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Advanced Shipping, Inc. and General Teamsters, Warehousemen & Helpers Union, Local 890, International Brotherhood of Teamsters, AFL-CIO. Case 21-CA-32512

December 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on January 26, 1998, the General Counsel of the National Labor Relations Board issued a complaint on June 21, 1999, against Advanced Shipping, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On November 12, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On November 15, 1999, 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 a response to the Notice to Show Cause.

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, at the Respondent's request, granted extensions of time for filing of an answer to September 7 and November 8, 1999.¹ The Respondent did not request a further extension of time for filing an answer and failed to file an answer by November 8, 1999, despite being notified by the Region of its obligation to do so.

In response to the Notice to Show Cause, the Chapter 7 bankruptcy trustee filed an opposition to the General Counsel's Motion for Summary Judgment. The trustee's

opposition asserts that she understood that the parties were trying to reach a negotiated settlement of the case, and that the only possible relief against the Respondent is monetary relief because the Respondent has been defunct since before being placed in bankruptcy in April 1998. The trustee's opposition also contends that "[t]he NLRB's claim for damages exceeds actual possible damages. There is no basis for a 'priority' claim in the bankruptcy case."

Attached to the Opposition, which was filed on November 26, 1999, is an "Answer to Complaint" dated November 22, 1999 and signed by counsel for the trustee. The answer states in full:

Martha Bowman, Chapter 7 trustee for Advanced Shipping, Inc. hereby answers the complaint referenced above as follows:

Based upon lack of information and belief, the allegations of the complaint are denied.

We find that the trustee's purported answer is untimely. The Respondent requested and received two extensions of time in which to file an answer, the latest of which was November 8, 1999. The Respondent, however, did not file a document purporting to be an answer until November 26, 1999, when the above-described answer was attached to the trustee's opposition to the General Counsel's Motion for Summary Judgment. The Respondent, through its trustee's counsel, has not provided any satisfactory explanation for its failure to file a timely answer, despite being given two extensions of time and the appropriate notice that failure to file an answer would result in the filing of a Motion for Summary Judgment.² In these circumstances, we find that the answer attached to the trustee's response to the Notice to Show Cause is untimely. See *Civetta Cousins, J.V.*, 327 NLRB No. 114 (1999), and the cases cited therein.

Further, even if we were to consider that document, we find that it does not constitute a proper answer to the complaint allegations under Section 102.20 of the Board's Rules and Regulations. It fails to address any of the factual or legal allegations of the complaint, and therefore is legally insufficient under the Board's Rules. See *Eckert Fire Protection Co.*, 329 NLRB No. 79 (1999), and cases cited therein.

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.³

On the entire record, the Board makes the following

¹ The General Counsel's motion states that the Respondent was placed in an involuntary Chapter 7 bankruptcy in April 1998, and that the attorney for the Chapter 7 trustee entered an appearance in response to the complaint. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

² It is well established that the "possible settlement of a case does not provide an exemption from the requirement to file an answer." *Sorensen Industries*, 290 NLRB 1132, 1133 (1988).

³ Member Hurtgen joins in granting the General Counsel's motion solely on the basis that the Respondent's answer to the complaint was untimely.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Oregon corporation, with various terminals located throughout California, a post office box located at P.O. Box 1535, Vacaville, California, and a terminal located in Bend, Oregon, has been engaged in the transportation of merchandise on behalf of its customers. During the 12-month period ending December 31, 1997, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$50,000 for the transportation of freight and commodities from the State of California directly to points outside the State of California. 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

In about July 1997, the Respondent's employees Cesar Llamas, Cesar Nuno, Juan Zamarippa, and Jorge Zamorano engaged in concerted activities with each other and with other employees for the purposes of mutual aid and protection, by complaining about, among other things, low rates of pay, long hours, unsafe working conditions, unfair assignment of shifts, failure to receive wages that were due, and mistreatment by supervisors.

On about August 25, 1997, the Respondent's employees Cesar Llamas and Carlos Rubio concertedly complained to the Respondent regarding wages, hours, and working conditions of the Respondent's employees by complaining about long hours and unfair assignment of shifts.

The Respondent, at the Bend, Oregon terminal, discharged: (1) employee Jorge Zamorano on about July 29, 1997; (2) employee Carlos Rubio on about August 26, 1997; and (3) employees Cesar Llamas, Cesar Nuno, and Juan Zamarippa on about September 8, 1997.

The Respondent discharged the five employees named above because they concertedly complained about the subjects set forth above, and to discourage employees from engaging in these or other concerted activities.

In about late August 1997, the Respondent, by its vice president/director and its supervisor/dispatcher, at the Oregon terminal, threatened to discharge an employee if the employee continued to engage in protected concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(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)(1) of the Act by discharging employees Cesar Llamas, Cesar Nuno, Carlos Rubio, Juan Zamarippa, and Jorge Zamorano, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest. Backpay 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). The Respondent shall also be required to remove from its files any and all references to the unlawful discharges, and to notify the five employees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Advanced Shipping, Inc., Vacaville, California, and Bend, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they concertedly complain to the Respondent about low rates of pay, long hours, unsafe working conditions, unfair assignment of shifts, failure to receive wages that were due, and mistreatment by supervisors.

(b) Threatening to discharge employees if they engage in protected concerted activities.

(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) Within 14 days from the date of this Order, offer Cesar Llamas, Cesar Nuno, Carlos Rubio, Juan Zamarippa, and Jorge Zamorano full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Cesar Llamas, Cesar Nuno, Carlos Rubio, Juan Zamarippa, and Jorge Zamorano whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful dis-

charges of Cesar Llamas, Cesar Nuno, Carlos Rubio, Juan Zamarippa, and Jorge Zamorano, and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

(d) 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 back-pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bend, Oregon, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 21, 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 July 29, 1997.

(f) 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. December 30, 1999

Sarah M. Fox, Member

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 discharge or otherwise discriminate against employees because they concertedly complain to us about low rates of pay, long hours, unsafe working conditions, unfair assignment of shifts, failure to receive wages that were due, and mistreatment by supervisors.

WE WILL NOT threaten to discharge employees if they engage in protected concerted activities.

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, within 14 days from the date of this Order, offer Cesar Llamas, Cesar Nuno, Carlos Rubio, Juan Zamarippa, and Jorge Zamorano full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Cesar Llamas, Cesar Nuno, Carlos Rubio, Juan Zamarippa, and Jorge Zamorano whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest, with interest.

WE WILL, within 14 days from the date of this Order, expunge from our files any and all references to the unlawful discharges of Cesar Llamas, Cesar Nuno, Carlos Rubio, Juan Zamarippa, and Jorge Zamorano, and WE WILL, within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

ADVANCED SHIPPING, INC.

⁴ In the event that the Board's Order is enforced by a Judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

