

Upon the basis of the foregoing findings of fact and of the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Local 391 is a labor organization within the meaning of Section 2(5) of the Act.
2. By engaging in the conduct set forth in the section entitled "Concluding findings," the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

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**Eklund Brothers Transport, Inc. and General Drivers and Helpers Local Union 74, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.**  
*Case No. 18-CA-1305. March 21, 1962*

DECISION AND ORDER

On December 13, 1961, Trial Examiner George L. Powell issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report together with a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations on the Trial Examiner.<sup>1</sup>

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<sup>1</sup> We agree with the Trial Examiner's rejection of the Respondent's defense that it was not required to bargain with the Teamsters Union pursuant to the May 5, 1961, election because of alleged "newly discovered evidence" as to the latter's preelection conduct, which was made the basis of a charge on August 14, 1961. We find it unnecessary, however, to pass upon or adopt the Trial Examiner's suggestion that the Respondent may properly have engaged in an "investigation" of the Teamsters' alleged conduct. A representation proceeding is not adversary in nature and is designed to assure the employees of a resolution of a question concerning representation as speedily as possible consistent with due process. To this end the Board has established a cutoff date for preelection conduct to which any party may object. Similarly, the Board has established a 5-day period after the election within which objections to conduct affecting the election may be filed. Conduct occurring before the cutoff date or to which no objections have been filed within the time provided therefor will not be considered by the Board to invalidate an otherwise valid election, absent unusual circumstances not here present.

## ORDER

The Board adopts the Recommended Order of the Trial Examiner with the modifications of provisions 2(b) and 2(c) in accord with footnotes 5 and 6 of the Recommended Order.<sup>2</sup>

<sup>2</sup> The notice is further modified by adding the following language at the end thereof. Employees may communicate directly with the Board's Regional Office, 316 Federal Building, 110 South Fourth Street, Minneapolis 1, Minnesota, Telephone 339-0112, Extension 2601, if they have any question concerning this notice or compliance with its provisions

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

## STATEMENT OF THE CASE

In this proceeding, heard before the duly authorized Trial Examiner, in Williston, North Dakota, on November 7, 1961, Eklund Brothers Transport, Inc., the Respondent herein, was charged with a refusal to bargain with General Drivers and Helpers Local Union 74, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act. All parties participated in the hearing and subsequent thereto, on or before November 24, 1961, the General Counsel and the Respondent, respectively, filed briefs.

Upon the entire record in the case, I make the following:<sup>1</sup>

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

The Respondent is and has been at all times material herein a corporation organized and existing under the laws of the State of North Dakota, having its principal office and place of business at Watford City, North Dakota, where it is engaged in the business of the hauling and distribution of crude oil and fresh and saline water in and about various oil fields in North Dakota and Montana. The Respondent also has a place of business located at Poplar, Montana.

During the year 1961, the Respondent's revenue derived from its Montana operations was in excess of \$300,000 and the revenue derived from its North Dakota operations was in excess of \$1,000,000.

During 1961 the Respondent performed services for Texaco, Inc., in an amount exceeding \$148,000 and for Amerada Petroleum Corporation in excess of \$142,000.

Amerada Petroleum Corporation is a Delaware corporation with principal offices and place of business in New York City. It is engaged in the acquisition, development, exploitation, and production of crude oil and natural gas, and has operations in 15 States of the United States and Canada, as well as investments in petroleum concessions in Venezuela, Libya, Tunisia, and Guatemala. During the year ending December 31, 1960, it had a gross sales and operating revenue of \$102,445,193 and shipped goods valued in excess of \$1,000,000 across State lines. It is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

Texaco, Inc., a Delaware corporation with principal offices and place of business in New York City, is, together with its subsidiaries and affiliates, one of the leading integrated, worldwide organizations in the petroleum industry. It is engaged in exploration, production, transportation, sales, and research of petroleum products, crude oil, natural gas, and chemicals. It maintains plants and establishments in many States of the United States, South America, and Africa. For the year ending December 31, 1960, it had a gross operating income of \$2,980,308,544 and shipped goods valued in excess of \$1,000,000 across State lines. It is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

Respondent is and at all times material herein has been engaged in commerce as an employer within the meaning of Section 2(6) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

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

<sup>1</sup> No witnesses were called. The case was developed by way of stipulation and offers of proof as will be set out below. All facts are taken from the admitted portions of the complaint or from the stipulations unless otherwise indicated

## III. THE UNFAIR LABOR PRACTICES

On April 3, 1961, a petition was filed by the Teamsters and duly served upon the Respondent which, *inter alia*, set forth that a specified unit of Respondent's employees desired representation by the Teamsters.

