

267 NLRB No. 151

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D--1099  
Chicago, IL

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

F. LANDON CARTAGE COMPANY d/b/a  
LANDON INTERSTATE LIMITED, a/k/a  
LANDON INTERNATIONAL, a/k/a  
LANDON TRUCK LEASING LIMITED

and

Case 13--CA--22438

CHICAGO TRUCK DRIVERS, HELPERS,  
AND WAREHOUSE WORKERS UNION  
(INDEPENDENT)

DECISION AND ORDER

Upon a charge filed on 3 August 1982 by Chicago Truck Drivers, Helpers, and Warehouse Workers Union (Independent), herein called the Union, and duly served on F. Landon Cartage Company d/b/a Landon Interstate Limited, a/k/a Landon International, a/k/a Landon Truck Leasing Limited, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on 15 September 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of

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hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing its method of operation from one utilizing employee drivers to one utilizing alleged independent contractors, and by making other unilateral changes in employee terms and conditions of employment. Respondent did not file an answer to the complaint.

On 8 November 1982 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 26 January 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The

respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint served on Respondent stated that, unless an answer was filed within 10 days from the service thereof, "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." As noted above, Respondent did not file an answer to the complaint and did not respond to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with Section 102.20 of the Board's Rules set out above, the allegations of the complaint are deemed admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.<sup>1</sup>

#### Findings of Fact

##### I. The Business of Respondent

Respondent is, and has been at all times material herein, an Illinois corporation with an office and place of business located at 2117 South May Street, Chicago, Illinois, where it is engaged

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<sup>1</sup> In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

in the transportation of goods and materials for nonretail customers. During the past calendar year, a representative period, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$50,000 for the transportation of freight and commodities in interstate commerce pursuant to arrangements with and as agent for various common carriers and other business enterprises, including Inland Steel Container Corp., Carpenter Steel, and McMillan Steel, each of which operates and does business between and among various States of the United States. By virtue of its operations, Respondent functions as an essential link in the transportation of freight and commodities in interstate commerce.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. The Labor Organization Involved

Chicago Truck Drivers, Helpers, and Warehouse Workers Union (Independent), is a labor organization within the meaning of Section 2(5) of the Act.

## III. The Unfair Labor Practices

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

All truck drivers, helpers and office helpers employed by Respondent excluding guards and supervisors as defined in the Act.

Since approximately 1960, and at all times material, the Union has been the designated exclusive bargaining representative of Respondent's employees in the unit described above and has been so recognized by Respondent. Such recognition has been embodied in a series of collective-bargaining agreements between Respondent and the Union, the most recent of which was effective by its terms from 1 April 1979 to 31 March 1982.

On or about 1 April 1982 Respondent unilaterally changed its method of operation from one utilizing employee drivers, in the unit described above, to one utilizing solely alleged independent contractors and/or owner-operators without affording the Union an opportunity to negotiate and bargain concerning said change in its method of operation.

On or about 1 April 1982 Respondent unilaterally ceased paying health, welfare, and pension benefits on behalf of unit employees, as required by the collective-bargaining agreement between the parties, without affording the Union an opportunity to negotiate and bargain concerning the cessation of payment of said benefits.

In or about April 1982 Respondent offered to lease and/or sell its tractors to the unit employees without affording the Union an opportunity to negotiate and bargain concerning the lease and/or sale of said tractors to employees.

On or about 16 April 1982 Respondent unilaterally increased the lease fee assessed to its unit employees without affording

the Union an opportunity to negotiate and bargain concerning said lease fee.

We find that, by the above-stated conduct, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### IV. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that, in or about April 1982, Respondent changed to an alleged independent contractor and/or owner-operator method of operation and made other changes in employee terms and conditions of employment without affording the Union an opportunity to bargain about such changes, we shall order Respondent to restore the status quo ante by resuming its former method of operation, offering its employees full and immediate reinstatement to their former positions or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and making each of them whole for any loss of pay and other benefits he or she may have suffered by reason of Respondent's unilateral changes. We have also found that Respondent further violated Section 8(a)(5) and (1) of the Act by unilaterally ceasing payment of health, welfare, and pension benefits. In order to dissipate the effects of this unlawful action, we shall order

Respondent to make its employees whole by paying the benefits required by the collective-bargaining agreement,<sup>2</sup> and by reimbursing its employees for any expenses ensuing from Respondent's unlawful failure to make such required payments as set forth in Kraft Plumbing and Heating, Inc., 252 NLRB 891, fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in Florida Steel Corporation, 231 NLRB 651 (1977). See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

#### Conclusions of Law

1. F. Landon Cartage Company d/b/a Landon Interstate Limited, a/k/a Landon International, a/k/a Landon Truck Leasing Limited, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chicago Truck Drivers, Helpers, and Warehouse Workers Union (Independent), is a labor organization within the meaning of Section 2(5) of the Act.

