

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

ROCHELLE WASTE DISPOSAL, LLC

Employer

and

Cases 33-RC-5002
and 33-CA-15298

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S SECOND SUPPLEMENTAL DECISION ON
CHALLENGED BALLOT, ORDER DIRECTING HEARING AND
CONSOLIDATING CASES AND NOTICE OF HEARING**

This report contains the Acting Regional Director's order regarding the sole determinative challenged ballot of Jeff Jarvis, raised by the Employer. I have concluded that the challenged ballot issue raises substantial and material questions of fact which can best be resolved by a hearing.

Procedural History

Pursuant to a petition filed on August 18, 2006,¹ a Regional Director's Decision and Direction of Election and Supplemental Decision and Direction of Election, an election was conducted on February 1, 2007, among employees of the Employer in the following-described appropriate collective-bargaining unit:

All full-time and regular part-time heavy equipment operators including the scale operator and the landfill supervisor employed by the Employer at the Rochelle Municipal

¹ All dates are 2006 unless otherwise specified.

#2 landfill in Rochelle, Illinois, EXCLUDING temporary employees employed through a temporary agency, office clerical and professional employees, guards and supervisors as defined in the Act.

The tally of ballots made available to the parties at the conclusion of the election discloses the following results:

Approximate number of eligible voters.....	5
Void ballots	0
Votes cast for Petitioner	2
Votes cast against participating labor organization.....	2
Valid votes counted	4
Challenged ballots	1
Valid votes counted plus challenged ballots	5

Challenges are sufficient in number to affect the results of the election.

No objections to conduct of the election or to conduct affecting the result of the election were filed by either party within the time provided.

On January 25, 2007, the Petitioner filed an unfair labor practice charge in Case 33-CA-15298, alleging that the Employer violated Section 8(a)(1), (3) and (4) of the Act by discharging Jeff Jarvis.

On March 28, 2007, the Regional Director issued a Complaint and Notice of Hearing in Case 33-CA-15298 (“the Complaint”) alleging certain violations of Section 8(a)(1)(3) and (4) of the Act.²

BACKGROUND

The Employer, a corporation with an office and place of business in Rochelle, Illinois, is engaged in the business of providing recycling and waste disposal services. At the time of the

² A copy of the Complaint and Notice of Hearing is attached as Exhibit 1.

election, there were approximately five employees in the above-described unit, under the overall supervision of owner Clyde Gelderloos.

THE CHALLENGED BALLOT

The ballot of Jeff Jarvis was challenged by the Employer on the grounds that he was no longer employed as he had been permanently laid off prior to the date of the election. The Employer contends that Jarvis had no reasonable expectancy of reemployment and therefore the challenge to his ballot should be sustained.

In the Complaint and Notice of Hearing in Case 33-CA-15298 it is alleged that the Employer discharged Jarvis on January 24, 2007. In paragraph 6, it is alleged that by such conduct, the Employer has discriminated in regard to the hire or tenure or conditions of employment of its employees, in violation of Section 8(a)(1) and (3) of the Act. In paragraph 7, it is alleged that by such conduct, the Employer has discriminated against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

The undersigned concludes that the challenge to Jarvis' ballot raises substantial and material questions of fact that best can be resolved by a hearing.

CONCLUSION AND ORDER

The Acting Regional Director, having carefully considered the matter, IT IS HEREBY ORDERED, pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, that a hearing be held in this matter for the purpose of receiving testimony relative to the aforesaid challenged ballot.

Complaint and Notice of Hearing having issued in Case 33-CA-15298, in which the hearing on the allegations of the Complaint is scheduled for June 25, 2007, at 9 a.m., and on consecutive dates thereafter until concluded, in the Thomas M. Harvey NLRB Hearing Room, 300 Hamilton Square, Suite 200, Peoria, Illinois, and it having been ordered by the Acting Regional Director in Case 33-RC-5002 that a hearing be held to resolve the challenged ballot issue,

IT HAVING BEEN DETERMINED by the General Counsel of the Board by the undersigned Acting Regional Director, after duly considering the matter, that a consolidation for the purpose of hearing in Cases 33-CA-15298 and 33-RC-5002 is necessary to effectuate the purposes of the Act, and to avoid unnecessary costs and delay,

IT IS FURTHER ORDERED, pursuant to Section 102.33 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, that these cases are consolidated for the purpose of hearing, ruling, and decision by an administrative law judge, and that thereafter Case 33-RC-5002 shall be transferred to, and continued before, the Board in Washington, DC, and that the provisions of Sections 102.46 and 102.69(e) of the above-mentioned rules shall govern the filing of exceptions.

