

**APD Transport Corp. and its Alter Ego, National Book Consolidators, Inc. and Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 22-CA-9259**

November 25, 1980

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO

Upon a charge filed on May 30, 1979, by Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on APD Transport Corp. and its *alter ego*, National Book Consolidators, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by its Regional Director for Region 22, issued a complaint on August 3, 1979, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. The Regional Director granted several requests by Respondent and extended the time for filing an answer until September 27, 1979. Respondent, however, failed to file a timely answer to the complaint.

On January 10, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 7, 1980, Respondent filed a response to the Motion for Summary Judgment in which it summarily denied the allegations of the complaint and further requested that the Board dismiss the Motion for Summary Judgment.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer there-

to. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, according to the uncontroverted allegations in the Motion for Summary Judgment, by a letter dated October 26, 1979, counsel for the General Counsel confirmed a prior telephone conversation and advised Respondent's attorney that an answer had not been received notwithstanding two prior extensions and that unless an answer was received by October 31, 1979, the General Counsel would move for summary judgment. By letter dated October 30, 1979, Respondent's attorney advised counsel for the General Counsel that Respondent and Charging Party had reached an agreement to settle the complaint. Thereafter, however, Respondent failed to file an answer or to make any attempt to resolve the issues raised by the complaint. In the absence of an answer, request for withdrawal or other disposition of the case, counsel for the General Counsel telephoned Respondent's attorney on January 3, 1980, and advised him of an intention to file immediately a Motion for Summary Judgment. Again, Respondent failed to file an answer, and on January 10, 1980, the General Counsel filed the Motion for Summary Judgment. On January 16, 1980, the Board issued a Notice To Show Cause and set January 30, 1980, as the deadline for filing a response. Thereafter, the Board granted requests by Respondent and Charging Party and extended the time for filing a response. On February 7, 1980, Respondent filed a response to the Motion for Summary Judgment in which it denied all of the substantive allegations of the complaint and requested that the Motion for Summary Judgment be dismissed. Although Respondent's motion and opposition to the Motion for Summary Judgment were filed in a timely fashion, Respondent gave no

<sup>1</sup> The Respondent has requested oral argument. This request is hereby denied as the record, and the briefs adequately present the issues and the positions of the parties.

explanation for its failure to file a timely answer to the complaint.

On May 30, 1980, Respondent filed another motion in response to the General Counsel's Motion for Summary Judgment and the Board's Notice To Show Cause. Subsequently, the General Counsel filed a reply urging that the Board dismiss Respondent's May 30 motion because it had not been filed in a timely fashion. We find merit in the General Counsel's position.

On February 7, 1980, after granting a second extension of time to file a response to the Notice To Show Cause, the Board notified the parties that the time for filing a response had been extended until February 20, 1980, but that no further extension for filing would be granted. In addition, Section 102.24 of the Board's Rules and Regulations, Series 8, as amended, requires that motions, such as Respondent's May 30 motion, "shall be filed promptly and within such time as not to delay the proceeding." Respondent, however, has not offered any explanation for filing its May 30 motion over 3 months after the filing date set by the Board, and, by any measure, such a late filing is dilatory and fails to comply with Section 102.24. Accordingly, in these circumstances, we find that the May 30 motion is untimely, and that it should be denied for that reason.<sup>2</sup>

<sup>2</sup> Moreover, even if we were to consider the contentions raised by Respondent in its May 30 motion, we would deny the motion as lacking in merit. In its May 30 motion, Respondent's new attorney asserts that Respondent's former attorney had been advised by counsel for the General Counsel that an answer would not be necessary if Respondent and Charging Party entered into a written settlement agreement. On October 30, 1979, Respondent informed the General Counsel that it had reached an out-of-Board agreement with Charging Party settling the complaint; but Charging Party did not file a request to withdraw charges until January 8, 1980. The General Counsel, however, refused to approve the settlement or permit the charges to be withdrawn because the settlement failed substantially to remedy the unfair labor practices alleged in the charges. (See *infra*, sec. III, for a fuller discussion.) We find no merit to Respondent's contentions that it was misled into believing that an answer was unnecessary because counsel for the General Counsel failed to inform Respondent that a proposed settlement required approval by the General Counsel before the matter could be concluded.

