

**TransMontaigne, Inc., and Teamsters Local Union
No. 929 a/w International Brotherhood of Team-
sters, AFL-CIO.** Case 4-CA-27610

December 20, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND WALSH

On June 23, 2000, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and an answering brief.

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,¹ and conclusions as modified and to adopt the recommended Order as modified.

Louis Dreyfus Energy Corporation (LDEC) and the Union were parties to a collective-bargaining agreement from December 1, 1995 to November 30, 1998. Article 2 of the agreement states:

RECOGNITION OF THE UNION

The COMPANY^[2] recognizes the UNION as the collective bargaining representative with regard to wages, hours, and other conditions of employment for EMPLOYEES classified as terminal operators who are employed by the COMPANY at its Philadelphia terminal, 58th Street, Philadelphia, Pennsylvania In the event of a bona fide sale of the assets or change in ownership, or in the event COMPANY ceases operation of the facility any successor COMPANY which purchases, acquires or becomes the EMPLOYER of EMPLOYEES [sic] presently covered by the Recognition clause shall not be bound by this Recognition clause.

On October 30, 1998,³ TransMontaigne, Inc., through its wholly-owned subsidiary TransMontaigne Product Services, Inc. (TPSI), acquired all of the issued and outstanding capital stock of LDEC from LDEC's owner,

¹ The General Counsel excepts to the judge's failure to find that TransMontaigne, Inc., TransMontaigne Product Services, Inc., and TransMontaigne Product Services East, Inc. constituted a single employer for purposes of the National Labor Relations Act. The Respondent admitted in its answer to the amended complaint, and we therefore find, that from October 30, 1998 to April 1, 1999, TransMontaigne, Inc., TransMontaigne Product Services, Inc., and TransMontaigne Product Services East, Inc. constituted a single employer. We shall modify the recommended Order and the notice accordingly.

² The "COMPANY" was defined as LDEC in art. 1 of the contract.

³ All dates are 1998 unless otherwise indicated.

Louis Dreyfus Corporation (LDC). LDEC was renamed TransMontaigne Product Services East, Inc. (TPSE).⁴

By letter dated October 28, Erik Carlson, of TransMontaigne Inc.⁵ informed the Union that TransMontaigne, Inc. did not intend to recognize the Union, stating that it was not obligated to do so under article 2 of the agreement between LDEC and the Union. By letters dated October 29 and November 13, the Union's counsel, Carter N. Williamson, requested that Carlson contact him to negotiate a new collective-bargaining agreement. The Respondent did not respond to the requests.

TransMontaigne' Inc. contends that it has no obligation to recognize and bargain with the Union because the Union, in article 2 of the agreement between the Union and LDEC pertaining to the obligations of a successor employer, waived its right to represent unit employees.

The judge found that the transaction between LDC and TPSI was a transfer of the stock of LDEC, and thus LDEC (TPSE) remained the same legal and employing entity that it had been before the transaction. The judge reasoned that there was therefore neither a "successor" owner or a "successor" employer and that, even assuming that article 2 created a waiver, any such waiver did not apply in these circumstances. Accordingly, the judge concluded that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with the Union.

For the reasons discussed below, we agree with the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with the Union. Our rationale, however, is different.

Nothing in this case turns on whether Respondent is regarded, by virtue of a stock transfer, as the same legal entity that recognized and entered into the collective-bargaining agreement with the Union or whether the Respondent is treated as a successor to that entity, by application of the principles of *NLRB v. Burns International Security Services*, 406 U.S. 272, 287 (1972). The Respondent claims that it was a *Burns* successor; the judge found (and our concurring colleague agrees) that because a stock transfer was involved, successorship principles do not apply and thus that the Respondent was not a "successor Company" within the meaning of article 2 of the agreement. The distinction between a stock purchaser and a successor might matter here if the issue was whether the Respondent was required to abide by the

⁴ On April 1, 1999, TPSE was merged into TPSI, at which time TPSE ceased to exist.