On April 18, 1961, Respondent and Teamsters executed an Agreement for Consent Election which was approved by the Regional Director of the National Labor Relations Board for the Eighteenth Region, hereinafter referred to as Regional Director, on April 20, 1961.

Pursuant to the terms of the agreement for consent election, mail balloting was conducted between April 24<sup>2</sup> and May 5 in a unit of "All drivers and drivers' helpers working at and out of the Employers Watford City, North Dakota, and Poplar, Montana, operations engaged in delivering petroleum products, crude oil and water, but *excluding* mechanics, the safety supervisor, dispatchers, firemen, servicemen, pushers, employees of Dakamont Motor Sales, Inc., employees of Eklund Bros. Truck Stop, office clerical employees, guards, professional employees and supervisory employees as defined in the National Labor Relations Act, as amended." The payroll period for eligibility was April 8, 1961. The ballots were counted in the Regional Office of the Eighteenth Region on May 8, 1961. The Employer challenged the ballot of John Nightingale, Jr., and the Teamsters challenged the ballots of Leo J. Dardis, Ernest Dumdai, Loren Chitwood, and Alvin Johnsrud.

On May 8, 1961, a tally of ballots was served upon the Respondent and the Teamsters showing, *inter alia*,

Approximate number of eligible voters.....	57
Votes cast for Petitioner.....	25
Votes cast against participating labor organization.....	23
Valid votes counted.....	48
Challenged ballots.....	5

and further that the challenged ballots were sufficient in number to affect the results of the election and that a majority of the valid votes counted, plus challenged ballots, had not been cast for the Teamsters.

On May 26, 1961, a report on challenged ballots and certification of representative was issued by the Regional Director and duly served upon Respondent and Teamsters. The report sustained the employer challenge of Nightingale and the Teamsters' challenges of Dumdai, Chitwood, and Johnsrud, holding that they were ineligible voters. The report further found that the Teamsters' challenge of Dardis was without merit and overruled it. However, since the ballot of Dardis could not affect the results of the election, it was not opened and counted.

On June 1, 1961, counsel for Respondent, Ward M. Kirby, replied to the report of the Regional Director by letter to him which *inter alia*, demanded a hearing on the challenged ballots and, further, requesting that a second election be held.

On June 5, 1961, the Regional Director by letter replied to the request of Attorney Kirby and, *inter alia*, declined the request for hearing, referring to paragraph 6 of the agreement for consent election.

On June 9, 1961, attorney for Respondent, Kirby, replied to a request by Sylvan Hubrig, business representative for the Union, requesting a bargaining meeting. The letter stated *inter alia*, that the Company would not meet until such time as it determined whether or not to accept the certification as valid.

On July 13, 1961, attorney for Respondent, Kirby, again wrote to Hubrig advising him, *inter alia*, that no decision had as yet been reached but that, in the meantime, the Union should present a copy of its demands to the Company.

On July 18, 1961, Hubrig met with Orvey Eklund, president of Respondent, and submitted a proposed contract.

On July 20, 1961, Hubrig wrote to Eklund, enclosing additional proposals.

On August 17, 1961, at a meeting attended by Hubrig, Orvey Eklund, attorneys for Respondent, Ward M. Kirby, and Howard C. Burton, and by Commissioner Clell Harris of the Federal Mediation and Conciliation Service, the Company took the position that it was refusing and would continue to refuse to bargain for reason that it objected to the report of the Regional Director, and because of alleged misconduct of the Union prior to the election.

In addition to the above, which the Respondent admitted in a stipulation, it raised two affirmative defenses.

1. It noted the fact that the Teamsters' petition filed on April 3, 1961, above, called for a unit of "all regular full time drivers and drivers helpers . . ." but on April 18,

<sup>2</sup> All dates are in 1961 unless otherwise indicated

1961, the date set for the hearing, the parties modified the unit to include "all drivers and drivers helpers . . ." and executed a consent election agreement.

After the election took place, Respondent supplied the Regional Director, at his request in investigating the challenges, payroll records showing the employment history of the challenged voters Chitwood, Dumdai, Dardis, and Johnsrud, *whose votes had been challenged on the ground that they had voluntarily terminated their employment and were therefore not eligible voters.* [Emphasis supplied in Respondent's brief.] Four days later on May 24, 1961, again at the request of the Regional Director, it furnished the Regional Director with a short statement respecting the employment status of the same four voters pointing out that it employed six other drivers with similar status whose votes were not challenged. The Regional Director made his report on challenged ballots and certification of representative on May 26, 1961, sustaining the Teamsters' challenges as to Dumdai, Chitwood, and Johnsrud, on the basis that they were "*recurrent, and casual employees whose employment is seasonal and, as such, do not have a sufficient community of interest with the regular employees to warrant their inclusion in the same unit with regular employees.*" [Emphasis supplied in Respondent's brief.] Respondent filed objections on June 1, 1961, and requested a hearing on the issue. On June 5, 1961, the Regional Director declined to permit further review of or a hearing upon the matter.

