

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

OZBURN-HESSEY LOGISTICS, LLC,)	
)	
Petitioner/Cross-Respondent)	
v.)	Nos. 19-1054
)	19-1090
NATIONAL LABOR RELATIONS BOARD,)	
)	
Respondent/Cross-Petitioner)	
)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER,)	
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL)	
AND SERVICE WORKERS INTERNATIONAL UNION,)	
AFL-CIO/CLC)	
Intervenor)	

**JUDGMENT ENFORCING IN PART AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

Before: BATCHELDER, DONALD, and READLER, Circuit Judges.

THIS CAUSE came to be heard on a petition filed by Ozburn-Hessey Logistics, LLC for review of an Order of the National Labor Relations Board issued August 27, 2018, in Board Case Nos. 26-CA-092192, 15-CA-097046, 15-CA-105527, 15-CA-106180, 15-CA-106387, 15-CA-106511, 15-CA-108749, 15-CA-109235, 15-CA-111520, 15-CA-111523, 15-CA-111581, 15-CA-117208, 15-CA-119826, 15-CA-119925, 15-CA-123315, and 15-CA-117208, reported at 366 NLRB No. 177 (2018), and upon a cross-petition filed by the National Labor Relations Board for enforcement of said Order. The Court heard argument of the parties and has considered the briefs and transcript of record filed in this cause. On March 12, 2020, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of Ozburn-Hessey Logistics, LLC and granting in part the Board’s cross-petition for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Sixth Circuit that Ozburn-Hessey Logistics, LLC, its officers, agents,

successors, and assigns, shall abide by said Order as modified by the Court. (See attached Order and Appendix.)

FOR THE COURT:

NATIONAL LABOR RELATIONS BOARD

v.

OZBURN-HESSEY LOGISTICS, LLC,

ORDER

Ozburn-Hessey Logistics, LLC, Memphis, Tennessee, its officers, agents, successors, and assigns (the Respondent), shall

1. Cease and desist from

- (a) Confiscating union materials from employee break areas.
- (b) Ordering offsite employees distributing union literature for organizational purposes in an outside, nonworking area to leave the premises.
- (c) Telling employees to resign if they do not like their working conditions.
- (d) Telling bargaining-unit employees that they are not represented by the Union.
- (e) Discharging employees for supporting the United Steelworkers Union (the Union) or for other protected concerted activities.
- (f) Refusing to bargain collectively with the Union by unilaterally changing terms and conditions of employment of its unit employees, including by the following such unilateral changes: implementing a mandatory exercise and stretching program; implementing an advance notice requirement for employees requesting time off; changing its policy to disallow employees from using paid time off to make up their hours when they are sent home early; changing the shipping department hours from 8 hours per day, 5 days per week to 11 hours per day, 3 days per week; changing the inventory department start time from 4 a.m. to 8 a.m.; increasing enforcement of its policy prohibiting employees from leaving the building after clocking in; increasing contributions to employee 401(k) plans; implementing new leave-request systems; and changing certain employees' start times.
- (g) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to

the Union's performance of its functions as the unit employees' collective-bargaining representative.

- (h) In any other 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 Shawn Wade and Stacey Williams 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 Shawn Wade and Stacey Williams 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 amended remedy section of the Board's decision.
 - (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Shawn Wade and Stacey Williams 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) On request by the Union, rescind the unilateral changes in terms and conditions of employment implemented in April through September 2013.
 - (e) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All full time custodians, customer service representatives, senior customer service representatives, cycle counters, inventory specialists, maintenance, maintenance techs, material handlers, operators 1, operators 2, operators 3, quality assurance coordinators, returns clerks, and team leads employed by the Employer at the Memphis, Tennessee facilities located at 5510 East Holmes Road, 5540 East Holmes Road, 6265 Hickory Hill Road, 6225 Global Drive, 4221 Pilot Drive, and 5050 East Holmes Road. Excluded: All other employees, including office clerical and professional employees, guards, and supervisors as defined in the Act.

- (f) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the unlawful unilateral changes in the manner set forth in the amended remedy section of the Board's decision.
- (g) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.
- (h) Furnish to the Union in a timely manner the information the Union requested on June 17, 2013.
- (i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (j) Within 14 days after service by the Region, post at its Memphis, Tennessee facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 3 consecutive years in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed one or more of the facilities 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 April 22, 2013.
- (k) Within 14 days after service by the Region, convene meetings at its Memphis, Tennessee facilities during working time, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to employees, supervisors, and managers by either Senior Vice President

Randall Coleman or Senior Employee Relations Manager Shannon Miles (or one of their successors) in the presence of a Board agent if the Region so desires, or, at the Respondent's option, by a Board agent in the presence of Coleman or Miles (or one of their successors). The Respondent shall allow a representative of the Union's choice to attend and video record each such meeting in the manner set forth in the amended remedy section of the Board's decision. The Respondent shall give each supervisor and manager a copy of the remedial notice, shall provide sign-in sheets for supervisors and managers at the readings of the notice, and shall maintain the sign-in sheets for inspection by the Regional Director in the manner set forth in the amended remedy section of the Board's decision. The Respondent shall allow all employees to attend these meetings without penalty or adverse employment consequences, financial or otherwise.

