

Triple A Services, Inc. and Local 705, International Brotherhood of Teamsters, AFL-CIO. Case 33-CA-10932

July 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

The issue presented in this case¹ is whether the judge correctly found that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing, for discriminatory reasons, to hire a majority of its predecessor's union-represented employees and thereafter violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified and set forth in full below.³

We agree with the judge that the Respondent unlawfully refused to hire five of the seven former union-represented employees of Kankakee Canteen Corporation, the predecessor employer, in order to avoid an obligation to recognize and bargain with the Union. In finding antiunion motivation, however, we do not rely on any provisions of the sales contract between the Respondent and Kankakee. Instead, we find that the General Counsel has proven unlawful motivation by showing: the hiring of all nonunit employees from Kankakee applicants; the hiring of only two Kankakee applicants for seven unit positions; preparations to transfer employees from other facilities to unit positions made prior to any receipt of job applications from Kankakee unit employees; the pretextual claim that poor work performance was a reason for failing to hire some Kankakee unit employees who did apply; and, fi-

nally and most significantly, the credited testimony of Peggy Shutter, a Kankakee management official hired by the Respondent, about a statement made by Ken Zydek, the Respondent's vice president, during a meeting with the Union's business representative. In this last regard, according to Shutter, Zydek explained the Respondent's failure to hire the five former Kankakee unit employees by saying that

he had checked with a labor attorney and that to remain nonunion you could only hire 40 percent of the people, which was 2.8 and that meant that is why they hired two [of the former union-represented employees].

Standing alone, Zydek's statement manifested the clear and unlawful intent to hire less than half of the unionized Kankakee work force in order to avoid successorship status. See, e.g., *U. S. Marine Corp.*, 293 NLRB 669, 671-672 (1989), *enfd. en banc* 944 F.2d 1305 (7th Cir. 1991). The other evidence cited above further supports the conclusion of unlawful motivation and warrants our affirmation of the judge's unfair labor practice findings.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Triple A Services, Inc., Kankakee, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire job applicants because of their union membership or affiliation.

(b) Refusing to recognize or bargain collectively in good faith with Local 705, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time route representatives, field maintenance employees, installation employees, inside maintenance employees and stockpersons at its Kankakee, Illinois facility but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(c) 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, recognize and bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, set forth above, with respect to rates of pay, hours, and other terms and conditions of employment and, if an understanding is

¹ On May 10, 1996, Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party filed answering briefs. The Respondent, thereafter, filed reply briefs.

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

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ The Respondent excepts to the judge's recommended Order requiring that the notice to employees be posted at all three of its facilities. We find merit in the exception and shall require posting of the notice only at the Kankakee facility where the unfair labor practices occurred.

We shall further modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

reached, embody such understanding in a signed agreement.

(b) Within 14 days from the date of this Order, offer Eugene DeCarlo, Kenneth DeMara, Tim White, Mel Herbert, and Jeff Schultz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make Eugene DeCarlo, Kenneth DeMara, Tim White, Mel Herbert, and Jeff Schultz whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusals to hire DeCarlo, DeMara, White, Herbert, and Schultz, and within 3 days thereafter notify the employees in writing that this has been done and that the refusals to hire will not be used against them in any way.

(e) Preserve and, within 14 days of a 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 Order.

(f) Within 14 days after service by the Region, post at its Kankakee, Illinois facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 3, 1994.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁴If 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 hire job applicants because of their union membership or affiliation.

WE WILL NOT refuse to recognize or bargain collectively in good faith with Local 705, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time route representatives, field maintenance employees, installation employees, inside maintenance employees and stockpersons at our Kankakee, Illinois facility but excluding all other employees, office clerical employees, professional employees, 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, recognize and bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, set forth above, with respect to rates of pay, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL, within 14 days from the date of the Board's Order, offer Eugene DeCarlo, Kenneth DeMara, Tim White, Mel Herbert, and Jeff Schultz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Eugene DeCarlo, Kenneth DeMara, Tim White, Mel Herbert, and Jeff Schultz whole for any loss of earnings and other benefits resulting from our unlawful refusals to hire them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusals to hire Eugene DeCarlo, Kenneth DeMara, Tim White, Mel Herbert, and Jeff Schultz, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the

refusals to hire will not be used against them in any way.