⁵ Carlson's titles as shown on the letterhead are senior vice president, general counsel, and corporate secretary.

terms of the collective-bargaining agreement.⁶ But the General Counsel does not make that contention. In this case, rather, the question is simply whether the Respondent was required to recognize and bargain with the Union. And the law is clear that the Union's right to recognition, as well as the Respondent's corresponding duties, are statutory, not contractual, in nature, regardless of whether the Respondent is regarded as a successor or the continuation of the same legal entity.⁷ Absent a waiver by the union, then, the Respondent would be required to recognize and bargain with the Union, regardless of whether it was bound by the agreement.

The waiver of a statutory right, in turn, must be clear and unmistakable. Article 2 of the collective-bargaining agreement does not meet this standard. By its terms, article 2 provides that:

any successor COMPANY which purchases, acquires or becomes the EMPLOYER of EMPLOYEES presently covered by the Recognition clause [of the agreement] shall not be bound *by this Recognition clause*. [Emphasis added.]

This language refers specifically to the recognition clause of the agreement and not to the Respondent's independent, statutory duty to recognize the Union. Thus article 2 does not constitute a clear and unmistakable waiver of the Union's statutory right to recognition. Moreover, the provision cannot even be reasonably read as such a waiver. Rather, article 2 must be read as releasing a new employer from the old employer's contractual obligations, as reflected in the agreement. Interpreting the provision as a waiver of a statutory right to recognition makes no sense. While a union might have reasons to agree in advance that a new employer will not be required to assume the old contract,⁸ it would be irrational for the union to agree that, based on a change in corporate ownership, it will give up its fundamental right to represent employees.

Even assuming that article 2 was triggered by the transaction here, the Respondent would at most have

⁶ Under *Burns*, a successor generally is not bound to its predecessor's collective-bargaining agreement, but rather is free to establish its own initial terms and conditions of employment. 406 U.S. at 287–291. A stock purchaser, in contrast, generally remains bound to the agreement in effect at the time of the transaction. See *Rockwood Energy & Mineral Corp.*, 299 NLRB 1136, 1139 (1990), enf. 942F.2d 169 (3d Cir. 1993).

⁷ See *Burns*, supra, 406 U.S. at 287; *Rockwood Energy & Mineral Corp.*, supra, 299 NLRB at 1139. Accord: *Hartford Hospital*, 318 NLRB 183, 189–190 (1995), enf. 101 F.3d 108 (2d Cir. 1996) (employer had duty to recognize and bargain with union, regardless of whether merger was akin to stock transfer or employer was successor).

⁸ See *Burns*, supra, 406 U.S. at 287–288.

been relieved of its contractual obligations. Accordingly, we conclude that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, TransMontaigne, Inc., TransMontaigne Product Services East, Inc., and TransMontaigne Product Services, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

Substitute the attached notice for that of the administrative law judge.

CHAIRMAN HURTGEN, concurring.

I concur in the result. It is clear that there has been no change of employers. Rather, the stock of LDEC has been transferred from LDC to TPSE. The corporate employer was, and is, LDEC. Although the enterprise is now called TPSE, that does not change the fact that LDEC remains the corporate Employer. In view of this, and the fact that there have been no significant changes in operations or employees, LDEC remains under an obligation to bargain.¹

Article 2 of the collective-bargaining agreement does not require a contrary result. As to this issue, I apply normal rules of contract interpretation rather than principles of waiver.² Article 2 applies to a “sale of assets” or a “change in ownership.” That clause provides that, in such events, the “successor Company” is not bound by the recognition clause of the contract. However, as discussed above, this case does not involve a sale of assets or a change in ownership. The Employer/owner of the enterprise continues to be LDEC, and LDEC continues to own the assets. Thus, article 2 does not apply.

My colleagues say that it is irrelevant whether Respondent is a *Burns* successor to the predecessor, as distinguished from a continuation of the predecessor corporate entity. However, this matter is relevant because of the language of article 2 of the predecessor-union contract. That article provides:

Any successor COMPANY which purchases, acquires or becomes the EMPLOYER of EMPLOYEES presently covered by the Recognition clause [of the agreement] shall not be bound by this Recognition clause.

¹ The General Counsel does not contend that the Respondent was bound to the contract that expired on November 30, 1998.

² See my dissent in *Dorsey Trailer, Inc.*, 327 NLRB 835 (1999).

