

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

ATC LOGISTICS OF MARYLAND, INC.

Employer

and

Case No. 5-RC-15340

**TEAMSTERS LOCAL UNION NO. 557, A/W
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO¹**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record, the Regional Director finds:

1. ATC Logistics of Maryland, Inc. (ATC) and Randstad North America, L.P. (RNA) are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
2. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
3. The labor organization involved claims to represent certain employees of ATC and RNA.
4. A question affecting commerce exists concerning the representation of certain employees of ATC and RNA the within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

¹ The Employer's and Petitioner's name appear as amended at the hearing.

5. ATC, a Delaware corporation, is engaged in the business of operating an automobile processing facility at the Masonville Marine Terminal at the Port of Baltimore, Maryland. At the hearing, ATC stipulated that it meets the monetary requirements for the Board's discretionary jurisdictional standards. The parties stipulated, and I find, that ATC is engaged in commerce within the meaning of the Act.²

Teamsters Local Union No. 557, a/w International Brotherhood of Teamsters, AFL-CIO (Local 557) seeks to represent a unit of all full-time and regular part-time employees in the classifications of rail crew/rail handler, drivers, body shop mechanics, body shop painters, parts coordinators and distribution coordinators employed by ATC, including those employees supplied by RNA, at the Masonville Marine Terminal, Port of Baltimore, Maryland; but excluding office clerical employees, technical employees, field coordinators, maintenance engineers, guards, and supervisors³ as defined by the Act.

The unit set forth in the petition, which originally was filed by Teamsters Local Union No. 570 a/w International Brotherhood of Teamsters (Local 570), sought all rail crew employees, drivers and temporary rail crew/driver employees utilized by ATC Logistics on payroll at Randstad.⁴ There is no history of collective bargaining between the parties for these employees, nor any other bars to the conduct of an election.

ATC presented as its witnesses executive vice president John Lang and director of operations Cindy Harris. RNA presented agent Edward C. Birch as its witness. The Petitioner presented as its witness former ATC employee Jarrett McBurroughs.

ISSUES

The issues raised in the instant proceeding include the following:

- 1) Whether a "substantial and representative" complement of employees exists so as to warrant the direction of an immediate election.

² The parties stipulate, and I find, that RNA, which is one of two sources for temporary workers who work at ATC in the positions of rail handlers and drivers, also is an employer engaged in commerce within the meaning of the Act.

³ At the hearing, the parties stipulated that the following individuals are supervisors within the meaning of Section 2(11) of the Act: Cindy Harris, director of operations; Jack Lucas, shop manager; George Green, assistant director of operations; John Baker, body shop superintendent; and Timothy Orick, mechanic supervisor. In addition, the parties stipulated at hearing that the appropriate unit should exclude office clericals, the receptionist, employees employed in the IT department, and the programmer.

⁴ The Employer named on this petition is "ATC Logistics, Int." However, at the hearing Local 557 moved to amend the petition to add RNA as an alleged employer. In addition, counsel for Local 557 moved to amend the petition so as to substitute Local 557 for Local 570 as the Petitioner for all purposes in this proceeding.

- 2) Whether the Hearing Officer's rulings permitting amendment of the petition made at the hearing are free from prejudicial error, whether RNA was denied due process as a result of the amendment at hearing to add it as an employer, and whether the petition should be dismissed.
- 3) Whether the drivers and rail handlers are "jointly employed" by ATC and RNA.
- 4) Whether the maintenance engineer or the field coordinator are supervisors as defined by Section 2(11) of the Act.

POSITIONS OF THE PARTIES

Regarding whether a "substantial and representative" complement of employees exists so as to warrant the direction of an immediate election, ATC contends that ATC does not have a "substantial and representative" complement of employees by virtue of its expanding nature of its operations. Thus, ATC argues that the petition should be dismissed as premature.

Local 557 contends that the existing workforce is substantial and representative, and, therefore, an immediate election should be directed. It further argues that ATC's plans for expansion are "entirely speculative," but even if such plans come to pass, the employee complement will not expand in any significant degree.

Based on the record as a whole and careful consideration of the arguments of the parties at the hearing and in brief, I find that a substantial and representative complement of employees does not exist at ATC, and therefore the petition should be dismissed as premature.⁵

THE EMPLOYER'S OPERATION

ATC operates an automobile processing facility in Baltimore, Maryland where it processes and preps automobiles through its facility, which includes a vehicle processing center and staging area. ATC unloads Toyota vehicles from rail cars at an "off-site" railhead located about 2/10 of a mile from the entrance to the ATC facility.⁶ ATC then processes these vehicles, which are shuttled by ATC to the Toyota facility located adjacent to ATC's property.

⁵ In light of my decision here, I find it unnecessary to pass on any issues other than whether a "substantial and representative" complement of employees exists so as to warrant the direction of an immediate election.

⁶ There are also three rail spurs on site that have been constructed to provide a total capacity of 21 rail cars and that are fully lighted for 24-hour operations. ATC will use these spurs to begin spotting rail cars into the facility upon the first shipments of Ford exports, which are discussed below.

