

**Industrial Disposal, Inc., Angelo Pacio Sanitation, Inc., L. Pucillo and Sons, Inc. and Local 945, International Brotherhood of Teamsters, AFL-CIO.** Cases 22-CA-19427(2), 22-CA-19427(3), and 22-CA-19427(5)

May 18, 1994

## DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by the Union on September 2, 1993, the General Counsel of the National Labor Relations Board issued a complaint on December 30, 1993, against Industrial Disposal, Inc. (Respondent Industrial), Angelo Pacio Sanitation, Inc. (Respondent Pacio) and L. Pucillo and Sons, Inc. (Respondent Pucillo), collectively called the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, Respondent Industrial and Respondent Pacio failed to file an answer.<sup>1</sup>

On April 11, 1994, the General Counsel filed a Motion for Summary Judgment with the Board with respect to Respondent Industrial and Respondent Pacio. On April 13, 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. Neither Respondent Industrial nor Respondent Pacio filed a response. The allegations in the motion are therefore undisputed.

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

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Memorandum in Support of the General Counsel's Motion for Summary Judgment disclose that the Region, by letters dated January 24, 1994, notified Respondent Industrial and Respondent Pacio that the time for filing an answer had been extended to January 31, 1994, and that unless an answer were received by that date, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General

<sup>1</sup>No motion was made with respect to Respondent Pucillo. This Motion for Summary Judgment is granted only with respect to Respondent Industrial and Respondent Pacio.

Counsel's Motion for Summary Judgment with respect to Respondent Industrial and Respondent Pacio.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent Industrial, a corporation with an office and place of business in Elizabeth, New Jersey, has been engaged in the collection, removal and transportation of solid waste. During the 12-month period ending December 30, 1993, Respondent Industrial performed services valued in excess of \$50,000 in States other than the State of New Jersey. Respondent Pacio, a corporation with an office and place of business in East Patterson, New Jersey, has been engaged in the collection, removal and transportation of solid waste. During the 12-month period ending December 30, 1993, Respondent Pacio performed services valued in excess of \$50,000 in states other than the State of New Jersey. We find that Respondent Industrial and Respondent Pacio are employers 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

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

All regular full-time drivers employed by the Employer at its Elizabeth, New Jersey facility but excluding all casual and seasonal employees, managers, guards and supervisors as defined in the Act.

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

All regular full-time drivers employed by the Employer at its East Patterson, New Jersey facility but excluding all casual and seasonal employees, managers, guards and supervisors as defined in the Act.

Since about 1985 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Industrial unit, and since then the Union has been recognized as the representative by Respondent Industrial. The recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from July 1, 1990, to June 30, 1993.

Since about 1985 and at all material times, the Union has been the designated exclusive collective-

bargaining representative of the Pacio unit, and since then the Union has been recognized as the representative by Respondent Pacio. The recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from July 1, 1990, to June 30, 1993.

At all times since 1985, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Industrial unit and of the Pacio unit.

Since about April 23, 1993, Respondent Industrial and Respondent Pacio have failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Industrial unit and the Pacio unit, respectively, by failing and refusing to respond to the Union's demand to bargain for a new contract.

#### CONCLUSION OF LAW

By the acts and conduct described above, Respondent Industrial and Respondent Pacio have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby 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 Respondent Industrial and Respondent Pacio have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that Respondent Industrial and Respondent Pacio have failed and refused to bargain for a new contract, we will order Respondent Industrial and Respondent Pacio to meet and bargain with the Union.

#### ORDER

The National Labor Relations Board orders that:

A. Respondent Industrial Disposal, Inc., Elizabeth, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain with Local 945, International Brotherhood of Teamsters, AFL-CIO, over the terms of a new contract for the employees in the following unit:

All regular full-time drivers employed by the Employer at its Elizabeth, New Jersey facility but excluding all casual and seasonal employees, managers, guards and supervisors as defined in the Act.

(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 appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in Elizabeth, New Jersey, copies of the attached notice marked "Appendix A."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 22, 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.

B. Respondent, Angelo Pacio Sanitation, Inc., East Patterson, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain with Local 945, International Brotherhood of Teamsters, AFL-CIO, over the terms of a new contract for the employees in the following unit:

All regular full-time drivers employed by the Employer at its East Patterson, New Jersey facility but excluding all casual and seasonal employees, managers, guards and supervisors as defined in the Act.

(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 appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in East Patterson, New Jersey, copies of the attached notice marked "Appendix B."<sup>3</sup> Copies of the notice, on forms provided by the Re-

<sup>2</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."

<sup>3</sup>See fn. 2, above.

gional Director for Region 22, 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. May 18, 1994

James M. Stephens,	Member
Dennis M. Devaney,	Member
Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

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 fail or refuse to meet and bargain with Local 945, International Brotherhood of Teamsters, AFL-CIO, over the terms of a new contract for our employees in the following unit:

All regular full-time drivers employed by us at our Elizabeth, New Jersey facility but excluding all casual and seasonal employees, managers, guards and supervisors as defined in the Act.

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 as the exclusive representative of our employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

INDUSTRIAL DISPOSAL, INC.

APPENDIX B

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All regular full-time drivers employed by us at our East Patterson, New Jersey facility but excluding all casual and seasonal employees, managers, guards and supervisors as defined in the Act.

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 as the exclusive representative of our employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

ANGELO PACIO SANITATION, INC.