A reasonable interpretation of the language is that the parties to the contract agreed that a *successor company* would not be bound to recognize the Union. That clause provides that, in such events, the “successor Company” is not bound by the recognition clause of the contract. My colleagues conclude that the Union and the “predecessor” may have agreed that the Union would have no *contractual* recognition claims against a successor company, but that the Union would retain *statutory* recognition claims against a successor. In my view, it is unrealistic to assume that the parties would agree that there could not be a successor contractual claim and yet there could be a successor statutory claim.

My conclusion is based on a “contract coverage” analysis, rather than a “waiver” analysis. As I have explained elsewhere, a “contract coverage” analysis is appropriate where, as here, the contract covers an issue. The Board’s task is to ascertain the contractual intent of the parties and to give effect to it.³ This is done through standard contract interpretation, rather than through the prism of “clear and unmistakable waiver.” It is enough to say that the language favors one view over another, not that one view is clear and unmistakable and the other view clearly wrong.

As I read the clause in question here, a “successor Company” is not bound to recognize the Union. Clearly, a “successor Company” is not the same company as the original one, i.e., the one that entered into the collective-bargaining agreement with the Union. And it is equally clear, in the instant case, that the Respondent is the *same* company. The shareholders have changed, but the company has not. Thus, the clause does not defeat the bargaining obligation.

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.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice

³ See my dissent in *Allied Signal Aerospace*, 330 NLRB 1216 (2000).

To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to recognize and bargain with Teamsters Local Union No. 929 a/w International Brotherhood of Teamsters, AFL–CIO, as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and upon request bargain with the Union as the exclusive representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed statement:

All employees classified as terminal operators who are employed by us at our Philadelphia terminal, 58th Street, Philadelphia, Pennsylvania, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

TRANSMONTAIGNE, INC.

William E. Slack Jr., Esq., for the General Counsel.

Thomas A. Sratovich, Esq., of Denver, Colorado, for the Respondent.

William H. Haller, Esq., of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon charges filed on October 29, 1998, by Teamsters Local Union No. 929, affiliated with International Brotherhood of Teamsters, AFL–CIO (the Union), the Regional Director, Region 4, National Labor Relations Board (the Board), issued a complaint on June 7, 1999, and an amended complaint on March 7, 2000, alleging that TransMontaigne, Inc. (the Respondent), had committed violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act), by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in an appropriate bargaining unit since October 30, 1998. The Respondent has filed timely answers denying that it has committed any violation of the Act.

All parties have agreed to waive their rights to an evidentiary hearing before an administrative law judge and to submit a stipulation of facts with attached exhibits which will constitute the entire record in this case. Briefs submitted on behalf of all parties have been given due consideration. Upon this record, I make the following

FINDINGS OF FACT

The parties have stipulated as follows:

Prior to October 30, 1998, the Louis Dreyfus Energy Corp. (LDEC), a wholly-owned subsidiary of Louis Dreyfus Corporation (LDC), owned and operated a refined petroleum products (heating oil, low sulfur diesel fuel, and kerosene) storage and terminaling facility located at 58th Street and the Schuylkill River in Philadelphia, Pennsylvania (the Philadelphia Terminal). LDEC recognized the Union as the exclusive collective-bargaining representative of a unit consisting of:

All employees classified as terminal operators who are employed by the Respondent at its Philadelphia Terminal, 58th Street, Philadelphia, Pennsylvania, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act [the unit].

Joint Exhibit No. 1 is an agreement titled "Labor Agreement Plus Amendment Philadelphia PA," having an effective date of December 1, 1995, to November 30, 1998 (the Labor Agreement), which constituted the collective-bargaining agreement between LDEC and the Union with respect to the unit.

As of October 29, 1998, LDEC employed two employees in the unit at the Philadelphia Terminal, terminal operators William Aaron and James Dowdell. Aaron and Dowdell reported to Terminal Manager John Small.

Effective October 30, 1998, the Respondent, through its wholly-owned subsidiary, TransMontaigne Product Services, Inc. (TPSI), acquired all of the issued and outstanding capital stock of LDEC from its owner LDC, an unaffiliated third party, with LDEC, which was renamed TransMontaigne Product Services East, Inc. (TPSE), becoming a wholly-owned subsidiary of TPSI. Effective April 1, 1999, TPSE was merged into TPSI, at which time TPSE, formerly LDEC, was liquidated and ceased to exist.

