

**Pony Express Courier Corporation and International Brotherhood of Teamsters, Local 690, affiliated with International Brotherhood of Teamsters, AFL-CIO.** Case 19-CA-22094

February 5, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On November 16, 1992, the General Counsel of the National Labor Relations Board issued a consolidated amended complaint and notice of hearing in Cases 19-CA-22094 and 19-CA-22124 alleging that the Respondent has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 19-RC-12505. (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 January 4, 1993, the General Counsel filed a Motion to Sever Case 19-CA-22094, Motion to Transfer Case 19-CA-22094, and Motion for Summary Judgment in Case 19-CA-22094. On January 6, 1993, the Board issued an order severing Case 19-CA-22094 and transferring that proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent separately filed a response to the Motion for Summary Judgment. The General Counsel filed an opposition thereto.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>1</sup>

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. 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

<sup>1</sup> The General Counsel's motion to sever Case 19-CA-22094 was grounded on the contention that there are no issues which warrant a hearing in this case and thus it can be more expeditiously processed in a summary judgment proceeding. Case 19-CA-22124 presents issues which must be considered at a hearing. Accordingly, after due consideration we reaffirm the decision to sever the cases and deny Respondent's motion for reconsideration. We also deny Respondent's alternative motion to stay in Case 19-CA-22124.

reexamine the decision made in the representation proceeding. We therefore find that 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.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a State of Delaware corporation with an office and place of business in Spokane, Washington, where it is engaged in the business of transporting time-critical commodities. During the past 12-month period, the Respondent, in the course and conduct of its business operations, had gross sales of goods and services valued at in excess of \$500,000. During the past 12-month period, the Respondent sold and shipped goods or provided services from its facilities within the State of Washington, to customers outside the State, or sold and shipped goods or provided services to customers within the State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value of in excess of \$50,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(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*

On or about April 20, 1992, a majority of employees in the unit described below selected the Union as their collective-bargaining representative and the Union was certified on April 28, 1992,<sup>2</sup> as the collective-bargaining representative of the employees in the following appropriate unit:

All courier guards employed by Pony Express Courier Corp. in Spokane, Pasco, Yakima, Wenatchee, and Ephrata, Washington; Lewiston and Coeur d'Alene, Idaho; Hermiston, LaGrande, and Pendleton, Oregon; and Missoula, Montana, but excluding all other employees, supervisors and guards as defined in the Act.

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

<sup>2</sup> On March 3, 1992, the Regional Director issued a Decision and Direction of Election. The Respondent filed a request for review of the Regional Director's Decision and Direction of Election and motion to stay election. On April 20, 1992, the Board denied the Respondent's request for review and motion to stay the election.

### B. Refusal to Bargain

Since May 6, 1992, the Union has requested the Respondent to bargain and, since May 22, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

### CONCLUSION OF LAW

By refusing on and after May 22, 1992, to 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)(1) and (5) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) 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 the Respondent, Pony Express Courier Corporation, Spokane, Washington, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Teamsters, Local 690, affiliated with 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 employ-

ment, and if an understanding is reached, embody the understanding in a signed agreement:

All courier guards employed by Pony Express Courier Corp. in Spokane, Pasco, Yakima, Wenatchee, and Ephrata, Washington; Lewiston and Coeur d'Alene, Idaho; Hermiston, LaGrande, and Pendleton, Oregon; and Missoula, Montana, but excluding all other employees, supervisors and guards as defined in the Act.

(b) Post at its facility in Spokane, Washington, copies of the attached notice marked "Appendix."<sup>3</sup> 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.

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

<sup>3</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 refuse to bargain with International Brotherhood of Teamsters, Local 690, affiliated with International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the 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 courier guards employed by us in Spokane, Pasco, Yakima, Wenatchee, and Ephrata, Washington; Lewiston and Coeur d'Alene, Idaho; Hermiston, LaGrande, and Pendleton, Oregon; and Missoula, Montana, but excluding all other em-

ployees, supervisors and guards as defined in the Act.

PONY EXPRESS COURIER CORPORATION