

**Fluid Transport, Inc. and Steel, Paper House,
Chemical Drivers and Helpers, Local 578,
International Brotherhood of Teamsters, AFL-
CIO. Case 21-CA-29763**

March 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

On December 23, 1993, the Acting General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 21-RC-19181. (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 an answer admitting in part and denying in part the allegations in the complaint.

On February 22, 1994, the Acting General Counsel filed a Motion for Summary Judgment. On February 23, 1994, 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

Although the Respondent's answer denies that the Union requested bargaining, it admits that the Respondent has refused to bargain with the Union. The Respondent attacks the validity of the certification on the basis of its objections to the election and the Board's unit determination in the representation proceeding.¹

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

¹The Respondent's answer denies a number of complaint allegations. Thus, the Respondent denied the complaint allegations that the unit is appropriate, that the Union was certified, and that the Union has been the exclusive collective-bargaining representative of the unit notwithstanding the Board's Decision and Certification dated September 30, 1993. In addition, the Respondent denies that the Union requested the Respondent to bargain notwithstanding the Union's letter dated October 20, 1993, and the Respondent's letter in response dated October 28, 1993, which states that the Respondent declines "your request to bargain" because of its belief that the Union was improperly certified. The Respondent has not disputed the authenticity of these documents. Accordingly, we find that the Respondent's denials do not raise any issues warranting a hearing.

special circumstances that would require the Board to 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, a California corporation, has been engaged in the business of transportation at its facility located at 5112 Alhambra Avenue, Los Angeles, California.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped or caused to be shipped, goods, supplies, materials, or services valued in excess of \$50,000 which were shipped from the Respondent's Los Angeles, California facility directly to customers located within the State of California, each of which customers in turn meets a standard for the assertion of the Board's jurisdiction other than an indirect standard.

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*

Following the election held May 5, 1993, the Union was certified on September 30, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All drivers, truck loaders and washers, and maintenance employees employed by Respondent at its facility located at 5112 Alhambra Avenue, Los Angeles, California; excluding all other employees, office clerical employees, professional 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 October 20, 1993, the Union has requested the Respondent to bargain, and, since October 28, 1993, 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 October 28, 1993, 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)(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 the 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, Fluid Transport, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Steel, Paper House, Chemical Drivers and Helpers, Local 578, 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 drivers, truck loaders and washers, and maintenance employees employed by Respondent at its facility located at 5112 Alhambra Avenue, Los Angeles, California; excluding all other employees, office clerical employees, professional em-

ployees, guards, and supervisors as defined in the Act.

(b) Post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 21, 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.

Dated, Washington, D.C. March 31, 1994

James M. Stephens, Member

Dennis M. Devaney, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If 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 Steel, Paper House, Chemical Drivers and Helpers, Local 578, 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 drivers, truck loaders and washers, and maintenance employees employed by us at our facility

located at 5112 Alhambra Avenue, Los Angeles, California; excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

FLUID TRANSPORT, INC.