During the past year, the Respondent, through the activities of its wholly-owned subsidiary, TPSI, has sold and shipped goods valued in excess of \$50,000 from the Philadelphia Terminal directly to points located outside the Commonwealth of Pennsylvania.

Following the Respondent's acquisition of LDEC (renamed TPSE), Aaron and Dowdell continued to be employed at the Philadelphia Terminal as employees of TPSE and then on April 1, 1999, subsequent to the merger of TPSE into TPSI and the liquidation of TPSE (formerly LDEC), as employees of TPSI and continued to be classified as terminal operators. In conjunction with the acquisition of LDEC by the Respondent, and as employees of TPSE and subsequently TPSI, Aaron and Dowdell became and remain full participants in the Respondent's welfare and benefit plans, including group health, retirement savings plan, life insurance benefits, vacation eligibility and holiday benefits. There has been no substantial change in the duties performed by Aaron and Dowdell since the Respondent's acquisition of LDEC, and Aaron and Dowdell have continued to report to the terminal manager. Aaron, Dowdell, and the terminal manager have been the only individuals employed at the Philadelphia Terminal since the Respondent's acquisition of LDEC.

Since the Respondent's acquisition of LDEC, the Philadelphia Terminal has continued to operate as a refined petroleum products storage and terminaling facility. There has been no substantial change in the manner in which the Philadelphia Terminal operates since the acquisition of LDEC by the Respondent, and the Respondent, through its wholly-owned subsidiary, TPSI, has continued business operations at the Philadelphia Terminal without interruption or substantial change.

Article 2 of the labor agreement provides that "[I]n the event of a bona fide sale of the assets or *change in ownership*, or in the event COMPANY ceases operation of the facility, *any successor COMPANY which purchases, acquires or becomes the EMPLOYER of EMPLOYEES* presently covered by the Recognition clause *shall not be bound by this Recognition clause.*" (Emphasis supplied.)

At all times material, Erik Carlson has held the position of the Respondent's senior vice president and has been an agent of the Respondent and its subsidiary enterprises, including TPSI, and during the time of its existence which ceased on April 1, 1999, TPSE, within the meaning of Section 2(13) of the Act. At all times material, Paul Cardullo has been the Union's president. In October and November 1998, Carter Williamson was employed by the Union as its counsel.

Erik Carlson sent the Union a letter, dated October 28, 1998, which stated in part:

This is to advise you that TransMontaigne Inc. ("TransMontaigne") has entered into a formal definitive agreement with Louis Dreyfus Corporation, pursuant to which TransMontaigne will acquire all of the issued and outstanding stock of Louis Dreyfus Energy Corp. Closing of this transaction is anticipated to occur on October 30, 1998. As provided in Article 2 of the Labor Agreement between Louis Dreyfus Energy Corp. and Teamsters Local Union No. 929 dated November 30, 1995, TransMontaigne is not obligated and does not intend to recognize the Union.

The letter also stated that TransMontaigne would be contacting employees of the Philadelphia Terminal to offer them employment with it upon terms and conditions established by TransMontaigne management.

By letters dated October 29 and November 13, 1998, respectively, to Erik Carlson, Carter Williamson requested that the Respondent recognize the Union and negotiate with it a new collective-bargaining agreement covering the employees in the unit.

There have been no further communications between the Respondent, TPSI and/or TPSE and the Union concerning the Union's representation of the unit at the Philadelphia Terminal.

Analysis and Conclusions

The sole issue is whether the Respondent was obligated to recognize and bargain with the Union once it acquired and began to operate the Philadelphia Terminal.

The Respondent contends that it has no such obligation because the Union waived its rights to represent the employees in the unit by virtue of the recognition clause in article 2 of the labor agreement between the Union and LDEC. Article 2 provides, in part: "In the event of a bona fide sale of the assets or

change in ownership, or in the event COMPANY ceases operation of the facility, any successor COMPANY which purchases, acquires or becomes the EMPLOYER of EMPLOYEES presently covered by the Recognition clause shall not be bound by this Recognition clause.” The Respondent asserts that when it purchased the stock of LDEC, it became a successor employer to LDEC, but the successor’s duty to bargain with the incumbent union had been knowingly and voluntarily waived by the clear and unambiguous language of article 2.