Respondent, claiming the determination made by the Regional Director was in error in fact, is charging the Regional Director with "arbitrary and capricious action . . . in the course of a representation election, (a) by sustaining, on improper grounds, challenges lodged by [Teamsters] to certain ballots . . . (b) in refusing a hearing . . . on the status of the employees . . . and (c) in declining to tally the ballots cast by such employees." Respondent attempted to litigate the issue in the instant case on the ground, apparently, that it contains substantial and material issues with respect to the results of the election and the certification of the Teamsters as the majority representative of the employees in the unit. The General Counsel objected, on relevancy and materiality, to testing the merits of that issue on the ground that there must be finality to representation case proceedings and that the Trial Examiner was bound by the Regional Director's report on challenged ballots and certification of representative. The Trial Examiner sustained this objection but permitted Respondent to make an offer of proof which will be detailed later. The General Counsel moved to reject this offer of proof but ruling thereon was reserved and will be made in this decision.

2 The second affirmative defense made by Respondent to the complaint in this case is that the Teamsters engaged in preelection conduct of such nature as to preclude a free election, but that it had no knowledge of this conduct within the 5-day period following the election so as to give it grounds to file a timely objection to the election. Accordingly, it filed a charge on August 14, 1961, alleging the Teamsters had engaged in certain unfair labor practices with respect to this conduct.<sup>3</sup> As this matter involves an entirely different proceeding, the Trial Examiner sustained the objection of the General Counsel to any evidence on this issue but Respondent was permitted to make an offer of proof. This offer, after being made, was rejected by the Trial Examiner upon motion of the General Counsel.

#### Summary and Issues

Following an election under a consent election agreement, the Teamsters were certified by the Regional Director as the exclusive collective-bargaining representative of the employees. Respondent refused to bargain with the Teamsters contending first, that the certification lacked vitality having been issued by the Regional Director in an "arbitrary and capricious" manner, and secondly that the election should be set aside due to later discovered evidence of Teamsters misconduct so serious as to preclude the holding of a free election.

Accordingly, unless there is merit to either of the two affirmative defenses, the Respondent admittedly refused to bargain with the certified representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

The heart of the case, as to the first affirmative defense, is the determination of what constitutes "arbitrary and capricious" manner. The responsibility of the Trial

<sup>3</sup> *General Drivers and Helpers Local Union 74 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* Case No 18-CB-165 The Regional Director declined to issue a complaint on August 22, 1961, to which Respondent filed a timely appeal to the General Counsel. No further action had been taken at time of the instant hearing.

Examiner in this case is not to supplant his judgment for that of the Regional Director in the latter's rulings as to the facts of *eligibility* of certain employees to vote. Rather, it is to examine the evidence put forth in support of the charge of "arbitrary and capricious" manner.

#### Evidence of "arbitrary and capricious" manner

The Regional Director is charged with arbitrary and capricious action in the course of a representation election (a) by sustaining, on improper grounds, challenges lodged by the Teamsters to certain ballots cast in such election; (b) in refusing a hearing, at the request of Respondent, on the employment status of the employees who cast the challenged ballots; and (c) in declining to tally the ballots cast by such employees.