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<sup>2</sup> Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Company, 240 NLRB 1213 (1979).

3. All truck drivers, helpers and office helpers employed by Respondent excluding guards and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing on or about 1 April 1982, and at all times material thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, by unilaterally changing its method of operation from one using employee drivers to one using solely alleged independent contractors and/or owner-operators, by unilaterally offering to lease and/or sell its tractors to unit employees, by unilaterally increasing the lease fee assessed unit employees, and by unilaterally ceasing to pay health, welfare, and pension benefits as required by the collective-bargaining agreement between the parties, without affording the Union an opportunity to negotiate and bargain regarding the same, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, F. Landon Cartage Company d/b/a Landon Interstate Limited, a/k/a Landon International, a/k/a Landon Truck Leasing Limited, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Chicago Truck Drivers, Helpers, and Warehouse Workers Union (Independent), as the exclusive bargaining representative of its employees in the following appropriate unit:

All truck drivers, helpers and office helpers employed by Respondent excluding guards and supervisors as defined in the Act.

(b) Unilaterally changing its method of operation from one utilizing employee drivers to one utilizing solely alleged independent contractors and/or owner-operators, offering to lease and/or sell its tractors to unit employees, increasing the lease fee assessed unit employees, and ceasing to pay health, welfare, and pension benefits as required by the collective-bargaining agreement, without affording the Union an opportunity to negotiate and bargain regarding the same.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Resume its former method of operation utilizing employee drivers.

(c) Rescind the 16 April 1982 increase in the lease fee assessed to unit employees.

(d) If Respondent has made individual agreements or arrangements with any unit employees as alleged independent contractors or owner-operators, notify them individually, and by the posting of the attached notice, that it will no longer offer, solicit, enter into, continue, or enforce such agreements or arrangements, without prejudice to the assertion by the employees affected of any legal rights they may have acquired under such contracts.

(e) Offer all unit employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of wages and other benefits resulting from Respondent's unlawful conduct, in the manner set

forth in the section of this Decision and Order entitled 'The Remedy.'

(f) Make whole the employees in the appropriate unit by paying the benefits owed pursuant to the terms of its collective-bargaining agreement with the Union, and by reimbursing unit employees for any expenses ensuing from Respondent's unlawful failure to make such required payments, in the manner set forth in the section of this Decision and Order entitled 'The Remedy.'

(g) Preserve and, upon 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 Decision and Order.

(h) Post at its Chicago, Illinois, place of business copies of the attached notice marked 'Appendix.'<sup>3</sup> Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including places where notices to employees

<sup>3</sup> In the event that 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.'

are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Decision and Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. 26 August 1983

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Donald L. Dotson, Chairman

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Howard Jenkins, Jr., Member

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Don A. Zimmerman, 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

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Chicago Truck Drivers, Helpers, and Warehouse Workers Union (Independent), as the exclusive representative of the employees in the following appropriate unit:

All truck drivers, helpers and office helpers employed by us excluding guards and supervisors as defined in the Act.

WE WILL NOT unilaterally change our method of operation from one utilizing employee drivers to one utilizing solely alleged independent contractors and/or owner-operators, offer to lease or sell tractors to employees, increase the lease fee assessed our employees, or cease paying health, welfare, and pension benefits on behalf of employees, without affording the Union the opportunity to negotiate and bargain with respect thereto.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as exclusive representative of all the employees in the bargaining unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL resume our former method of operation utilizing employee drivers.

WE WILL rescind the 16 April 1982 increase in the lease fee.

If we have made individual agreements or arrangements with any unit employee as alleged independent contractors or owner-operators, WE WILL notify them individually, and by the posting of this notice, that we will no longer offer, solicit, enter into, continue, or enforce such agreements or arrangements, without prejudice to the assertion by the

employees affected of any legal rights they may have acquired under such contracts.

WE WILL offer all unit employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and WE WILL make them whole for any loss of wages and other benefits resulting from our unlawful conduct, with interest.

WE WILL make whole the employees in the appropriate unit by paying the benefits owed pursuant to the terms of our collective-bargaining agreement with the Union, and by reimbursing unit employees for any expenses ensuing from our unlawful failure to make such required payments.

F. LANDON CARTAGE COMPANY d/b/a  
LANDON INTERSTATE LIMITED, a/k/a  
LANDON INTERNATIONAL, a/k/a  
LANDON TRUCK LEASING LIMITED

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(Employer)

Dated ----- By -----  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Everret McKinley Dirksen Building, 1219 South Dearborn Street, Chicago, Illinois 60604, Telephone 312--353--7597.