

Overland Transportation System, Inc. and D.P. Cartage, Inc., a single employer¹ and Local 299, International Brotherhood of Teamsters, AFL-CIO. Case 7-CA-39348

April 18, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge and amended charge filed on January 7 and 13, 1997, the General Counsel of the National Labor Relations Board issued a complaint on January 24, 1997, alleging that the Respondents have 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 7-RC-20440. (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 Respondents filed answers admitting in part and denying in part the allegations in the complaint.

On March 10, 1997, the General Counsel filed a Motion for Summary Judgment. On March 12, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 25, 1997, Respondent Overland filed a response.

Ruling on Motion for Summary Judgment

In its answer and response, Respondent Overland admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's determination in the representation proceeding that the employees covered in the certified unit are employed by it as a single or joint employer with D.P. Cartage. Respondent Overland also contends that the Board violated its rules and regulations and did not follow precedent by reopening the representation hearing and allowing the Union to introduce unlimited evidence and pursue new legal theories which could have been examined or introduced at the original hearing. In its answer, Respondent D.P. Cartage denies that it is a single or joint employer with Respondent Overland and that it has refused to bargain.

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexam-

¹ Overland Transportation System, Inc. is sometimes referred to as Respondent Overland. D.P. Cartage, Inc. is sometimes referred to as Respondent D.P. Cartage. They are jointly referred to as Respondents.

ine the decision made in the representation proceeding.² We therefore find that the Respondents have 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).

We also find that no issue warranting a hearing is raised with respect to Respondent D.P. Cartage's refusal to bargain. Although the letter to the Union from the attorney representing Respondent D.P. Cartage stated that he was available to meet with the Union to negotiate a contract, the letter also stated that he was not authorized to negotiate on behalf of Respondent Overland, and, in his subsequent answer to the complaint, the attorney denied that the unit is appropriate because Respondent D.P. Cartage is not a single or joint employer with Respondent Overland. It is therefore clear that Respondent D.P. Cartage is continuing to contest the appropriateness of the unit and the Board's certification. In these circumstances, we find that Respondent D.P. Cartage has effectively refused to bargain as alleged in the complaint. See *Terrace Gardens Plaza*, 315 NLRB 749 (1994), *enfd.* 91 F.3d 222 (D.C. Cir. 1996).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Overland, a corporation, with its principal office and place of business in Indianapolis, Indiana, and an office and place of business in Dearborn, Michigan (Respondents' Dearborn facility), has been engaged in the intrastate and interstate transportation of commodities by motor freight. At all material times, Respondent D.P. Cartage, a corporation with its principal office and place of business in Markham, Illinois,³ and an office and place of business in Dearborn, Michigan (Respondents' Dearborn facility), has been engaged in the intrastate and interstate transportation of commodities by motor freight.

² Both Respondents deny the factual allegations of the complaint which support the finding that they constitute a single-integrated business enterprise and a single employer within the meaning of the Act. However, they do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent Overland and Respondent D.P. Cartage constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

³ Respondent D.P. Cartage admitted the jurisdictional facts with respect to itself, but noted that its principal place of business is in Markham, Illinois, rather than Indianapolis, Indiana, as alleged in the complaint.

At all material times, Respondent Overland and Respondent D.P. Cartage have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; and have interchanged personnel with each other. Based on their operations described above, Respondent Overland and Respondent D.P. Cartage constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

During the 12-month period ending December 31, 1996, the Respondents in conducting their business operations described above, collectively, jointly and severally, derived gross revenues in excess of \$500,000 and collectively, jointly and severally, performed services valued in excess of \$50,000 in States other than the State of Michigan. We find that the Respondents are 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 December 9, 1994, the Union was certified on November 14, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers and dock workers employed by D.P. Cartage, Inc. and Overland Transportation System at their facility located in Dearborn, Michigan; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.⁴

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

B. *Refusal to Bargain*

Since about December 2, 1996, the Union has requested the Respondents to bargain, and, since about December 11, 1996, the Respondents have 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 December 11, 1996, to bargain with the Union as the exclusive collective-bargaining representative of the employees in the appro-

⁴The certification, which differs inconsequentially from the complaint allegation, erroneously states that the facility is located in Detroit, Michigan, which was its previous location.

priate unit, the Respondents have 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 Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them 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 Respondents begin 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 Respondents, Overland Transportation System, Inc. and D.P. Cartage, Inc., a single employer, Dearborn, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 299, 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 full-time and regular part-time truck drivers and dock workers employed by D.P. Cartage, Inc. and Overland Transportation System at their facility located in Dearborn, Michigan; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at their facility in Dearborn, Michigan, copies of the attached notice marked "Appendix."⁵ Copies of the

⁵If 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

notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondents' authorized representatives, shall be posted by the Respondents 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 Respondents 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 Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since January 7, 1997.

(c) 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 Respondents have taken to comply.

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 Local 299, 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 full-time and regular part-time truck drivers and dock workers employed by D.P. Cartage, Inc. and Overland Transportation System at our facility located in Dearborn, Michigan; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

OVERLAND TRANSPORTATION SYSTEM,
INC. AND D.P. CARTAGE, INC.