TRIPLE A SERVICES, INC.

David Nixon, Esq., for the General Counsel.

John J. Murphy Jr., Esq., of Chicago, Illinois, for the Respondent.

Thomas R. Carpenter, Esq., of Chicago, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. On charges filed by Local 705, International Brotherhood Teamsters, AFL-CIO (the Union or the Charging Party), a complaint and notice of hearing issued on May 23, 1995, alleging that Triple A Services, Inc. (Respondent, the Employer, or Triple A) violated Section 8(a)(1) and (3) of the Act by refusing to hire certain employees because of their union membership and further violated Section 8(a)(5) of the Act by refusing to bargain in good faith with the Union. Pursuant to notice, the case was heard before me on February 22 and 23, 1996.¹ Briefs have been timely filed by the General Counsel, the Charging Party, and Respondent, which have been duly considered.²

FINDINGS OF FACT³

I. THE EMPLOYER'S BUSINESS

The Employer is an Illinois corporation engaged in the business of providing food services. During the past calendar year in conducting its business, the Employer derived gross revenues in excess of \$500,000 and purchased and received at its Illinois facility goods and services valued in excess of \$50,000 directly from points outside the State of Illinois.

The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹The complaint was amended at the hearing to reflect the supervisory status of Peggy Shutter as Respondent's operations manager.

²No opposition thereto having been filed, the General Counsel's "Motion to Correct Typographical Errors in Record" is granted.

³There is conflicting testimony regarding some of the allegations of the complaint. In resolving these conflicts, I have taken into consideration the apparent interests of the witnesses. In addition, I have considered the inherent probabilities; the probabilities in light of other events; corroboration or lack of it; and consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. In evaluating the testimony of each witness, I rely specifically on their demeanor and make my findings accordingly. While apart from considerations of demeanor, I have taken into account the above-noted credibility considerations, my failure to detail each of these is not to be deemed a failure on my part to have fully considered it. *Bishop & Malco, Inc.*, 159 NLRB 1159, 1161 (1966).

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

It appears that since at least 1967, the Union has represented the following unit of employees of the Kankakee Canteen Corporation (Kankakee), a food service employer with its place of business in Kankakee, Illinois:

All full-time and regular part-time route representatives, field maintenance employees, installation employees, inside maintenance employees and stockpersons at its Kankakee, Illinois facility but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The unit at Kankakee consisted of seven employees, five route drivers, and two maintenance men. The most recent contract between Kankakee and the Union expired on September 30, 1994.

Sometime in early 1993, Respondent and Kankakee discussed the prospect of Respondent purchasing Kankakee to add to its two other food service operations located in Morris and Chicago, Illinois. After a hiatus of several months, Respondent requested and received certain financial information and a meeting was held between the principals of the two companies in about March 1994.⁴ Respondent's vice president, Ken Zydek, and executive vice president, Thomas A. Whennen, testified that they learned at about this time that the Union represented certain employees of Kankakee. A copy of the union contract was sent to Phillip Grossman, Respondent's attorney with responsibility for transacting the purchase.

Negotiations were suspended for a few months but resumed in August 1994, at which time a decision was made to make the purchase.

On October 4, an "Agreement for Purchase and Sale of Assets" was executed between Kankakee and Respondent for the sale of "all of the seller's properties, equipment, fixtures, inventory and assets he used in the operation of the business known as Kankakee Canteen Corporation located at Kankakee, Illinois." With respect to the representation of Kankakee employees by the Union, this agreement provided as follows:

Employee Contracts. Not later than three (3) days prior to the Closing Date, the Seller shall advise its Employees of the intended sale of its assets to TAS and further advise its Employees, in the presence of representatives of TAS that effective as of the Closing Date the employees of KCC will be discharged. The Seller shall then permit TAS to interview its existing employees to determine which of them, if any, shall be rehired by TAS. The compensation, benefits, hours and scope of employment regarding any of the employees of KCC to be rehired by TAS shall be subject to those conditions and stipulations which are mutually agreed upon by TAS and the former employees of KCC.