As to (a), Respondent argues that the unit established by the terms of the consent election agreement was substantially different from that requested in the Teamsters petition; that the Regional Director "went far afield" from the challenges, which were made on the ground the voters "had voluntarily terminated their employment," and concluded they were ineligible to vote because they were seasonal employees lacking a community of interest with regular employees; and that in so ruling he barred only 3 of a class of 11 similarly situated employees from the polls. I find no merit to this argument. There was no change in the unit. The effect of the consent election agreement is that rather than having *eligibility* set out in the definition of the unit it was left to be determined by individual challenges. In all election cases, each party to the election is permitted to have an official observer at the election with authority to challenge the eligibility of any voter. Once challenged, the voter inserts his folded ballot into an envelope, seals it, and tenders it to the Board agent who marks it for identification. The voter, himself, then places the ballot in the ballot box. The ballot is never examined unless and until a later determination is made that it should be opened and counted. Based on the challenge, the Regional Director conducts and investigation and passes on the eligibility based upon his findings made on evidence adduced in the investigation. This investigation may, upon his discretion, be made in the form of an open hearing or it may be done orally and by letter as in the instant case. There admittedly was no issue as to the facts of the employment status of the challenged voters as those facts supplied by Respondent were accepted. The Regional Director is not limited in his investigation to the precise wording of the challenge. Rather, any challenge opens up all aspects of eligibility as it is not reasonable to expect observers, who usually are not trained as lawyers, to be able to precisely state the reasons for a given challenge. However, the challenge must be so worded as to contain a logical reason for rejecting the vote of the one challenged, such as was done in the instant case. Regardless of whether an employee is listed on the list of employees as of the payroll period governing the election, a voter must still be an employee, for the purpose of voting, on the date of the election or a challenge to his vote will be sustained and his vote not be counted. The payroll period decided upon precludes new hires from voting. Finally, it is not accurate to say the Regional Director "barred only three of a class of eleven similarly situated employees." As a matter of fact the Regional Director, in the absence of a challenge, is precluded from determining the eligibility of a voter. When observers for the parties do not challenge a voter they, in effect, admit that he is qualified to vote. But failure to challenge some does not bar a challenge of another "similarly situated." The Regional Director has no authority to investigate the eligibility to vote of an unchallenged voter, hence it cannot be established that a challenged voter is "similarly situated" to an unchallenged voter and both votes are to be counted or *neither one is to be counted*. The challenged voter stands on his *own* situation.

As to (b), the Regional Director is charged with arbitrary and capricious action by failing to have a hearing to air the employment status of the challenged voters. But, as the decision of whether to have a hearing rests in the sound discretion of the Regional Director pursuant to the binding consent election agreement, and as there was no dispute as to the employment status of the challenged voters as supplied by Respondent, no useful purpose would seem to be achieved by holding a hearing. There is no other evidence of abuse of discretion. Accordingly, this contention lacks merit. Respondent argues that the hearing is necessary because the Regional Director "substantially modified" the unit in the consent election agreement. The invalidity of this argument is set out above. Finally, again, even if a postelection hearing were ordered, it would be improper and reversible error to receive evidence as to the eligibility to vote of any unchallenged voter.

As to (c), the Respondent charges the Regional Director with arbitrary and capricious action because he declined to count the votes of the ballots of the three employees he found should not be eligible to vote in the election. In other words, Respondent takes issue with the decision of the Regional Director. It is clear then that the issue in this case is whether the Regional Director's conclusions, drawn from the admitted facts, is correct or in error. The Respondent correctly understands and states the law that the Regional Director's determination in consent elections of this character *are final* in the absence of fraud, misconduct, or such gross mistakes as to imply bad faith on the part of the Regional Director even though the Board might have reached a different conclusion. (*Sumner Sand & Gravel Company*, 128 NLRB 1368; This policy was affirmed by the courts in *Buffalo Arms, Inc.*, v. N.L.R.B., 224 F. 2d 105 (C.A. 2), in which it reversed a contrary ruling of the Board in 110 NLRB 816.) Accordingly, the duty is on the Respondent to carry the burden of proof in its affirmative defense that the Regional Director was arbitrary and capricious. As there is no evidence of fraud or misconduct, and as the parties were permitted to do all they agreed to be bound to in the consent election agreement, the only possible hook on which Respondent can hang its serious charge would be one made by proving the Regional Director made such a gross mistake as to imply bad faith.<sup>4</sup> Did the Respondent prove a gross mistake? I think not. The Regional Director made a reasonable application of precedent to the facts relying on the case of *California Vegetables Concentrates, Inc.*, 120 NLRB 266. In the *California* case, the employer was engaged in a year-round operation with a labor force fluctuating according to the weather and the availability of materials. The regular work force was augmented during the peak periods by additional employees classified in two groups as recurrent and casual. The employees in both these groups had other, regular places of employment. The recurrent employees were those who had previously worked for the employer. However, the employees in both groups would or would not return during subsequent peak periods. They received the same pay and performed the same duties as regular employees, although they did not participate in other benefits. The Board stated that an operation of this kind was on an annual basis with a representative work force of regular year-round employees, rather than on a seasonal basis with a work force composed primarily of seasonal employees. The Board distinguished this kind of operation from one which is primarily seasonal in nature, and concluded that both the recurrent and the casual employees were temporary seasonal employees without a sufficient community of interest to warrant their inclusion in the unit with regular employees. On the facts presented by the Respondent about which there is no controversy, the Regional Director's decision was in accordance with the above Board policy. Accordingly, it cannot be maintained that the Regional Director made such a gross mistake as to imply bad faith and the first affirmative defense of Respondent falls for lack of proof. The General Counsel's motion, made at the hearing, to strike the Respondent's offer of proof is hereby granted.

