

Black Bull Carting, Inc., and Black Bull Transfer Station, Inc. and Local 813, International Brotherhood of Teamsters, AFL-CIO. Case 29-CA-16871

April 22, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On October 28, 1992, the General Counsel of the National Labor Relations Board issued a complaint alleging that Respondent Black Bull Carting, Inc., and Respondent Black Bull Transfer Station, Inc., a single employer (collectively the Respondent or, singly, Respondent Carting and Respondent Transfer) has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the request of Local 813, International Brotherhood of Teamsters, AFL-CIO, the Union, to bargain following the Union's certification in Case 29-RC-7718.¹ (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On March 19, 1993, the General Counsel filed a Motion for Summary Judgment. On March 23, 1993, 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.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent claims it is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding whether Respondent Carting and Respondent Transfer each derived gross revenues in excess of \$500,000 during the year preceding issuance of the complaint and whether during that same period of time each purchased and re-

¹The Respondent claims it is without knowledge and information sufficient to form a belief as to the filing and service of the unfair labor practice charge in this case. The unrefuted assertion of counsel for the General Counsel, with supporting documentation, establishes that the charge was filed and a copy of the charge was sent to the Respondent on two occasions by certified mail and once by regular mail. The first certified mailing was returned unclaimed. When the charge was thereafter served by both regular and certified mail, neither a return receipt for certified mail nor an unclaimed regular mail letter was returned to the Board. Service of the charge was properly accomplished by deposit in the mail to the Respondent's last known address. *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (Nov. 25, 1992). The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Moreover, we note that the Respondent does not claim any prejudice at all regarding receipt of the charge.

ceived goods, supplies, and materials valued in excess of \$50,000 directly from points outside the State of New York. Further, the Respondent denies that Respondent Carting is engaged in solid waste collection and disposal services to residential and commercial customers and that Respondent Transfer has been engaged in the operation of a recycling facility.

We note that in the underlying representation proceeding the Respondent stipulated to the nature of the businesses, the receipt of goods and supplies at their facilities in excess of \$50,000 directly from points outside the State of New York, and further stipulated that Respondent Carting and Respondent Transfer were engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act. We also note that on this basis, the Regional Director concluded in the underlying representation proceeding that the Respondent was an employer within the meaning of the Act. The Respondent does not claim any newly discovered and previously unavailable evidence which would alter its prior stipulation or the Regional Director's finding based thereon. Accordingly, we conclude that Respondent Carting and Respondent Transfer are employers engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act.

The Respondent denied that Respondent Carting and Respondent Transfer have been affiliated business enterprises with common owners and management; have formulated and administered a common labor policy affecting employees; have provided services for each other; and have held themselves out to the public as a single integrated business enterprise. The Respondent further denies that Respondent Carting and Respondent Transfer constitute a single integrated business enterprise and a single employer within the meaning of the Act. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent Carting and Respondent Transfer constitute a single integrated business enterprise and a single employer within the meaning of the Act.

Finally, the Respondent denied that the Union has requested that the Respondent recognize it as the exclusive collective-bargaining representative of the employees and that the Union has requested to meet and bargain collectively with the Respondent. Attached to the General Counsel's Motion for Summary Judgment is the affidavit of the Union's attorney which details his various letters, faxes, and telephone conversations in an attempt to set up bargaining. Various documents are attached to this affidavit. These documents confirm the assertions in the affidavit. The affidavit and documents demonstrate that the Union has requested rec-

ognition and to bargain and that the Respondent has refused in order to test the certification of the Union. The Respondent does not dispute the receipt or authenticity of these letters, faxes, or assertions in its reply to the Motion for Summary Judgment. Moreover, in its response to the Notice to Show Cause, the Respondent admits it has failed to bargain in good faith with the Union in order to test the Union's certification. Accordingly, we find that the Union has requested recognition and bargaining with the Respondent.

In its answer to the complaint and in its response to the Notice to Show Cause, the Respondent attacks the validity of the certification of the Union on the basis of its objections to the election. All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Carting, a New York corporation with its principal office and a place of business located at 26-07 29th Street, in the County of Queens, City and State of New York (the Astoria facility) and an additional place of business located at 151 Anthony Street, Brooklyn, New York (the Brooklyn facility), has been engaged in the business of providing solid waste collection and disposal services to residential and commercial customers. During the year preceding issuance of the complaint, Respondent Carting purchased goods, supplies, and materials valued in excess of \$50,000 directly from points outside the State of New York. We find that Respondent Carting is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent Transfer, a New York corporation with its principal office and a place of business located at 252 Maspeth Avenue, Brooklyn, New York (the 252 Maspeth facility) and an additional place of business located at 222 Maspeth Avenue, Brooklyn, New York (the 222 Maspeth facility), has been engaged in the operation of a recycling facility. During the year preceding issuance of the complaint, Respondent Transfer

² With the exception of conclusory paragraphs which the Respondent denied, the Respondent has not admitted or denied the remainder of the allegations in the complaint. Rule 102.20 of the Board's Rules and Regulations provides in relevant part, "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 Respondent has raised no issue with regard to the allegations not specifically denied. Accordingly, these allegations stand as admitted.

purchased and received at its 252 Maspeth and 222 Maspeth facilities goods, supplies, and materials valued in excess of \$50,000 directly from points outside the State of New York. We find that Respondent Transfer 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 Certification*

Following the election held May 14, 1992, the Union was certified on August 19, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

All chauffeurs, helpers, pickers, sorters, bulldozer operators, mechanics and welders employed by the Respondent, excluding all clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since August 24, 1992, the Union has requested the Respondent to recognize and bargain, and since about September 23, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after September 23, 1992, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent 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.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett*

Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that Respondent Black Bull Carting, Inc., and Respondent Black Bull Transfer Station, Inc., a single employer, Astoria, New York, and Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Local 813, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) 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 appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All chauffeurs, helpers, pickers, sorters, bulldozer operators, mechanics and welders employed by the Respondent, excluding all clerical employees, guards and supervisors as defined in the Act.

(b) Post at its Astoria, Brooklyn, 252 Maspeth, and 222 Maspeth facilities copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately

³If 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."

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.

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

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 recognize and bargain with Local 813, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of our employees in the bargaining unit.

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 with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All chauffeurs, helpers, pickers, sorters, bulldozer operators, mechanics and welders employed by us, excluding all clerical employees, guards and supervisors as defined in the Act.

BLACK BULL CARTING, INC., AND
BLACK BULL TRANSFER STATION, INC.