Assuming, *arguendo*, Respondent's former attorney was under the impression that there was no necessity to file an answer because of a proposed withdrawal of charges and an attempt to settle the complaint, Charging Party did not actually file a withdrawal request until January 8, 1980, a date well beyond the deadline for filing an answer. As set forth in an affidavit attached to Respondent's August 18, 1980, motion requesting oral argument, Respondent's former attorney asserted that counsel for the General Counsel had stated that "if the matter was *actually* settled, and withdrawn" (emphasis supplied), an answer would not be necessary. Thus, Respondent's answer which had been due on September 27, 1979, was already more than 3 months overdue when Charging Party filed its request for withdrawal of charges. Further, the complaint filed on August 3, 1979, explicitly informed Respondent that an answer was necessary, and Respondent's former attorney understood an answer was necessary because he filed a number of requests for extensions of time to file such an answer. In addition, the General Counsel's letter dated October 26, 1979, informed Respondent that a Motion for Summary Judgment would be filed unless an answer was received. Finally, on January 3, 1980, the General Counsel again informed Respondent that a Motion for Summary Judgment would be filed unless Respondent filed an answer to the complaint. In the absence of an answer, on January 10, 1980, the

On June 4, 1980, Respondent filed a motion to dismiss the complaint because of an "out-of-Board" settlement reached between Respondent and Charging Party. The General Counsel filed a response urging the Board to deny Respondent's motion because the alleged settlement agreement failed to remedy the unfair labor practices alleged in the complaint. We find merit to the General Counsel's position.

The complaint alleges that Respondent violated Section 8(a)(1), (3), and (5) of the Act by closing its Maspeth, New York, terminal and removing its operations to Paterson, New Jersey, under the name of its *alter ego*, National Book Consolidators, Inc., without notice to or affording Charging Party an opportunity to bargain about the decision to close its terminal and/or to bargain about the effects of the closing on the unit employees and that Respondent discharged and failed to reinstate and/or transfer unit employees to its Paterson facility. Respondent asserts, however, that after protracted negotiations, it signed an agreement with Charging Party which purported to settle the outstanding complaint. The agreement provided that Respondent would provide certain sums of money to pay, in specified priorities, portions of debts owed to Charging Party, to various trust funds, and to employees. On January 8, 1980, Charging Party filed a request to withdraw charges with the General Counsel.<sup>3</sup> The General Counsel, however, refused to approve the settlement because the settlement failed to provide a full remedy for all of the complaint allegations. Thus, for example, the settlement agreement made no provisions to provide backpay or reinstatement or transfer rights to employees discharged because of Respondent's alleged unlawful termination of its New York facility. In addition, the settlement agreement made no provision for the posting of a notice to inform employees of Respondent's unfair labor practices and of Respondent's intention to cease and desist from committing such unfair labor practices.

Nevertheless, Respondent contends that the Board should permit Charging Party to withdraw its charges and that the Board should dismiss the complaint because Respondent and Charging Party have reached an amicable settlement of their differ-

General Counsel filed its Motion for Summary Judgment. Respondent, however, did not file an answer until February 7, 1980, when it filed a response to the Notice To Show Cause. In these circumstances, where the complaint was first filed on August 3, 1979, and Respondent failed to file a timely answer despite repeated warning that a Motion for Summary Judgment would be filed, we find that Respondent has failed to offer a sufficient reason to explain its failure to file a timely answer.

<sup>3</sup> The request to withdraw charges was filed with the Regional Office after the General Counsel had mailed its Motion for Summary Judgment to the Board.

