

Aaron Brothers Company, a Division of Chromalloy American Corporation and Teamsters Automotive Workers Union, Local No. 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 21-CA-17396

September 19, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On June 21, 1979, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Aaron Brothers Company, a Division of Chromalloy American Corporation, City of Commerce, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

I. STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Los Angeles, California, on April 17, 1979. The charge was filed on November 29, 1978, by Teamsters Automotive Workers Union, Local No. 495, International Brotherhood of Teamsters, Chauffeurs, and Helpers of America (Union). The complaint issued on February 7, 1979, was amended during the hearing, and alleges that Aaron Brothers Company, a Division of Chromalloy

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

American Corporation (Respondent)¹ has violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act). Post-trial briefs were filed for the General Counsel and for Respondent.

II. JURISDICTION

Respondent operates a chain of retail art supply stores. Its annual revenues exceed \$500,000, and it annually causes materials and supplies of a value exceeding \$50,000 to be transported across state lines. The complaint alleges, the answer admits, and it is found that Respondent is an employer engaged in commerce and operations affecting commerce within Section 2(2), (6), and (7) of the Act.

III. LABOR ORGANIZATION

It is undisputed that the Union is a labor organization within Section 2(5) of the Act.

IV. ISSUES

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by including its union represented employees in a companywide wage increase effective October 5, 1978, and by generally refusing to bargain with the Union on and after November 9.

The answer denies any wrongdoing.

V. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

On September 4, 1975, following a Board election,² the Union was certified as the bargaining representative of Respondent's employees in this unit:

All warehouse employees, including truckdrivers employed by Respondent at its store located at 940 Orange Drive, Los Angeles, California; but excluding all other employees, including office clerical employees, guards, and supervisors as defined in the Act.

Respondent thereafter refused to bargain with the Union to test the validity of the certification. By Decision dated April 30, 1976, the Board ordered Respondent to bargain. See *Aaron Brothers Corp.*, 223 NLRB 1179 (1976). This Order was enforced by a decision of the Ninth Circuit, which issued on October 21, 1977. See *N.L.R.B. v. Aaron Brothers Corp.*, 563 F.2d 409 (9th Cir. 1977).

Respondent and the Union met for the first time to negotiate a contract on March 30, 1978. They met again on April 17. By letter of April 20, 1978, Respondent's spokesman, John Fretwell, informed the Union that Respondent would be moving its warehouse facility, which was the locus of unit work, from 940 Orange Drive, Los Angeles, to a location in City of Commerce. The letter did not divulge a date for the move or any other particulars.

¹ Respondent's name appears as amended at the hearing.

² Case 31-RC-3083.

In a May 11 bargaining meeting, which was the first following Fretwell's letter, Fretwell was unable to provide any details about the proposed move but did venture that the new facility "more than likely" would require additional employees. Finally, during a meeting on June 15, particularization about the move still lacking, the Union's spokesman, John Krasnick, suggested that negotiations be suspended until September 15. Krasnick's stated reason was that the move by then would be completed, and the nature of the new operation would be known.³ Fretwell agreed. In late August Fretwell informed Krasnick that construction of the new warehouse was going "very slowly" because of a cement shortage, and they agreed to resume negotiations on November 9 instead of September 15.

By notice dated September 22, 1978, Respondent notified its employees companywide, including those in the bargaining unit, that they would be receiving an hourly wage increase of 19 cents, effective October 5. The Union first learned of the increase during the November 9 bargaining meeting when Fretwell gave Krasnick a copy of the employee notice. Fretwell told Krasnick that he had asked that the increase be withheld from the unit employees and was "embarrassed" that it had not. He voiced agreement with Krasnick's accusation that the inclusion of the unit employees in the raise was an unfair labor practice. With that, Krasnick proposed that the new wage levels be used as a base for the continued negotiation of the wage issue. Fretwell declined, explaining that he was without authority to offer anything additional. Krasnick countered that he would have to file an unfair labor practice charge in that event, and Fretwell said that he would not blame Krasnick if he did.⁴ The present charge resulted.

³ Krasnick is credited that uncertainty about the move was his stated and true reason for seeking a suspension of negotiations. Fretwell's testimony that Krasnick cited "pressing business, personal and otherwise" is rejected. Not only did Robert Snyder, Respondent's vice president of personnel, testify that Krasnick suggested the delay "hoping that that would give us adequate time to make our move," but, as discussed in the succeeding footnote, Fretwell revealed himself during the course of his testimony as eminently capable of self-serving falsehood. Finally, Krasnick's version, corroborated in significant part by Snyder, is the more plausible.

