of the employees in the unit, and (1) has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act, and (2) has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of their rights as guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

The acts and conduct of Burns described above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Burns 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.

We shall order that Burns provide the information requested by the Union that is relevant and necessary to the Union's performance of its duties.

ORDER

The National Labor Relations Board orders that the Respondent, Burns Aerospace Corporation, Inglewood, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide information requested by the Union that is relevant and necessary to the Union's performance of its duties.

[3] The claim that Burns has ceased active operations and exists only as a "shelf" (or shell) corporation raises no material issues requiring denial of the General Counsel's motion. See *East Dayton Tool & Die Co.*, 239 NLRB 141 fn. 1 (1978). Because the General Counsel is not seeking summary judgment against B/E, we do not pass in this proceeding on whether B/E is liable for Burns' unlawful failure to provide information. In its answer to the complaint, B/E has denied engaging in such conduct.

(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) Provide the information requested by the Union on or about February 14, March 29, May 2, and August 27, 1996.

(b) Within 14 days after service by the Region, post at its Inglewood, California facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 31, 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 April 11, 1996.

(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 Respondent has taken to comply.

[4] 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."

MEMBER HIGGINS, dissenting.

I would deny summary judgment. The answer filed by B/E will occasion a hearing and thus nothing is served by granting a summary judgment now. The circumstances of this case are quite unique, and it would be an anomalous result if B/E prevails on its contention that its refusal to provide the very same information is not unlawful. In these circumstances, I would deny summary judgment or at least expressly permit B/E to litigate the legality of the refusal (by B/E *and Burns*) to supply the information.

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 provide information requested by the Union that is relevant and necessary to the Union's performance of its duties.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide the information requested by the Union on or about February 14, March 29, May 2, and August 27, 1996.

BURNS AEROSPACE CORPORATION