In addition, ATC handles Honda's "in transit damage" work, which involves repairing vehicles that are damaged either on rail, ship, or motor carrier. This work, body repair and painting, is performed in the paint prep, paint shop, and paint finish areas, located in ATC's main building, before the vehicles are distributed to the dealer network.

In late 2001, Honda awarded ATC a contract to handle newly produced vehicles in the United Kingdom, which entails the importing of 70,000 vehicles per year. ATC received the first shipments of these vehicles in January of 2002. In addition, Honda is slated to have a vehicle launch on March 10, 2002, of a new vehicle – a three-door Civic hatchback – which currently is only produced in the United Kingdom. Consequently, ATC is holding these vehicles until there are sufficient vehicles for distribution to the dealerships. As of the time of the hearing, ATC was scheduling rail moves to be loaded outbound the week of the hearing so that west coast dealers would receive these vehicles. The processing of these vehicles differs from that of the domestic Hondas processed by ATC in that in addition to the work performed on Honda domestic vehicles, these import vehicles must be cleaned and labeled prior to delivery to car dealers. ATC will also be involved in loading rail cars with the vehicles for shipment, a task not performed on the Honda domestic vehicles previously handled by ATC.

Honda also awarded ATC with its export business, which was formerly handled in Newark, New Jersey. This work, which began in or around the last week of December of 2001 or the first week of January of 2002, involved the shipment of vehicles to ATC for processing in preparation for their export. In January of 2002, ATC began handling an average of 1,000 Honda exports per month, plus 3,000 Toyota and 4,500 Honda domestics.

In early February of 2002, ATC was awarded another piece of new business: a contract with Ford Motor Company (Ford) to begin processing vehicles for export to Puerto Rico and the Middle East beginning in April of this year.⁷ Beginning in April and May of 2002, ATC will handle about 321 Ford exports per month. These vehicles require the following work: undercoating; pulling of fuses; and the placing of keys on rubber bands on the dash. In June or July of this year, executive vice president Lang estimated that the number of vehicles per month will jump to about "1,001" per month, and in September the operation will be fully ramped up with ATC handling an estimated 2,274 Ford vehicles per month. At that point, ATC will begin handling the Crown Victoria and the Grand Marquis destined for the Middle East, which require the installation of additional air conditioning units. Consequently, ATC's shop will experience an increase in work as a result of performing such installations.

⁷ Ford has structured this work in three "waves:" Wave 1; Wave 2; and Wave 3. The estimated launching timing for these waves is April, July and October, respectively.

ANALYSIS

According to ATC Exhibit No. 7, a copy of which is attached,⁸ as of February 7, 2002, the date of the petition, there were 23 employees working in the following 7 classifications: rail handler; drivers; field coordinator⁹; distribution coordinator¹⁰; maintenance engineer¹¹; body shop painter; and body shop mechanic.¹² As of the February 22nd hearing, there were 19 employees¹³ working at ATC in the following 8 classifications: rail handler; drivers; field coordinator; distribution coordinator; maintenance engineer; body shop painter; body shop mechanic; and parts coordinator.

By September 2002, ATC projects that 93 employees will be working in the following 20 job classifications: rail handler; field coordinator; distribution coordinator; drivers; scanner/labeler/surveyor;¹⁴ body shop mechanic; body shop helper; body shop painter; maintenance engineer; maintenance; undercoaters; vehicle prep drivers;¹⁵ mechanic I; mechanic II;¹⁶ car washers; parts warehouseman; marine and rail inspector; truck and yard inspector; shop and final inspector;¹⁷ and parts coordinator.

⁸ The bracketed numbers on ATC Exhibit No. 7 denote RNA-supplied employees whereas the non-bracketed numbers refer to ATC employees.

⁹ The field coordinator will be responsible for directing the work of the labelers/scanners/surveyors.

¹⁰ As of the time of the hearing, ATC employed only one distribution coordinator, who is responsible for maintaining the information received for the units to be shipped out and the accompanying paperwork, as well as insuring that the vehicles are properly marked and set up in a designated area.

¹¹ The maintenance engineer is responsible for performing any maintenance work around the facility such as changing light bulbs, lawn mowing and maintenance, as well as the pick up of materials and supplies for shop employees when necessary. In addition, he performs maintenance work in and about the main building shop area.

¹² The body shop mechanic repairs any damage done to vehicles while in transit such as replacing damaged roofs, fenders and bumpers.

¹³ The evidence revealed that there was a temporary decrease in the number of rail handlers working at ATC after the filing of the petition but prior to the close of the hearing due to employee terminations by ATC.

¹⁴ These employees will be required to survey, scan and mark the cars being processed by ATC pursuant to its new accounts.

¹⁵ Vehicle prep drivers will be responsible for taking cars out of the shop staging area and to the ramp for undercoating, where these employees pull fuses from the vehicles and put rubber bands on key rings.

¹⁶ Level I mechanics are skilled ASE certified mechanics, which are necessary due to the complexities of the contract requirements, while Level II are semi-skilled mechanics who would perform more minor repairs.