ences. We disagree. As pointed out in *Community Medical Services of Clearfield, Inc., d/b/a Clear Haven Nursing Home*, 236 NLRB 853 (1978), the Board will approve a withdrawal of charges and a settlement agreement only when the alleged unfair labor practices are substantially remedied and a dismissal of the charges would effectuate the policies of the Act. "[T]he willingness of a charging party to withdraw charges is not necessarily a ground for dismissal of a complaint 'for once a charge is filed, the General Counsel proceeds, not in vindication of private rights, but as the representative of an agency entrusted with the power and the duty of enforcing the Act in which the public has an interest.'"<sup>4</sup> It is clear that, once a matter has ripened to involve the Board, the Board cannot ignore the rights of discriminatees and the public by giving effect to a private agreement between a charging party and a respondent when approval of that agreement would not effectuate the policies of the Act. In this connection, we note that a number of employees have expressed objections to the terms of the settlement agreement between Respondent and Charging Party and have urged the General Counsel to proceed with the case. We agree with the General Counsel that the failure to provide backpay and reinstatement to discriminatorily discharged employees falls far short of a substantial remedy. In view of the failure of the settlement agreement to provide a substantial remedy for the unfair labor practices alleged in the complaint, we will not approve the request to withdraw charges and dismiss the complaint.<sup>5</sup>

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT

APD Transport Corp. (APD), a New York corporation, has maintained its principal office and place of business in Maspeth, New York, where it has been engaged in the business of delivering books, stationery, and related supplies. During the 12-month period ending on or about December 1,

1978, said operations being representative of its operations at all times material herein, APD derived gross revenues in excess of \$50,000 from the transportation of books, stationery, and other goods and materials to its Maspeth terminal directly from States other than the State of New York.

National Book Consolidators, Inc. (NBC), a New Jersey corporation, has maintained its principal office and place of business in Paterson, New Jersey, where it has been engaged in the business of providing and performing parcel delivery services and other related services and has been engaged in the business of transporting books, stationery, and other goods and materials. In the course and conduct of its business operations during calendar year 1979, said operations being representative of its operations at all times material herein, NBC derived gross revenue in excess of \$50,000 from the transportation of books, stationery, and other goods and materials to its Paterson terminal in interstate commerce directly from States other than the State of New Jersey.

We find, on the basis of the foregoing, that APD and NBC separately and individually are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATION INVOLVED

Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

At all times material herein, APD and NBC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision, have formulated and administered a common labor policy affecting employees of these enterprises, have common premises and facilities, have provided services for each other, have interchanged personnel with each other, and have held themselves out to the public as a single integrated enterprise. On or about July 17, 1978, NBC was established by APD as a subordinate instrument to and a disguised continuation of APD. By virtue of the acts and conduct described above, we find that NBC is, and has been at all times material herein, an *alter ego* of APD. In addition, by virtue of its operation described above, APD and NBC constitute a single integrated business enterprise and a single employer within the meaning of the Act. At all times material herein, Angelo Cornacchia and K. Shim have been and are now super-

<sup>4</sup> *Clear Haven Nursing Home*, *supra* at 853, citing *The Ingalls Steel Construction Company*, 126 NLRB 584 at fn. 1 (1960).

<sup>5</sup> In joining his colleagues in granting the General Counsel's Motion for Summary Judgment, Member Penello relies solely on Respondent's failure to file a timely answer to the complaint and its failure to show sufficient cause for not doing so. Accordingly, he does not rely on *Clear Haven Nursing Home*, *supra*, in which he dissented.

visors within the meaning of Section 2(11) of the Act, and have been and now are agents of both APD and NBC within the meaning of Section 2(13).

For approximately 30 years prior to December 1, 1978, and at all times thereafter to date, the Union has been and is now the exclusive representative of the employees in the following appropriate unit:

All terminal and other employees employed by APD at its Maspeth terminal but excluding executives and their immediate assistants; station managers and department managers; day and night supervisors; watchmen; shop and automotive maintenance department employees; general office and C.O.D. employees; employees engaged in sales, systems, timestudy, uniform, telephone, payroll, personnel and secretarial work.

By virtue of Section (9)(a) of the Act, the Union has been and is now the exclusive representative of the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. On or about December 1, 1975, APD and the Union entered into a collective-bargaining agreement effective from December 1, 1975, through November 30, 1978, covering the employees in the above unit.

Respondent interfered with, restrained, and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act by engaging in the following acts: on or about December 1, 1978, Respondent ceased operation at its Maspeth, New York, terminal, and on an unknown date in or about January 1979, Respondent, under the name of NBC, opened its Paterson, New Jersey, terminal and resumed its former Maspeth terminal operations at that location. Since that date, Respondent has been continuously engaged at its Paterson terminal in the business of delivering books, stationery, and related supplies, and in providing and performing parcel delivery services and other related services.

