

A.T.L. Corporation and General Teamsters Local Union No. 174, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 19-CA-16889

28 February 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

Upon a charge filed by the Union 10 July 1984,¹ and amended 8 August, the General Counsel of the National Labor Relations Board issued a complaint 31 October against the Company, the Respondent, alleging that it has violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Company has failed to file an answer.

On 28 November the General Counsel filed a Motion for Summary Judgment. On 5 December 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 Company filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary 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 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated 21 November, notified the Respondent that unless an answer was received by 26 November 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

The Respondent, a Washington corporation, is engaged in the business of warehousing and distrib-

uting import freight at its facility in Kent, Washington. During the 12 months preceding issuance of the complaint, a representative period, the Respondent sold and shipped goods valued in excess of \$50,000 to points outside the State of Washington. We find that the Company is an employer engaged in commerce within the meaning of Section 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

A. *The Unit and the Union's Representative Status*

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

All warehouse helpers, solo [truckdrivers] semi and heavy-duty hostlers, dispatchers, and working foremen employed by the Respondent at its Kent, Washington facility, but excluding office clerical employees, guards and supervisors as defined in the Act and all other employees.

Since about 1 May 1982, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and has been recognized as such by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period 1 May 1982 to 30 April 1985.

B. *The 8(a)(5) and (1) Violations*

About 6 July, the Company, by James A. Wilson,² unilaterally subcontracted driving and hauling work which had previously been performed by bargaining unit employees. The Company failed to provide prior notice to the Union of the subcontracting and did not afford the Union the opportunity to negotiate and bargain as the exclusive representative of the unit employees.

About 7 and 8 July, the Company, acting through Wilson, bypassed the Union and dealt directly with three of the discharged employees³ by offering them nonunion employment at wage rates and with benefits different from those specified in the applicable collective-bargaining agreement.

² At all times material, James A. Wilson has been the Company's president and a supervisor and an agent of the Company respectively within the meaning of Sec. 2(11) and (13) of the Act.

³ The record does not reflect the identity of the three employees.

¹ All dates are in 1984 unless otherwise indicated.

C. *The 8(a)(3) and (1) Violations*

About 6 July, in furtherance of its subcontracting decision, the Company discharged the following bargaining unit employees: Erik Sears, Bruce Mickelson, Danny C. Eades, Allan Thornton, Mike Lovett, and Wendell Boyle.

CONCLUSIONS OF LAW

1. By, about 6 July, unilaterally subcontracting bargaining unit driving and hauling work, without prior notice to or bargaining with the Union, the Company 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.

2. By, about 7 and 8 July, bypassing the Union and dealing directly with three unit employees by offering them nonunion employment at wage rates and with benefits different from those specified in the collective-bargaining agreement, the Company 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.

3. By, about 6 July, in furtherance of its subcontracting decision, discharging employees Erik Sears, Bruce Mickelson, Danny C. Eades, Allan Thornton, Mike Lovett, and Wendell Boyle, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Company 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, inter alia, order the Company to reinstate the driving and hauling work it unlawfully subcontracted to nonunit employees and to refrain from making any changes unilaterally in connection with those operations without first bargaining concerning any such decision. We shall also order the Company to offer Erik Sears, Bruce Mickelson, Danny C. Eades, Allan Thornton, Mike Lovett, and Wendell Boyle immediate and 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 they may have suffered as a result of the discrimination practiced against them. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

ORDER

The National Labor Relations Board orders that the Respondent, A.T.L. Corporation, Kent, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with General Teamsters Local Union No. 174, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the bargaining unit by unilaterally subcontracting driving and hauling work previously performed by unit employees at its Kent, Washington facility.

(b) Bypassing the Union and bargaining directly with unit employees by offering them nonunion employment at wages and with benefits different from those specified in the applicable collective-bargaining agreement.

(c) Discharging or otherwise discriminating against any employee for supporting the Union or any other union.

(d) 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 as the exclusive representative of the employees in the following unit concerning any decision to subcontract driving and hauling work:

All warehouse helpers, solo [truckdrivers] semi and heavy-duty hostlers, dispatchers, and working foremen employed by the Respondent at its Kent, Washington facility, but excluding office clerical employees, guards and supervisors as defined in the Act and all other employees.

(b) Reinstate at its Kent, Washington facility the driving and hauling work previously performed by unit employees represented by the Union.

(c) Offer Erik Sears, Bruce Mickelson, Danny C. Eades, Allan Thornton, Mike Lovett, and Wendell Boyle immediate and 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 make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(d) Remove from its files any reference to the unlawful discharges and notify the employees in

writing that this has been done and that the discharges will not be used against them in any way.

(e) Preserve and, on 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.

(f) Post at its facility in Kent, Washington, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 19, 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.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the 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"

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 bargain with General Teamsters Local Union No. 174, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as

the exclusive representative of the employees in the bargaining unit by unilaterally subcontracting driving and hauling work.

WE WILL NOT bypass the Union and bargain directly with unit employees by offering them non-union employment at wages and with benefits different from those specified in the applicable collective-bargaining agreement.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Union or any other union.

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 collectively with the Union as the exclusive representative of all employees in the bargaining unit concerning any decision to subcontract driving and hauling work.

All warehouse helpers, solo [truckdrivers] semi and heavy-duty hostlers, dispatchers, and working foremen employed by us at our Kent, Washington facility, but excluding office clerical employees, guards and supervisors as defined in the Act and all other employees.

WE WILL reinstate the driving and hauling work previously performed by unit employees represented by the Union.

WE WILL offer Erik Sears, Bruce Mickelson, Danny C. Eades, Allan Thornton, Mike Lovett, and Wendell Boyle immediate and 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 make them whole, with interest, for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

A.T.L. CORPORATION