⁴ This is Krasnick's credited version of the conversation. Fretwell conceded in his testimony that, with one exception, Krasnick's version was "substantially accurate." Fretwell denied that Krasnick proposed using the new wage levels as a base for continued bargaining. This discrepancy is resolved in Krasnick's favor because his overall demeanor was more convincing than Fretwell's; his testimony on this point and generally carried greater substantive plausibility than Fretwell's in instances of conflict; and, as will be developed, Fretwell testified on one occasion with such palpable falseness as to cast serious doubt on his credibility in any case of conflict.

Thus, Fretwell testified that while he voiced agreement with Krasnick that inclusion of the unit employee in the raise was an unfair labor practice, etc., he in fact had recommended the raise and saw no need to give the Union prior notice because he doubted that the Union represented the employees or that it was "sincerely working" to obtain a contract for them. His majority doubts assertedly were based on employee turnover and growth of the complement since the election in 1975. Fretwell's story continued—and this is where his testimonial unreliability reached full bloom—that he misrepresented his position to Krasnick regarding the raise to "soften up the impact" and "ease" Krasnick's situation.

Fretwell, in short, is disbelieved that he took one position in the inner councils of management and expressed another to Krasnick. It is concluded that his position as stated to Krasnick had been his internal position as well. Snyder's attempted corroboration of Fretwell, by testifying that Fretwell had recommended the raise for unit employees, failed its purpose, given the rank unbeliability of that which it purported to corroborate.

The notice announcing the October 5 raise referred to "the company's policy to annually review your wage rates." The last previous companywide raise went into effect on June 9, 1977, and was 16 cents per hour. The employee notice on that occasion attributed the raise to "a banner year" in 1976 and called for "greater effort" from the employees "in order for the corporation to be able to continue this policy in years ahead." The last general raise previous to that was 13 cents per hour and became effective on August 3, 1976. The notice accompanying that raise urged "continued cooperation and production, as well as your loyalty—so that we may continue to be in a position to annually review your wages."

The 1976 general increase was preceded by one of 20 cents per hour, effective on July 8, 1975, and was heralded by an employee notice asking that they "continue to work together so that more pay increases will be forthcoming in the future." There is no evidence of general increases in years before 1975. Robert Snyder, Respondent's assistant vice president of personnel, testified that the general raises from 1975 through 1978 occurred as "a pattern from June to October" because of economic considerations. He elaborated that, summer being a slow season, Respondent prefers to grant increases in the early fall, "when business started to pick up again."

Respondent began transferring unit employees to the new City of Commerce facility at 1270 South Goodrich Boulevard in late August, and the move was largely completed by mid-September. Twenty-three of 27 unit employees at the old facility transferred to the new. By November 17 the new facility had a complement of 40 nonsupervisory warehouse employees; by December 14 the number had grown to 42; and by April 15, 1979, it had expanded to 52. Snyder testified that Respondent projects a nonsupervisory warehouse complement of about 80 within 1 year or 2. The old facility had 60,000 square feet of warehouse area, the new 175,000. The nature of the warehouse operation is about the same at the new as at the old facility.

B. Conclusions

It is concluded that Respondent violated Section 8(a)(5) and (1) as alleged by including the unit employees in the October 5 wage increase without first notifying the Union and giving it a chance to bargain over the change and by thereafter refusing to entertain wage negotiations, as shown by Fretwell's remarks to Krasnick in the November 9 meeting.