Prior to December 1, 1978, and at all times thereafter, Respondent failed and refused to notify the Union and failed and refused to bargain collectively with the Union with respect to its decision to close its Maspeth terminal and remove its operations from Maspeth to its Paterson terminal. In addition, prior to December 1, 1978, and at all times thereafter to date, Respondent has failed and refused to bargain collectively with the Union with respect to the effects of the cessation of its operations at its Maspeth terminal upon unit employees. By its conduct described above, Respondent pre-

vented the Union from demanding bargaining over the transfer of unit employees from its Maspeth to its Paterson terminal and thereby discharged its employees by refusing to offer them the opportunity to transfer. In addition, Respondent terminated operations at Maspeth, transferred operations to Paterson, and discharged and failed and refused to reinstate and/or transfer unit employees to its Paterson terminal because its employees joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining, or other mutual aid or protection. Finally, in March or April 1979, at its Paterson terminal, Respondent, by its agent, Angelo Cornacchia, refused to reinstate Ralph Napolitano and Carmine Pisano, unit employees, formerly employed by Respondent at its Maspeth terminal.

Accordingly, we find that by the aforesaid conduct Respondent discriminatorily closed its Maspeth terminal and transferred its operations to its Paterson terminal, discriminatorily refused to bargain about the closing or the effect of the closing of its Maspeth terminal and the transfer of its operations to its Paterson terminal, discriminatorily discharged and/or refused to reinstate or offer unit employees the opportunity to transfer to its Paterson terminal, and discriminatorily refused to transfer and/or reinstate former Maspeth employees Ralph Napolitano and Carmine Pisano and that Respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them under Section 7 of the Act and, by such conduct, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act. We also find that, by the aforesaid conduct, Respondent has, since November 1978, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. We have found that Respondent violated Section 8(a)(3) and (1) of the Act by closing its Maspeth terminal and moving its operations to its Paterson terminal and by discharging unit employees and refusing to transfer and/or reinstate unit employees at its Paterson terminal for discriminatory reasons, and Section 8(a)(5) and (1) of the Act by closing unilaterally its Maspeth terminal and transferring its operations to its Paterson terminal without notice or bargaining over the closing and transfer and without bargaining over the effects of the closing and transfer of operations. In the circumstances of this case, where the plant closing and the transfer of operations were discriminatorily motivated, we find it necessary, in order to effectuate the purposes of the Act, to restore the *status quo ante* by ordering Respondent to reopen its Maspeth terminal.<sup>6</sup> Accordingly, we shall order Respondent to restore the *status quo ante* by reopening its Maspeth terminal, reinstating the work of its unit employees at its Maspeth terminal, and by offering the terminated bargaining unit employees reinstatement to their former positions, or substantially equivalent positions, with backpay computed from the date of termination to the date of reinstatement, less net earnings to which shall be added interest computed thereupon in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977);<sup>7</sup> see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). We shall also order Respondent to bargain over any decision to close its Maspeth terminal and transfer its operations elsewhere, and if a decision is reached to close the Maspeth terminal, we shall order Respondent to bargain over the effects of such closing. In addition, we shall order Respondent to

<sup>6</sup> The Board's usual remedy for violations similar to those found against this Respondent, involving as they do discriminatorily motivated conduct, is to order a respondent to restore the *status quo ante* by reestablishing the closed operations, unless the respondent can show that such a remedy would be "unduly burdensome." See *National Family Opinion, Inc.*, 246 NLRB No. 84 (1979); *N. C. Coastal Motor Lines, Inc.*, 219 NLRB 1009 (1975), *enfd.* 542 F.2d 637 (4th Cir. 1976). In the instant case, Respondent failed to file a timely answer, or introduce evidence showing a reopening to be unduly burdensome; accordingly, all of the allegations of the complaint have been deemed to be admitted as true. In these circumstances, Respondent has failed to meet its burden of establishing that the reopening of its plant would be "unduly burdensome."