(i) Seven (7) of the employees of KCC are now covered by the terms of a certain collective agree-

⁴All dates refer to 1994 unless otherwise indicated.

ment with Union 705 of I.B.T. and KCC through September 30, 1994 (the "IBT Agreement");

(ii) The Seller shall terminate the IBT Agreement on the Closing Date and indemnify and hold harmless TAS from any claim, liability, cause of action or suit which may be brought by IBT or any employee of KCC under the IBT Agreement expiring September 30, 1994;

(iii) The Seller shall not enter into any new IBT Agreement or extend the existing IBT Agreement or enter into any other IBT Agreement which shall apply to any period extending beyond September 30, 1994 as to the employees of KCC.

Zydek testified, with respect to evaluating Kankakee employees for employment with Triple A, that he met with Peggy Shutter, vice president and comptroller of Kankakee, in early October 1994. Shutter went through her views as to the strengths and weaknesses of the Kankakee employees, including the seven drivers and maintenance employees represented by the Union. Shutter did not, however, make any recommendations as to the hiring of any of them.

Thereafter, Zydek discussed the hiring issue with Whennen and relayed to him the same information about the Kankakee unit employees that Shutter had previously provided to him.

As provided by the sales agreement set out above, the Kankakee employees were advised of the sale and terminated on October 19 and obliged to submit employment applications to Respondent if they desired reemployment by Respondent. All seven unit employees submitted employment applications.

After these terminations on October 19, and the submission of employment applications to Respondent, Shutter and Whennen discussed the former Kankakee employees, and she provided basically the same evaluations she had given to Zydek.

After the sale and closing on October 21, Triple A assumed the operation of the Kankakee facility with a total complement of 21 employees. Shutter was hired as regional operations manager. Thirteen others were selected from those submitting employment applications with Triple A. However, out of the seven union drivers and maintenance men employed by Kankakee, only two were hired, Brad Gill and George Trumble. Five employees were transferred from Morris to fill the positions formerly held by unit employees. One came from Chicago. It does not appear that any employees were transferred from other locations to fill nonunit positions. All nonunit employees were hired from among the Kankakee job applicants.⁵

Whennen testified that his experience with acquiring other vending companies showed that 90 percent of the drivers hired from the prior companies left within 30 days to 6 months, which Whennen attributed to differences in pay systems or accounting practices.

On October 25, shortly after the Kankakee facility began operating under Respondent's ownership, Sergio Ocequera, union business agent, filed a grievance on behalf of the former Kankakee unit employees who were not retained, contending that they should have been retained under the lay-

off seniority provisions of the recently expired contract. At a meeting shortly thereafter, Ocequera complained that these union employees had not been retained and asked why. Zydek testified that he explained to Ocequera that the Respondent had no contract with the Union; that the contract did not apply to Triple A, so that Respondent was not involved in these grievances. According to Zydek, he told Ocequera that when the Union represented 30 percent of the employees, they could talk about a union.

Zydek's account of the meeting varies from the version offered by Ocequera and Shutter who also attended the meeting. Both Ocequera and Shutter testified that in discussing the hiring of Kankakee's union employees, Zydek said that under Illinois law, he was obliged only to hire 40 percent or 2.8 union employees. Since he did not need to hire a fraction of a person, he stated that it was sufficient to hire only two union employees, but that he might hire more of the former Kankakee union employees later. Based on a review of the record and the credibility criteria set out above, I credit the mutually corroborative testimony of Ocequera and Shutter.

It is undisputed that on October 22, five employees were transferred from the Morris facility to Kankakee to perform the driver and maintenance work previously done by union employees. One was sent from Chicago. It is also undisputed that during the time period September to October, Respondent advertised in various newspapers soliciting drivers and mechanics for employment at the Morris facility. Whennen testified that these ads were placed to obtain trainees at Morris to take the place of those employees who were going to be transferred to Kankakee.

As noted earlier, Triple A purchased the assets of Kankakee. Those assets included vending machines, vehicles, and customer accounts of Kankakee. When Triple A took over Kankakee's operations, it began to service Kankakee's customers. The parties stipulated that those former Kankakee customers constituted a substantial majority of the Respondent's customers at Kankakee. Likewise, Triple A continued to use Kankakee's suppliers who, the parties stipulated, constituted a substantial majority of the suppliers serving Triple A at the Kankakee facility.

