

**Cortland Transit, Inc. and Teamsters, Local Union
No. 317.** Case 3-CA-19655

September 18, 1997

ORDER DENYING RECONSIDERATION

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

On July 10, 1997, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding¹ in which the Board granted the General Counsel's Motion for Default Summary Judgment and found that the Respondent had implied that the employees' selection of the Union as their collective-bargaining representative was the reason for the Respondent's refusal to grant regularly scheduled wage increases to its employees; discriminatorily and unilaterally withheld and refused to grant regularly scheduled wage increases to its employees; discriminatorily issued written warnings to an employee; refused to furnish the Union with certain information regarding the Respondent's termination of an employee; unilaterally implemented rules regarding employee limits on bus idling at its facility and employees' responsibility for lost or missing monthly bus passes, an employee dress code providing for the wearing of sweatshirts as part of its employees' uniform, and a drug and alcohol policy; and unilaterally changed the established purpose and use of its vending machine proceeds and ceased providing a Christmas party and summer picnic to its employees, in violation of Section 8(a)(1), (3), and (5) of the Act as alleged in the complaint.² The Board directed the Respondent, inter alia, to cease and desist, rescind the unlawful warning, grant the withheld wage

increases, provide the requested information, rescind the unilateral changes on request, and make the unit employees whole for any loss of wages or benefits incurred as a result of the changes.

On July 30, 1997, the General Counsel filed a motion for reconsideration requesting that the Board's Decision and Order be modified to include an order requiring the Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry*, 136 NLRB 785 (1962). The General Counsel argues that such a remedy was requested in the complaint, that the Respondent has not contested the propriety of that remedy, and that such an additional remedy is appropriate to alleviate the unfair labor practices found, in particular, the numerous unilateral changes.

On July 29, 1997, the Charging Party filed a statement in support of the General Counsel's motion.

Having duly considered the matter, we find that the request for reconsideration should be denied. The complaint and Motion for Summary Judgment failed to allege facts that would warrant an extension of the certification year in accord with the remedy set forth in *Mar-Jac Poultry*. There was no general allegation that the Respondent had failed or refused to recognize the Union or to meet and bargain with the Union in good faith following its certification and no indication how the Respondent's failure to provide information regarding a discharge or unilateral changes affected the parties' negotiations. A *Mar-Jac* remedy was therefore unwarranted.³ Accordingly,

IT IS ORDERED that the General Counsel's request for reconsideration is denied.

¹ 323 NLRB No. 207 (not reported in Board volumes).

² Par. 3 of the Conclusions of Law inadvertently stated that the Respondent violated Sec. 8(a)(3) instead of Sec. 8(a)(5) of the Act. The decision will be corrected accordingly.

³ See *Buck Creek Coal*, 310 NLRB 1240 fn. 2 (1993), and cases cited therein. Furthermore, although the Respondent withdrew its answer to the complaint, the Board has the responsibility to determine an appropriate remedy. See *Imperial Floral Distributors*, 319 NLRB 147 (1995).