¹⁷ Once ATC begins to handle the Ford account, the vehicles will be processed through the quality assurance building for their final quality check on shop performance and other requirements of the Ford contract. Therefore, a truck and yard inspector, shop and final inspector and marine and rail inspector will be hired as business increases.

With respect to the classifications of scanner/labeler/surveyor, body shop helper, car washers, and inspectors, Lang testified that by September 2002 he was “reasonably sure” that 100% of these positions would be occupied because ATC has committed itself to two accounts, the Ford and Honda accounts, that require work in these classifications.

As for Level I or II mechanics, some Level II mechanics will be hired by April 1, 2002; however, the Level I mechanics are not expected to be hired until mid-May, in preparation for the June 1 start-up. Lang testified that the full contingent of Level I mechanics will be brought on board 90 days after that because they will be performing engine work and the installation of air-conditioning units in vehicles destined for the Middle East. By September 2002, it is estimated that there will be eight Level I mechanics and four Level II mechanics.

Because each customer is assigned a distribution coordinator, ATC expects the number employed in this classification to increase. ATC expects to employ two distribution coordinators in September of 2002 as the volume of work increases.

Regarding the undercoating work, ATC plans to hire three to four undercoaters by April 1, 2002, pursuant to “wave 1” of the Ford export contract, which requires “standard services.” By mid-May, ATC anticipates it will need a total of 11 undercoaters by September 2002, in order to service the contracts it has in place.

As for car washing, the car washing facility, which was fully operational as of the time of the hearing, is expected to be utilized in April 2002 upon the first shipment of Ford vehicles. It is undisputed that in order to service the contracts it has in place, ATC plans to employ two car washers by September to handle the facility.

The Board has long held that to warrant an immediate election where there is definite evidence of an expanding or contracting unit, the present work complement must be substantial and representative of the ultimate complement to be employed in the near future, projected both as to the number of employees and the number and kind of classifications. *Douglas Motors Corp.*, 128 NLRB 307, 308 (1960). In general, the Board finds an existing complement of employees to be “substantial and representative” when approximately 30 percent of the eventual complement is employed in 50 percent of the anticipated job classifications. *Yellowstone International Mailing, Inc.*, 332 NLRB No. 35 (2000), citing, inter alia, *Custom Deliveries*, 315 NLRB 1018, 1019 fn. 8 (1994).

I find, in agreement with ATC, that the existing complement of employees does not constitute a “substantial and representative” complement of the projected workforce. The record evidence demonstrates a rapidly expanding operation and workforce. Contrary to Petitioner’s arguments in its brief, ATC’s plans are not “entirely speculative.” Rather, those plans are of more than reasonable certainty and are necessary to service the contracts in place between ATC and its customers. In this regard, the Petitioner did not present any evidence that would refute ATC’s plans for expansion. Nor do I find ATC’s anticipated time frame for its expansion to be too remote in time to serve as the standard

against which to measure the present complement of employees. *Gerlach Meat Co., Inc.*, 192 NLRB 559 (1971).

The anticipated expansion in the instant case, which is not conditioned upon the purchase or installation of any additional machinery or further building construction, is distinguishable from those in *General Engineering, Inc.*, 123 NLRB 586 (1959), and *Meramec Mining Co.*, 134 NLRB 1675 (1961), cited by the Petitioner in its brief. In *General Engineering*, the employer, in contending that the petition should be dismissed on the ground that an election would be premature, argued that after it completed installing machinery and the construction of a building, the plant would be turned over to another company, which might effect changes in the employee complement. The Board found that General Engineering and the second company constituted a single employer, that they regularly collaborated with respect to the work at the plant, and that if and when the second company took over the plant, there would be a labor surplus. Thus, it was speculative that the possible changes in corporate form would affect to any material extent the present workforce. *Id.*

In *Meramec Mining Co.*, the Board rejected the employer's argument that the petition was premature because it had plans to expand its work force when certain production operations began. Characterizing the employer's plans as "speculative in nature," the Board noted that it was admitted that there was no certainty that the production operations would in fact begin at the estimated time. Before such time arrived, the employer would continue to be engaged in a "relatively stable phase of its operations and for a substantial period of time." *Id.* at 1679-1680.

Assuming all factors favorable to the Petitioner's positions, as of the time of the petition, ATC's work force (including RNA-supplied employees, but excluding field coordinators, maintenance engineers, mechanics I and II, and inspectors) constituted 27.63% of the projected employee complement to be employed within approximately 7 months, working in 38.46% of the projected classifications.¹⁸ Based on the foregoing and the record as a whole, I find that ATC's present work force does not constitute a substantial and representative complement of employees to be employed in the near future. Thus, the petition properly is dismissed as premature.

ORDER

The petition is dismissed.

¹⁸ These percentages presume the appropriateness of the unit sought by the Petitioner.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by APRIL 11, 2002.

Dated MARCH 28, 2002

at Baltimore, Maryland

/s/ WAYNE R. GOLD
Regional Director, Region 5



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