

Associated Diamond Cabs, Inc. and Local #1, The Brotherhood of Taxi Drivers Union. Case 12-CA-9331

March 4, 1981

DECISION AND ORDER

Upon a charge filed on September 4, 1980,¹ by Local #1, The Brotherhood of Taxi Drivers Union, herein called the Union, and duly served on Associated Diamond Cabs, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 12, issued a complaint on September 24, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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.

With respect to the unfair labor practices, the complaint alleges in substance that on May 30, following a Board election in Case 12-RC-5829, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;² and that, commencing on or about June 18, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On October 3, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On November 18, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 1, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent, on December 1, filed directly with the Board a Cross-Motion for Summary Judgment. Respondent thereafter filed a response to the Notice To Show Cause.

¹ All dates hereinafter are 1980.

² Official notice is taken of the record in the representation proceeding, Case 12-RC-5829, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations. Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

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

Ruling on the Motion for Summary Judgment

On March 27 the Acting Regional Director for Region 12 issued a Decision and Direction of Election. Thereafter, Respondent filed a request for review, contending that the employees found to constitute an appropriate unit were not employees within the meaning of the Act but were independent contractors. On April 23 the Board issued an order denying Respondent's request for review. An election was conducted on April 23. The tally showed 32 votes for and 10 against the Union, with 26 challenged ballots, a determinative number. Following an investigation, the Acting Regional Director on May 30 issued a Supplemental Decision on Challenged Ballots and Certification of Representative certifying the Union as the exclusive representative of all of Respondent's employees in the appropriate unit.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding³

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the General Counsel's Motion for Summary Judgment. We also deny Respondent's Cross-Motion for Summary Judgment which is based on the same arguments that were decided by the Acting Regional Director and upon which we denied Respondent's request for review.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a nonprofit corporation with an office and place of business located in Miami, Florida, where it is engaged in the business of taxicab

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

service. In the course and conduct of its business **operations**, Respondent and its members annually receive revenues in excess of \$500,000 from the furnishing of taxicab services and annually purchase and receive at Respondent's Miami, Florida, facility **goods**, supplies, and materials valued in excess of \$50,000 directly from suppliers who in turn **purchase** and receive such goods, supplies, and materials directly from points located outside the State of **Florida**.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer 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 #1, The Brotherhood of Taxi Drivers Union, is a labor organization within the meaning of Section **2(5)** of the Act.

I. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The **following** employees of Respondent constitute a unit appropriate for collective-bargaining purposes **within** the meaning of Section **9(b)** of the Act:

All full-time and regular part-time taxi drivers, including steady daily lessees, extra-board daily **lessees** and annual lessees employed by the **Employer** at its Miami, Florida facility; **excluding** all **shareholder/owner-drivers**, garage men, **mechanics**, dispatchers, office clericals, guards and supervisors as defined in the Act.

2. The certification

On April 23, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted **under** the supervision of the Acting Regional **Director** for Region 12, designated the Union as **their** representative for the purpose of collective bargaining with Respondent.

The **Union** was certified as the collective-bargaining representative of the employees in said unit on May 30 **and** the Union continues to be such exclusive **representative** within the meaning of Section **9(a)** of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about June 6, and at all times thereafter, the Union has requested Respondent to

bargain collectively with it **as** the exclusive **collective-bargaining** representative of all the employees in the above-described unit. Commencing on or about June 18, and continuing at all times thereafter to date, Respondent **has** refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since June 18 and at all times thereafter, refused to bargain collectively with the Union **as** the exclusive representative of the 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 and is engaging in unfair labor practices within the meaning of Section **8(a)(5)** and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative **of all** employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will **be** accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 **NLRB** 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 **NLRB** 226, 229 (1962), *enfd.* 328 **F.2d** 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Company*, 149 **NLRB** 1419, 1421 (1964), *enfd.* 350 **F.2d** 57 (10th Cir. 1965).

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

CONCLUSIONS OF LAW

1. Associated Diamond Cabs, Inc., is an **employer** engaged in commerce within the meaning of Section **2(6)** and (7) of the Act.

2. Local #1, The Brotherhood of Taxi Drivers Union, is a labor organization within the meaning of Section **2(5)** of the Act.

3. All full-time and regular part-time taxi **drivers**, including steady daily lessees, extra-board daily lessees and annual lessees employed by the Employer at its Miami, **Florida**, facility; **excluding** all **shareholder/owner-drivers**, garage men, mechanics, dispatchers, **office** clericals, 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. Since May 30, the above-named labor organization has been and now is the certified and **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 refusing on or about June 18, and at all **times** thereafter, to bargain collectively with the above-named labor organization as the exclusive **bargaining** representative of all the employees of **Respondent** in the appropriate unit, Respondent has engaged in and is engaging in unfair labor **practices** within the meaning of Section **8(a)(5)** of the Act.

6. By the aforesaid 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.

7. 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, Associated Diamond Cabs, Inc., Miami, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) **Refusing** to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local #1, The Brotherhood of Taxi Drivers Union, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time taxi drivers, including steady **daily lessees**, extra-board daily lessees and annual lessees employed by the Employer at its Miami, Florida facility; **excluding** all **shareholder/owner-drivers**, garage men, mechanics, **dispatchers**, office clericals, guards and **supervisors** as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the 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) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Miami, **Florida**, facility copies of the attached notice marked "**Appendix.**"⁴ Copies of said notice, on forms provided by the Regional Director for Region 12 after being duly signed by Respondent's representative, 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.

(c) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ 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 refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local #1, The Brotherhood of Taxi Drivers Union, as the exclusive representative

of the employees in the bargaining unit **described** below.

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, upon request, bargain with the above-named Union, **as** the exclusive representative of all employees in the bargaining unit **described** below, with respect to rates of pay, wages, hours, and other **terms** and **conditions** of **employment**, and, if an understanding is

reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time taxi drivers, including steady daily lessees, extra-board daily lessees and annual lessees employed by the Employer at its Miami, Florida facility; **excluding** all shareholder/owner-drivers, garage men, mechanics, dispatchers, **office** clericals, guards and supervisors **as** defined in the Act.

ASSOCIATED DIAMOND CABS, INC.