The operation continued basically unchanged after the sale. Zydek testified that Respondent took over Kankakee's business using the Kankakee facility and, as noted above, serviced basically the same customers, using the same suppliers. Shutter, who was responsible for the day-to-day operation of Respondent, testified that she performed essentially the same job she had done with Kankakee, except that she did not do the hiring as she had done before at Kankakee. Shutter also testified that the operation continued basically unchanged after the sale to Respondent.

There were differences in the wages and benefits paid to employees after the sale. Respondent's drivers were paid on a commission rather than a wage basis and there were changes in vacation eligibility.

In addition, there were some differences in the manner of serving the customers. Under Kankakee, the soda machines were filled by soft drink distributors; under Respondent, the soda machines were filled by the drivers, thus requiring larger trucks. Also, Kankakee drivers did less minor vending machine repair than Respondent's drivers. As to the vehicles, Kankakee drivers were not responsible for the maintenance of the vehicles as they were under Respondent's operation.

⁵Gill had less than 2 years' seniority with Kankakee. While Trumble had 29 plus years, none of the other five who were denied employment had less than 25 years of seniority.

Shutter testified that while Kankakee moved its vending machines with its own maintenance men and drivers, Triple A sometimes used outside movers for this work.

With respect to the interchange of employees, Shutter testified that a driver came from Chicago or Morris as necessary to fill in for drivers at Kankakee for vacations and illnesses. However, the route jumper stationed at Kankakee normally substituted for unplanned absences that occurred on a daily basis.

B. Discussion and Analysis

1. The alleged discrimination

The General Counsel takes the position that Respondent refused to hire former Kankakee employees Eugene DeCarlo, Kenneth DeMara, Tim White, Mel Hebert, and Jeff Schultz because of their union membership. I agree. Respondent became aware in March 1994 during sale negotiations that Kankakee's drivers and technicians were represented by the Union. The record further discloses that it was the intention of Respondent to purchase the Kankakee operation free of any union. Indeed, one of the prerequisites or contingencies for the sale, set out in the sales contract, requires that this be accomplished before any sale was consummated.

While Respondent contends that it was not motivated by antiunion considerations in refusing to hire these union employees, the record does not support this position. Respondent's motivation is revealed in the grievance discussion on about October 26 or 27 set out above. The credited testimony shows that Zydek stated that he did not have any contract with the Union and that his only obligation to hire union employees was his understanding of a legal obligation to hire 40 percent of Kankakee's union employees (two union employees). This record discloses that his determination not to hire more than 40 percent was not based on any valid or objective consideration but was motivated by the fact that the other 60 percent were union which, at least in Zydek's judgment, disqualified them from consideration.

While Respondent might argue that their selections were based on recommendations from Shutter, this contention is not supported by the record. Shutter simply submitted her opinions concerning the strength and weaknesses of individual employees and did not recommend to Zydek or Whennen any hiring decisions. Insofar as this record discloses, there is nothing in the evaluations to show that Gill and Trumble were more qualified for hire than the others.

Respondent also argues that he decided to transfer employees to staff Kankakee because experience in prior acquisitions showed that drivers retained from acquired companies soon left their employment. However, the validity of this argument rests on the general, uncorroborated, and undocumented testimony of Whennen which I find unconvincing.

It is also significant to note that the Respondent's employee complement after the sale, except for unit drivers and technicians, consisted exclusively of former nonunit Kankakee employees. However, among the unit represented by the Union, i.e., drivers and technicians, Respondent did not hire any former Kankakee employees except for Gill and Trumble, but rather transferred employees from Morris and Chicago to fill those jobs. Trainees had been sought and hired at Morris in order to transfer employees to Kankakee. At the same time, Respondent was denying employment to

experienced union drivers and technicians already employed at Kankakee with an expertise developed over the years in dealing with Kankakee's customers, routes, and suppliers.⁶ Respondent concedes that trainees were hired at Morris in contemplation of transferring Morris employees to unit positions at Kankakee. In my opinion, these transfers were motivated by Respondent's desire to deny employment to union-affiliated drivers and technicians formerly employed by Kankakee because of their membership in the Union. See *Laro Maintenance Corp.*, 312 NLRB 155 (1993).

