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Status Enterprises, Inc. d/b/a Almond Freight Lines & Touch Transportation and Teamsters Local 200, International Brotherhood of Teamsters, AFL-CIO. Case 30-CA-14772

February 29, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
BRAME

Upon a charge filed by the Union on June 18, 1999, the General Counsel of the National Labor Relations Board issued a complaint on October 29, 1999, against Status Enterprises, Inc. d/b/a Almond Freight Lines (Respondent Status) and Touch Transportation (Respondent Touch), collectively the Respondent, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, each Respondent failed to file an answer.

On January 31, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On February 3, 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 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 November 24, 1999, notified Respondent that unless an answer were received by December 1, 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, Respondent Status, a corporation with offices and a place of business in Milwaukee, Wisconsin, and Rockford, Illinois has been engaged in busi-

ness as a trucking company, shipping freight interstate. During the calendar year preceding the issuance of the complaint, Respondent Status, in conducting its business operations, derived gross revenue in excess of \$50,000 for the transportation of freight from the State of Wisconsin directly to points outside the State of Wisconsin.

At all material times, Respondent Touch, a corporation with an office and place of business in Bensonville, Illinois, has been engaged in business as a trucking company, shipping freight interstate. During the calendar year preceding the issuance of the complaint, Respondent Touch, in conducting its business operations, derived gross revenue in excess of \$50,000 for the transportation of freight from the State of Illinois directly to points outside the State of Illinois.

At all material times, Respondent Status and Respondent Touch have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; and have provided services for and made sales to each other. We find that they constitute a single integrated business enterprise and are a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find 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 Respondent Status, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in work covered by the National Master Freight Agreement and the Central States Local Cartage Agreement, effective during the period April 1, 1998 through March 31, 2003.

Since July 1997, 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 Respondent Status. This recognition has been embodied in a collective-bargaining agreement, effective from April 1, 1998, through March 31, 2003. 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 or about January 18, 1999, Respondent Status closed its Milwaukee, Wisconsin facility without affording the Union prior notice or an opportunity to bargain about the effects of the closure.

This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

CONCLUSION OF LAW

By closing its Milwaukee, Wisconsin facility without giving prior notice to the Union and without affording the Union an opportunity to bargain about the effects of the closure on unit employees, the Respondent has 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.

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 Milwaukee, Wisconsin 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 Milwaukee, Wisconsin 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 Milwaukee, Wisconsin 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 business days after receipt 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 Milwaukee, Wisconsin facility is currently closed, we shall, in addition to ordering posting at Rockford, Illinois, order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former Milwaukee employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Status Enterprises, Inc. d/b/a Almond Freight Lines & Touch Transportation, Milwaukee, Wisconsin, and Rockford and Bensonville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to give Teamsters Local 200, International Brotherhood of Teamsters, AFL-CIO, prior notice of its decision to close its facility and an opportunity to bargain about the effects of that decision on the unit employees. The bargaining unit consists of:

All employees engaged in work covered by the National Master Freight Agreement and the Central States Local Cartage Agreement, effective during the period April 1, 1998 through March 31, 2003.

(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 over the effects on unit employees of the closure of its facility, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay limited backpay to the unit employees, with interest, in the manner set forth in the remedy section of this Decision and Order.

(c) 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 backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Rockford, Illinois, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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. Because the Respondent has closed the facility involved in Milwaukee, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all former Milwaukee employees employed by the Respondent at the time it closed its facility.

(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. February 29, 2000

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 fail to give Teamsters Local 200, International Brotherhood of Teamsters, AFL-CIO, prior notice of our decision to close our Milwaukee, Wisconsin facility and an opportunity to bargain about the effects of that decision on the unit employees. The bargaining unit consists of:

All employees engaged in work covered by the National Master Freight Agreement and the Central States Local Cartage Agreement, effective during the period April 1, 1998 through March 31, 2003.

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 over the effects on unit employees of the closure of our facility, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay limited backpay to the unit employees, with interest.

STATUS ENTERPRISES, INC. D/B/A ALMOND
FREIGHT LINES & TOUCH TRANSPORTATION

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."