

**Bay Recycling, Inc and Teamsters Local 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO Case 32-CA-9769**

February 23, 1989

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
JOHANSEN AND HIGGINS

Upon a charge and an amended charge filed by the Union on July 25 and August 16, 1988,<sup>1</sup> respectively, the General Counsel of the National Labor Relations Board issued a complaint against Bay Recycling, Inc., the Respondent, alleging that it has violated Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file a timely answer.

On November 7, the General Counsel filed a Motion for Summary Judgment. On November 10, 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 National Labor Relations Board has delegated its authority in this proceeding to a three member panel.

### 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 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all 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 October 18, notified the Respondent that unless an answer was filed by the close of business on October 25, a Motion for Summary Judgment would be filed. No answer was received from the Respondent by October 25. On October 27, counsel for the General Counsel had a telephone conversation with the Respondent's attorney in which the Respondent's attorney represented that he would file an answer within a "couple of days." On failing to receive an answer from the Respondent by November 2, counsel for the General Counsel mailed to the Board a Motion for Summary Judgment, which was received on No-

vember 7. The Respondent filed an answer on November 7, in which it, *inter alia*, denied the unfair labor practices alleged.<sup>2</sup>

In spite of being given two opportunities to file an answer after the original due date and of being on notice of the possible consequences of its failure to do so, the Respondent did not file a timely answer. Nor has the Respondent offered an explanation along with its late filed answer (it also has not responded to the Notice to Show Cause) for its failure to file a timely answer or for its failure, at any time, to request an extension of time to file an answer. In these circumstances, we find that the Respondent's ignoring the Board's procedures is incompatible with a showing of good cause. Accordingly, we find that the Respondent has failed to demonstrate good cause for its failure to file a timely answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion to Strike and her Motion for Summary Judgment.<sup>3</sup>

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I JURISDICTION

The Respondent, a California corporation, with offices and places of business in Oakland and Hayward, California, is engaged in the recycling of paper, cardboard, aluminum, and glass products. During the past 12 months, in the course and conduct of its business operations, the Respondent sold and shipped goods valued in excess of \$50,000 to customers located within the State of California, each of which meets one of the Board's jurisdictional standards, other than the indirect inflow or outflow standards.

We find that the Respondent 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.

<sup>2</sup> On November 10 counsel for the General Counsel filed a motion to strike the Respondent's answer as untimely.

<sup>3</sup> *Odaly's Management Corp.* 292 NLRB 1287 issued today. Even assuming that the Respondent's defenses to the complaint allegations are meritorious, Chairman Stephens would grant the General Counsel's Motion for Summary Judgment on the basis that the Respondent has failed to explain its failure to file a timely answer or request an extension of time for filing the answer. Under the circumstances of this case, Chairman Stephens would view the Respondent's conduct of repeatedly ignoring the Board's procedures and its warnings of the possible consequences as willful and inexcusable neglect. See his concurring opinion in *Odaly's*

<sup>1</sup> All dates refer to 1988 unless otherwise stated.

## II ALLEGED UNFAIR LABOR PRACTICES

In February, the exact date(s) unknown, the Respondent's owner, Bob O'Connor,<sup>4</sup> threatened employees that if they selected the Union as their bargaining representative, the Respondent would sell its business and close its doors, employees would be unemployed because the new owners would not employ them, the Respondent would refuse to bargain with the Union and the employees would get nothing out of collective bargaining negotiations, the Respondent did not have to "put up with" the Union and the employees would only be hurting themselves, the employees and their families would starve, and the Respondent could shut the doors tomorrow." Also in February, Rudnick threatened employees that the Respondent would have to close if they selected the Union because it could not afford the Union.

By this conduct, we find the Respondent violated Section 8(a)(1) of the Act.

From about June 16 through June 19, employees Mike Wills and Al Quintell concertedly ceased work and engaged in an economic strike in protest of the Respondent's late payment of wages. About June 20, Wills and Quintell made an unconditional offer to return to work.

About June 20, the Respondent discharged Wills and Quintell and since that date has failed and refused, and continues to fail and refuse, to reinstate the two employees to their former positions of employment.<sup>5</sup>

## CONCLUSIONS OF LAW

By the activities of the Respondent described in section II, above, including its discharge of and failure and refusal to reinstate Wills and Quintell because they engaged in protected concerted activity, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

<sup>4</sup> At all material times O'Connor and Benny Bustamati, the Respondent's dispatcher, have been supervisors within the meaning of Sec. 2(11) of the Act and agents of the Respondent within the meaning of Sec. 2(13) of the Act and Sanford Rudnick, a labor consultant to the Respondent, has been an agent of the Respondent within the meaning of Sec. 2(13) of the Act.

<sup>5</sup> The complaint alleges that the Respondent either discharged and failed and refused to reinstate the two employees in violation of Sec. 8(a)(3) and (1) of the Act or that in the alternative since about June 20, 1988, the Respondent has simply failed and refused to return Wills and Quintell to work in violation of Sec. 8(a)(1). The remedy is the same in either case. In any event, because of the nature of their concerted activity described above, we find that the discharge and refusal to reinstate Wills and Quintell violated Sec. 8(a)(1) 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.

Having found that the Respondent violated Section 8(a)(1) of the Act by discharging and failing and refusing to reinstate Mike Wills and Al Quintell, we shall order it to offer Wills and Quintell immediate and full reinstatement to their former positions or, if those positions 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 their unlawful discharge and/or failure and refusal to reinstate. Backpay shall be computed in the manner prescribed in *F W Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Bay Recycling, Inc., Oakland and Hayward, California, its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Threatening employees that if they select the Union, Teamsters Local 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO as their exclusive bargaining representative, the Respondent would sell its business or close its doors, the employees would be unemployed because the new owners would not hire them, the employees and their families would starve, the employees would only be hurting themselves, the Respondent could refuse to bargain with the Union and the employees would "get nothing" out of collective bargaining, the Respondent did not have to "put up with" the Union, the Respondent could "shut the doors tomorrow", and the Respondent could not afford the Union and it would have to close.

(b) Discharging and/or failing and refusing to reinstate employees for engaging 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) Offer Mike Wills and Al Quintell immediate and full reinstatement to their former positions or, if those positions 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 other 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 this decision

(b) 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

(c) 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

(d) Post at its facilities in Oakland and Hayward, California, copies of the attached notice marked "Appendix"<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, 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

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply

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<sup>6</sup> 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 threaten employees that if the employees select the Union, Teamsters Local 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO as their bargaining representative, we would sell our business or close our doors, the employees would be unemployed because the new owners would not hire them, the employees and their families would starve, the employees would only be hurting themselves, we could refuse to bargain with the Union and the employees would "get nothing" out of collective bargaining, we did not have to "put up with" the Union, we could "shut the doors tomorrow", and we could not afford the Union and would have to close

WE WILL NOT discharge and/or fail and refuse to reinstate employees for engaging 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 offer Mike Wills and Al Quintell immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed WE WILL make them whole for any other loss of earnings and other benefits suffered as a result of the discrimination against them, less any interim earnings, plus interest

WE WILL notify Mike Wills and Al Quintell that we have removed from our files any reference to their discharges and that the discharges will not be used against them in any way

BAY RECYCLING, INC