- (l) Within 14 days after service by the Region, publish in two publications of general circulation and local interest copies of the remedial notice, signed by the Respondent's authorized representative, and continue to do so twice weekly for a period of 8 weeks. The publications will be chosen by the Regional Director for Region 15, and they need not be limited to newspapers so long as they will achieve broad coverage of the area.
- (m) Within 21 days after service by the Region, file with the Regional Director for Region 15 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.

APPENDIX
NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF
THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT confiscate union materials from employee break areas.

WE WILL NOT order offsite employees distributing union literature in an outside, nonworking area to leave the premises.

WE WILL NOT tell you to resign if you do not like your working conditions.

WE WILL NOT tell bargaining-unit employees that you are not represented by the Union.

WE WILL NOT discharge any of you for supporting the United Steelworkers Union (the Union) or for other protected concerted activities.

WE WILL NOT refuse to bargain with the Union by unilaterally changing terms and conditions of employment of our bargaining-unit employees including by the following such unilateral changes: implementing a mandatory exercise and stretching program; implementing an advance notice requirement for employees requesting time off; changing our policy to disallow employees from using paid time off to make up your hours when you are sent home early; changing the shipping department hours from 8 hours per day, 5 days per week to 11 hours per day, 3 days per week; changing the inventory department start time from 4 a.m. to 8 a.m.; increasing enforcement of our policy prohibiting employees from leaving the building after clocking in; increasing contributions to employee 401(k) plans; implementing new leave-request systems; and changing certain employees' start times.

WE WILL NOT refuse to bargain with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as your collective-bargaining representative.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Shawn Wade and Stacey Williams 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 Shawn Wade and Stacey Williams whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Shawn Wade and Stacey Williams 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.

WE WILL, on request by the Union, rescind the unilateral changes in terms and conditions of employment implemented in April through September 2013.

WE WILL make our unit employees whole for any loss of earnings and other benefits suffered as a result of the unilateral changes, with interest.

WE WILL, before implementing any changes in your wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

All full time custodians, customer service representatives, senior customer service representatives, cycle counters, inventory specialists, maintenance, maintenance techs, material handlers, operators 1, operators 2, operators 3, quality assurance coordinators, returns clerks, and team leads employed by the Employer at the Memphis, Tennessee facilities located at 5510 East Holmes Road, 5540 East Holmes Road, 6265 Hickory Hill Road, 6225 Global Drive, 4221 Pilot Drive, and 5050 East Holmes Road. Excluded: All other employees, including office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 15 a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL furnish to the Union in a timely manner the information the Union requested on June 17, 2013.

WE WILL, within 14 days after this notice is served on us by Region 15, convene meetings at our Memphis, Tennessee facilities during working time, scheduled to

ensure the widest possible attendance, at which this notice will be read to employees, supervisors, and managers by either Senior Vice President Randall Coleman or Senior Employee Relations Manager Shannon Miles (or one of their successors) in the presence of a Board agent if the Region so desires, or, at our option, by a Board agent in the presence of Coleman or Miles (or one of their successors). WE WILL allow a representative of the Union's choice to attend and record each meeting. WE WILL give each supervisor and manager a copy of this notice, WE WILL provide sign-in sheets for supervisors and managers at the readings of this notice, and WE WILL maintain the sign-in sheets for inspection by the Board. WE WILL allow you to attend one of the meetings without penalty or adverse employment consequences, financial or otherwise.

WE WILL, within 14 days after this notice is served on us by Region 15, publish copies of this notice in two publications of general circulation and local interest, and WE WILL continue to do so twice weekly for a period of 8 weeks.

OZBURN-HESSEY LOGISTICS, LLC

The Board's decision can be found at <https://www.nlr.gov/case/26-CA-092192> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



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)	26-CA-092192 et al
UNITED STEEL, PAPER AND FORESTRY, RUBBER,)	
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL)	
AND SERVICE WORKERS INTERNATIONAL UNION,)	
AFL-CIO/CLC)	
Intervenor)	

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all the parties or their counsel of record through the CM/ECF system.

/s/David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 23rd day of March 2020



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

March 23, 2020

Clerk, United States Court of
Appeals for the Sixth Circuit
532 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202-3988

Re: Docket Nos. 19-1054 and 19-1090,
Ozburn-Hessey Logistics, LLC v. NLRB

Dear Clerk:

On March 12, 2020, the Court handed down its opinion granting in part Ozburn-Hessey Logistics, LLC petition for review and granting in part the Board's cross-application for enforcement. Pursuant to Rule 19 of the Federal Rules of Appellate Procedure, I am filing the Board's Proposed Judgment in the above entitled manner. A certificate of service is enclosed.

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, SE
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(202) 273-2960