NOTICE OF HEARING

YOU ARE HEREBY notified beginning on June 25, 2007, at 9:00 a.m., and, if necessary, on consecutive days thereafter until concluded, in the Thomas M. Harvey NLRB Hearing Room, 300 Hamilton Square, Suite 200, Peoria, Illinois, a hearing will be conducted before a duly designated administrative law judge of the National Labor Relations Board on the allegations set forth in the Complaint and Notice of Hearing in Case 33-CA-15298 and the challenged ballot in

Case 33-RC-5002, at which time and place you will have the right to appear in person or otherwise give testimony, provided by the National Labor Relations Act, as amended.

April 3, 2007

/s/ Will J. Vance

Will J. Vance, Acting Regional Director
National Labor Relations Board
Subregion 33
300 Hamilton Boulevard, Suite 200
Peoria, Illinois 61602-1246

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION THIRTY-THREE

ROCHELLE WASTE DISPOSAL, LLC

and

Case 33-CA-15298

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150 AFL-CIO

COMPLAINT AND NOTICE OF HEARING

International Union of Operating Engineers, Local 150, AFL-CIO, herein called Union, has charged that Rochelle Waste Disposal, LLC herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (“the Act”). Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (“the Board”) issues this Complaint and Notice of Hearing and alleges as follows:

1.

The charge in this proceeding was filed by the Union on January 25, 2007, and a copy was served by regular mail on Respondent on or about the same date.

2.

(a) At all material times Respondent, a corporation with an office and place of business in Rochelle, Illinois, herein called Respondent's facility, has been engaged in the business of providing recycling and disposal services.

(b) During the past calendar year Respondent, in conducting its business operations described above in paragraph 2(a), purchased and received goods and services from its

Rochelle, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois.

(c) At all material times Respondent has been engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4.

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Clyde Gelderloos	Owner
Evan Buskohl	Operations Manager
Tom Hilbert	Engineering Manager

5.

(a) On about January 24, 2007, Respondent discharged its employee Jeff Jarvis.

(b) Respondent engaged in the conduct described above in paragraph 5(a) because Jarvis assisted the Union and engaged in other protected concerted activities, and to discourage employees from engaging in these activities.

(c) Respondent engaged in the conduct described above in paragraph 5(a) because Jarvis testified at representation hearings before the Board in Case 33-RC-5002.

6.

By the conduct described above in paragraphs 5(a) and (b), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

7.

By the conduct described above in paragraphs 5(a) and (c), Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

8.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE THAT on **June 25, 2007**, and on consecutive days thereafter until concluded, at 9:00 a.m., in the Thomas M. Harvey NLRB Hearing Room, 300 Hamilton Square, Peoria, Illinois, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this (consolidated) complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Complaint. The Answer must be received by this office on or before **April 11, 2007** or postmarked on or before **April 10, 2007**. Respondent should file an original and four copies of the Answer with this office and serve a copy of the Answer on each of the other parties.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at

<http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the “File Documents” button under “Regional, Subregional and Resident Offices” and then follow the directions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. A failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off-line or unavailable for some other reason. When an Answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three business days after the date of electronic filing. Service of the Answer on each of the other parties must still be accomplished by means allowed under the Board’s Rules and Regulations. The Answer may not be filed by facsimile transmission. If no Answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

DATED at Peoria, Illinois this 28th day of March, 2007.

/s/ Ralph R. Tremain
Ralph R. Tremain, Regional Director
National Labor Relations Board
Subregion Thirty-Three
300 Hamilton Square, Suite 200
Peoria, Illinois 61602