With respect to any analysis under *Wright Line*, 251 NLRB 1083 (1980), I conclude that the General Counsel has made out a prima facie showing sufficient to support the inference that the union membership of DeCarlo, DeMara, White, Hebert, and Schultz was a motivating factor in Respondent's decision to refuse to hire them and that Respondent has not demonstrated that they would not have been hired even in the absence of that protected activity.

2. Successor employer—bargaining obligation

With respect to the matter of Triple A's status as a successor employer to Kankakee, I am satisfied, based on this record, that Triple A was a successor to Kankakee. The record discloses that after the sale, Triple A continued to service the same customers and to utilize the same suppliers in basically the same fashion. While there may have been some minor differences in the way that the customers were serviced or in the responsibilities and working conditions of drivers and technicians after Triple A took over, the operation continued basically unchanged after the sale. See *Fall River Dyeing Corp.*, 482 U.S. 27 (1987).

Having concluded that Respondent violated Section 8(a)(3) of the Act by refusing to hire the above-named five individuals, I also conclude that had Respondent not unlawfully denied them employment, the Union would have represented a majority in the contract unit. Under existing Board and court law, a successor employer is obligated to bargain with the Union when that successor hires a majority of the predecessor's employees in an appropriate unit. *Fall River Dyeing Corp.*, supra. In this case, the Union must be deemed to represent a majority in the unit now employed by Respondent. Consequently, Respondent violated and is violating Section 8(a)(5) of the Act by refusing to bargain with the Union as the collective-bargaining representative of those unit employees.⁷

3. Appropriate unit

Respondent contends that the single location unit of drivers and technicians at Kankakee is inappropriate on the grounds that any appropriate unit must include all three of the Respondent's facilities. I do not agree. I conclude that where, as here, a single location unit has been historically

⁶ All had over 25 years of employment with Kankakee except for Schultz (8 years).

⁷ While Respondent contends that no bargaining demand has been made by the Union, the record discloses that the Union pursued contract grievances and filed the charges underlying this complaint. These actions constitute an adequate demand for bargaining. Further, in the circumstances of this case, it is apparent, given the antiunion position of the Respondent, clearly expressed in the "Agreement for Purchase," that any request for bargaining would have been futile.

represented under contract with a union, a successor corporation is obligated to bargain for that single location unit of employees and may not refuse to bargain on the grounds that the only appropriate unit for bargaining must include other facilities owned by the successor corporation.⁸ See *Fall River Dyeing Corp.*, supra.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth in section III above, occurring in connection with Respondent Employer's operations described in section I above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that Respondent refused to hire Eugene DeCarlo, Kenneth DeMara, Tim White, Mel Hebert, and Jeff Schultz for reasons which violate the provisions of Section 8(a)(3) of the Act. I shall therefore recommend that Respondent make them whole for any loss of pay they may have suffered as a result of the discrimination practiced against them. All backpay and reimbursement provided herein, with interest, shall be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1171 (1987), and *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

⁸Even under existing Board representation case law, the single location unit herein is presumptively appropriate. See *J & L Plate, Inc.*, 310 NLRB 429 (1993). The facts of this case disclose no substantial interchange of employees or integration of operations between the locations to rebut that presumption.

CONCLUSIONS OF LAW

1. Respondent Triple A Services, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 705, International Brotherhood of Teamsters, AFL-CIO is a labor organization with the meaning of Section 2(5) of the Act.

3. At all times material here the following described unit has been an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time route representatives, field maintenance employees, installation employees, inside maintenance employees and stockpersons at its Kankakee, Illinois facility but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

4. At all times material here the Union has been and is now the exclusive representative of the employees in the above-described bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. The Union and Kankakee were parties to a collective-bargaining agreement covering the above-described unit which expired on September 30, 1994.

6. By refusing to hire job applicants Eugene DeCarlo, Kenneth DeMara, Tim White, Mel Hebert, and Jeff Schultz because of their membership in the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

7. By refusing to bargain with the Union for the employees in the above-described unit at Respondent's Kankakee facility, Respondent violated Section 8(a)(5) and (1) of the Act.

[Recommended Order omitted from publication.]