Even assuming that the waiver language relied on by the Respondent meets the “clear and unmistakable” standard set by the Supreme Court in *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983), insofar as it applies to a “successor” to LDEC, that language is not applicable under the circumstances involved here. The Respondent’s argument that it does apply fails to recognize the distinction between a “successorship” and a “stock transfer.” As the Board stated in *Hendricks-Miller Typographic Co.*, 240 NLRB 1082 (1979):

The concept of “successorship” as considered by the United States Supreme Court in *N.L.R.B. v. Burns International Security Services*, 406 U.S. 272 (1972), and its progeny, contemplates the substitution of one employer for another, where the predecessor employer either terminates its existence or otherwise ceases to have any relationship to the ongoing operations of the successor employer. Once it has been found that this “break” between predecessor and successor has occurred, the Board and the courts then look to other factors to see how wide or narrow this disjunction is, and thus determine to what extent the obligations of the predecessor devolve upon its successor.

The stock transfer differs significantly, in its genesis, from the successorship, for the stock transfer involves no break or hiatus between two legal entities, but is, rather the continuing existence of a legal entity, albeit under new ownership. 240 NLRB at 1083, fn. 4.

It is fundamental that a corporation and its stockholders are separate and distinct entities and that a mere change in the latter does not absolve the former of its continuing responsibilities under the Act. If it did, it “would mean that everyday’s transactions on every major stock exchange and every purchase or sale of a corporate subsidiary would carry with it the potential for total disruption of the labor relations of the business being bought or sold.” *EPE, Inc.*, 284 NLRB 191, 198 (1987). In the present case, there was no predecessor or successor, there was simply a transfer of stock which did not involve a substitution of one employer for another. After the transfer occurred, the employees in the unit continued to work for the same employer, LDEC renamed “TPSE,” at the same facility, performing the same duties, under the same supervision. The only thing that had changed was the ownership of the stock of LDEC. The changes in stock ownership and corporate name did not result in any significant changes to the operation of the Philadelphia Terminal, its management, the composition of the unit, or the stability of the existing bargaining relationship and there was no break or hiatus between two legal entities. Consequently, TSPE was not a successor to LDEC, it was the same legal entity. See, e.g., *M.C.P. Foods*, 311 NLRB 1159, 1160 (1993); *Rockwood Energy & Mineral Corp.*, 299 NLRB 1136, 1139 (1990), enf. 942 F.2d 169 (3d Cir. 1993); *EPE, Inc.*,

above at 198–199; *Western Boot & Shoe*, 205 NLRB 999, 1004–1005 (1973).⁹

Because there was no “successor” owner of the Philadelphia Terminal or “successor” employer of the employees in the unit, the alleged waiver contained in article 2 of the contract is inapplicable and the Respondent, into which LDEC/TSPE was merged, remained obligated to recognize and bargain with the Union. It is clear from the actions of the Union, in requesting that the Respondent recognize and bargain with it following the stock transfer, that it had not disclaimed interest in representing the unit. I find that the Respondent’s failure and refusal to do so violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees classified as terminal operators who are employed by the Respondent at its Philadelphia Terminal, 58th Street, Philadelphia, Pennsylvania, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been the exclusive representative of all employees in the above-described unit for the purposes of collective bargaining with respect to rates of pay, hours of employment, and other terms and conditions of employment within the meaning of Section 9(a) of the Act.

5. The Respondent has violated Section 8(a)(5) and (1) of the Act by, since October 30, 1998, failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the unit.

6. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it should be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

¹ Although these and similar cases did not involve a waiver issue, the underlying principle applies here.

² If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, TransMontaigne, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the unit.

(b) In any like or related manner 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 concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees classified as terminal operators who are employed by the Respondent at its Philadelphia terminal, 58th Street, Philadelphia, Pennsylvania, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Philadelphia, Pennsylvania, copies of the attached

notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 4, 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. 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 October 30, 1998.

(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 Respondent has taken to comply.

³ 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."