Rejected out of hand is Respondent's contention that the move to the new location and the attendant changes in complement size, etc., relieved Respondent of its bargaining obligation. Change in locus of unit work is of no particular moment in circumstances such as the present, and there easily was sufficient carryover of unit personnel relative to the overall complement at the new location⁵ and sufficient continuity in the nature of the operation generally to insure

⁵ For this purpose, "the appropriate point of analysis is ordinarily the date the new facility opened and began full operations." See *Lammert Industries, et al. v. N.L.R.B.*, 578 F.2d 1223, 1226 (7th Cir. 1978). Subsequent enlargements of complement, actual or projected, thus are irrelevant, at least in the present circumstances.

continued unit appropriateness and preserve the bargaining obligation. See *Lammert Industries v. N.L.R.B.*, 578 F.2d 1223 (7th Cir. 1978); *Republic Engraving and Designing Company, a Division of Nutten Inc., et al.*, 236 NLRB 1150, 1154 (1978). See also *Western Distributing Co. d/b/a Western-Davis Company, Inc.*, 236 NLRB 1224, 1226 (1978). Also rejected is the contention that union lassitude in bargaining licensed Respondent's conduct. There is nothing to suggest that the Union ever abandoned its role as bargaining representative or acquiesced in Respondent's conduct.

Finally, Respondent's contention that the wage increase was permissible as a continuation of a pattern of such increases dating back to 1975 is rejected. As stated in *Allis Chalmers Corporation*, 237 NLRB 290, 291 (1978):

[U]nilateral actions are violative even when they are made pursuant to an established company policy, if they are taken without affording the representative an opportunity to bargain.⁶

CONCLUSIONS OF LAW

1. By instituting the wage increase of 19 cents per hour, effective October 5, 1978, for those of its employees represented by the Union without first notifying and affording the Union a chance to bargain concerning that increase, as found herein, Respondent violated Section 8(a)(5) and (1) of the Act.

2. By refusing on and after November 9, 1978, to negotiate wage changes with the Union beyond that unlawfully instituted on October 5, as found herein, Respondent further violated Section 8(a)(5) and (1).

ORDER⁷

The Respondent, Aaron Brothers Company, a Division of Chromalloy American Corporation, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Instituting wage increases or other changes in the terms and conditions of employment of the employees in the unit described below without first consulting with and giving Teamsters Automotive Workers Union, Local No. 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America a chance to bargain concerning those changes.⁸

(b) Refusing to negotiate wage changes beyond that it unlawfully instituted on October 5, 1978, or otherwise failing to meet and negotiate with the above Union as the representative of its employees in this appropriate unit:

⁶ This is not to imply acceptance of the factual premise underlying Respondent's argument—namely, that the record establishes a definable pattern to annual increases.

⁷ All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusion and Order, and all objections thereto shall be deemed waived for all purposes.

⁸ Nothing herein shall be construed, however, as requiring Respondent to rescind any wage increase heretofore granted. See *Lammert Industries*, 229 NLRB 895 (1977).

All warehouse employees, including truckdrivers, employed by Respondent at its warehouse facility located at 1270 South Goodrich Boulevard, City of Commerce, California; excluding all other employees, including office clerical employees, guards, and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in their exercise of rights under the Act.

2. Take this affirmative action:

(a) Notify and, upon request, bargain with the above Union before making any changes in the wages, hours, and/or other terms and conditions of employment of the employees in the above unit.

(b) Upon request, bargain collectively with the above Union as the exclusive representative of its employees in the above unit concerning their terms and conditions of employment and if an agreement is reached embody it in a signed document.

(c) Post as its warehouse facility in City of Commerce, California, the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof and be maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁹ In the event that 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."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The hearing held in Los Angeles, California, on April 17, 1979, in which we participated and had a chance to give evidence, resulted in a decision that we had committed certain unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, and this notice is posted pursuant to that decision.

WE WILL NOT institute wage increases or other changes in the terms and conditions of employment of the employees in the unit described below without first consulting with and affording Teamsters Automotive Workers Union, Local No. 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a chance to bargain concerning those changes.

WE WILL NOT refuse to negotiate wage changes beyond that we unlawfully instituted on October 5, 1978, or otherwise fail to meet and negotiate with the above union as the representative of our employees in this appropriate unit:

All warehouse employees, including truckdrivers, employed by Respondent at its warehouse facility located at 1270 South Goodrich Boulevard, City of Commerce, California; excluding all other employees, including office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere

with, restrain, or coerce employees in their exercise of rights under the Act.

WE WILL notify and, upon request, bargain with the above union before making any changes in the wages, hours, and/or other terms and conditions of employment of the employees in the above unit.

WE WILL, upon request, bargain collectively with the above union as the exclusive representative of our employees in the above unit concerning their terms and conditions of employment; and, if an agreement is reached, embody it in a signed document.

AARON BROTHERS COMPANY, A DIVISION OF
CHROMALLOY AMERICAN CORPORATION