<sup>7</sup> Member Jenkins would compute interest in the manner set forth in his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

make the Union whole for damages resulting from its unlawful activity.<sup>8</sup>

The Board, upon the basis of the foregoing facts in the entire record, makes the following:

## CONCLUSIONS OF LAW

1. APD Transport Corp., and its *alter ego*, National Book Consolidators, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All terminal and other employees employed by APD at its Maspeth terminal but excluding executives and their immediate assistants; station managers and department managers; day and night supervisors; watchmen; shop and automotive maintenance department employees; general office and C.O.D. employees; employees engaged in sales, systems, timestudy, uniform, telephone, payroll, personnel and secretarial work, 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 herein, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section (9)(a) of the Act.

5. By closing its Maspeth terminal and moving its operations to its Paterson terminal, by discharging unit employees and refusing to transfer and/or reinstate unit employees at its Paterson terminal for discriminatory reasons, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

6. By closing its Maspeth terminal and transferring its operations to its Paterson terminal without giving notice or bargaining over the closing and by transferring and not bargaining over the effects of the closing of operations, Respondent has engaged

<sup>8</sup> Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question whether Respondent must pay any additional amounts into the health and welfare trust fund in order to satisfy our "make whole" remedy. These additional amounts may be determined depending on circumstances of each case by reference to provisions in the documents governing the fund and, if there are no governing provisions, by evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of refunds withheld, additional administrative costs, etc., but not collateral losses. *Merryweather Optical Company*, 240 NLRB 1213, fn. 7 (1979), and *Inland Cities, Inc.*, 241 NLRB 374, fn. 52 (1979).

in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By the aforesaid discriminatory conduct and unlawful refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, APD Transport Corp., Maspeth, New York, and its *alter ego*, National Book Consolidators, Inc., Paterson, New Jersey, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees with regard to transfer or reinstatement rights or any other types of rights because of the union activities of its employees.

(b) Terminating any of its operation in retaliation for activities of its employees in support of the above-named Union, or any other union or labor organization.

(c) Refusing to recognize and bargain with Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following unit:

All terminal and other employees employed by APD at its Maspeth terminal but excluding executives and their immediate assistants; station managers and department managers; day and night supervisors; watchmen; shop and automotive maintenance department employees; general office and C.O.D. employees; employees engaged in sales, systems, timestudy, uniform, telephone, payroll, personnel and secretarial work.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Reopen its Maspeth, New York, terminal and reinstitute the work of its unit employees and offer immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to established

equivalent positions, without prejudice to their seniority or other rights and privileges and make them whole for their loss or earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Bargain collectively with Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of Respondent's employees in the appropriate unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its terminals in Maspeth, New York, and Paterson, New Jersey, copies of the attached notice marked "Appendix."<sup>9</sup> Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>9</sup> In the event that 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."

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT discourage membership in Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging employees, or in any other manner discriminating against them in regard to their hire or tenure of employment,

their transfer or reinstatement rights, or any term or condition of employment.

WE WILL NOT terminate any of our operations in retaliation for activities of our employees in support of the above-named Union, or any other union or labor organization.

WE WILL NOT fail and refuse to bargain with the above-named Union, or any other labor organization, representing our employees in an appropriate unit, respecting the decision to cease operations at one of our terminals or the decision to transfer or the effects of the decision to transfer the work of any employees in the following appropriate unit:

All terminal and other employees employed by APD at its Maspeth terminal but excluding executives and their immediate assistants; station managers and department managers; day and night supervisors; watchmen; shop and automotive maintenance department employees; general office and C.O.D. employees; employees engaged in sales, systems, timetudy, uniform, telephone, payroll, personnel and secretarial work.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to

form, join, or assist the above-named Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engaged in concerted activities for the purpose of collective bargaining or other mutual aid, or to refrain from any or all such activities.

We will reopen our former Maspeth terminal and restore all unit work to that terminal.

WE WILL offer all unit employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges and We Will make them whole for any loss of earnings they may have suffered by reason of our discrimination against them.

WE WILL, upon request, bargain collectively with the above-named labor organization as the exclusive representative of our employees in the above appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

APD TRANSPORT CORP. AND ITS  
ALTER EGO, NATIONAL BOOK CON-  
SOLIDATORS, INC.