The second affirmative defense made by the Respondent is that the Teamsters engaged in preelection conduct of such nature as to preclude a free election and that it had no knowledge of this conduct within the 5-day period following the election so as to give it grounds to file a timely objection to the election. Accordingly, it filed an unfair labor practice charge against the Teamsters as set out above. I find no merit to this second affirmative defense.

As to the unfair labor practice charge filed against the Teamsters, it is the subject matter of an entirely different proceeding from the instant case. Accordingly, evidence with respect to it is irrelevant and immaterial and was rejected at the hearing on motion made by the General Counsel. I have reconsidered this decision and find no reason to reverse it. Finally, it is noted that no effort was made in the *election case* to reopen it and set the election aside because of "newly discovered" evidence. The election was concluded by mail ballot on May 5, 1961. Respondent admits that this alleged conduct of the Teamsters, which allegedly was of such serious nature as to preclude the holding of a fair election, did not come to its attention until August 1, 1961, and that it completed its investigation of this conduct by August 5 and filed the unfair labor practice charge on August 14, 1961. In its offer of proof, which was rejected, it is clear that the conduct related to statements made by Teamsters' agents at meetings of the employees prior to the election. This could

<sup>4</sup> An honest error of judgment does not constitute arbitrary and capricious action by the Regional Director. *N.L.R.B. v. Volneu Felt Mills, Inc.* 210 F. 2d 559 (C.A. 6); *N.L.R.B. v. J. W. Rex Co.*, 243 F. 2d 356 (C.A. 3)

not be considered "newly discovered" evidence as a simple investigation would have uncovered it. The serious nature of the alleged misconduct and its weight in assessing the impact or the reasonableness of its impact on the voters is, of course, seriously adulterated by the timelag of almost 3 months in coming to the attention of Respondent. The Board's rule of filing objections to election conduct within 5 days is based upon its long experience that the smell of something bad will become noticeable within that period—as a rule.

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

The activities of the Respondent, set forth in section III, above, occurring in connection with the operations of the Respondent described in section I above, have a close, intimate, and substantial relation 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

It having been found that the Respondent engaged in unfair labor practices by refusing on and after June 9, 1961, to bargain with the Teamsters, the statutory bargaining representative of its employees in an appropriate unit, it will be recommended that on request the Respondent bargain with the Teamsters on all proposals which raise bargainable issues, and, if an understanding is reached, embody such understanding in a signed agreement.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

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

2. All drivers and drivers' helpers working at and out of the Respondent's Watford City, North Dakota, and Poplar, Montana, operations engaged in delivering petroleum products, crude oil, and water, but *excluding* mechanics, the safety supervisor, dispatchers, tiremen, servicemen, pushers, employees of Dakamont Motor Sales, Inc., employees of Eklund Bros. Truck Stop, office clerical employees, guards, professional employees, and supervisory employees as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

3. The Union was on May 26, 1961, and at all times since has been the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing on and after June 9, 1961, to bargain collectively with the Teamsters as exclusive representative in the aforesaid appropriate unit, Eklund Brothers Transport, Inc., has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By the said refusal to bargain, Eklund Brothers Transport, Inc., interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

#### RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, it is recommended that Eklund Brothers Transport, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Teamsters as the exclusive bargaining representative of all its employees in the previously described appropriate unit.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the Teamsters or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Teamsters as the exclusive representative of employees in the previously described appropriate unit, with respect to rates of pay, wages, hours of work, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its place of business in Watford City, North Dakota, and Poplar, Montana, copies of the notice attached hereto as Appendix.<sup>5</sup> Copies of the notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of 60 days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Eighteenth Region, in writing, within 20 days from the date of the service of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply therewith.<sup>6</sup>

<sup>5</sup> If these recommendations are adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner," in the notice. If the Board's order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting the words "A Decree of the United States Court of Appeals Enforcing an Order" for the words "A Decision and Order."

<sup>6</sup> If these recommendations are adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order as to what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

Upon request WE WILL bargain collectively with General Drivers and Helpers Local Union 74, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all our employees in the unit described below, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All drivers and drivers' helpers working at and out of the Respondent's Watford City, North Dakota, and Poplar, Montana, operations engaged in delivering petroleum products, crude oil, and water, but *excluding* mechanics, the safety supervisor, dispatchers, tiermen, servicemen, pushers, employees of Dakamont Motor Sales, Inc., employees of Eklund Bros. Truck Stop, office clerical employees, guards, professional employees, and supervisory employees as defined in the National Labor Relations Act, as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist the above-named union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

EKLUND BROTHERS TRANSPORT, INC.,  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.