

Chauffeurs, Teamsters and Helpers Union, Local 186, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Max Rudolph, d/b/a Max Rudolph Trucking Company. Case 31-CB-287

June 28, 1968

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

Upon charges filed on October 23, 1967, by Max Rudolph, d/b/a Max Rudolph Trucking Company, herein called the Employer, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint dated December 14, 1967, against Chauffeurs, Teamsters and Helpers Union, Local 186, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Respondent, alleging that the Respondent did engage in and is engaging in unfair labor practices within the meaning of Sections 8(b)(3) and 2(6) and (7) of the Act.

The complaint alleges in substance that on or about September 18, 1967,¹ the Employer and Respondent entered into a final and binding collective-bargaining agreement, and that since on or about October 13, the Respondent has refused to execute the agreement in violation of Section 8(b)(3) of the Act. On December 26, the Respondent filed an answer admitting certain allegations in the complaint, affirmatively pleading certain facts, and denying the commission of any of the unfair labor practices alleged in the complaint.

On March 20, 1968, all parties to this proceeding entered into a stipulation of facts. On the same day the parties jointly moved that the proceedings be transferred to the Board stipulating that the charge, complaint and notice of hearing, answer, order postponing hearing, dated March 21, 1968, and stipulation of facts shall constitute the entire record and that no oral argument is necessary or desired. They further stipulated that they waived a hearing before a Trial Examiner, the ruling upon motions by a Trial Examiner, and the issuance of a Trial Examiner's Decision. On April 10, 1968, the Board approved the stipulation and ordered the proceedings transferred to the Board. Thereafter, the General Counsel, the Employer, and the Respondent filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the basis of the stipulation, the briefs, and the entire record in this case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Employer is a partnership with its place of business and terminal in Santa Paula, California, where it is engaged in the intrastate transportation of commodities by motor vehicle. Annually, in the course and conduct of its business operations, Employer derived gross revenues in excess of \$50,000 from its operations which were performed for various enterprises, including in excess of \$50,000 for services performed for Weyerhaeuser Company, which latter enterprise annually produces and ships goods valued in excess of \$50,000 from the State of California directly to points in other States of the United States. We find, as stipulated by the parties, that the Employer is 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 RESPONDENT

We find, as stipulated by the parties, that the Respondent is now, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

In their stipulation, the parties stated that:

On or about April 17, 1967, the Employer recognized the Respondent as the collective-bargaining representative of its employees at its Santa Paula terminal. Negotiations commenced in late April. The Employer was represented by Max Rudolph and by Attorneys Harry J. Keaton and Thomas P. Burke. The Respondent was represented by its agent, Arthur Bauerlein, and intermittently by its secretary-treasurer, Cliff Jameson, and by Attorney Daniel Feins. Negotiation meetings were held on April 27, May 10, June 28, and August 23. Early in the negotiations, the Employer was advised that the agreement would be submitted to the bargaining unit for ratification.

¹ All dates are 1967 unless otherwise indicated

By August 23, the parties had reached complete agreement except for compensation and other economic benefits for owner-operators. On that date, Respondent, which had held several meetings with the bargaining unit employees, represented to the Employer that all other terms were agreeable to such employees. On August 23, the economic benefits for owner-operators were negotiated and agreed upon.

On August 24, the Employer forwarded to Respondent a letter covering the "economics" for owner-operators agreed upon on August 23. On August 28, Bauerlein telephoned Burke and told him that the Company's proposal had been submitted to the owner-operators and that it was acceptable if the Company would guarantee to advance \$500 per month whether or not the owner-operators worked and would pay 70-percent gross on paper hauls. On August 31, Bauerlein called Keaton and was told by Keaton that the 70 percent of gross on paper runs was acceptable but not the \$500 guaranteed advance. On September 1, in separate telephone conversations, both Feins and Bauerlein told Keaton that there was an agreement and the 70-percent gross on paper runs would be added but not the \$500 guarantee and that Keaton should draft the contract.

By letter dated September 8, Employer forwarded a draft of the entire contract reflecting the above agreement on economic issues along with a letter of agreement containing provisions to cover an employee who could not work a full day and to deal with the problem of outstanding balances of some of the owner-operators. On September 14, the attorneys for Respondent requested some language changes which were agreed to by the Employer. On September 18, Bauerlein asked for some additional language changes and these were agreed to, as was a grievance claim, which was the only remaining outstanding matter. All of the changes were included in a letter and agreement which were mailed to the attorneys for Respondent on September 18.

On September 23, the bargaining unit consisted of nine drivers of company-owned equipment and seven owner-operators. On that date the agreement was submitted to the owner-operators, who demanded that certain changes be made, each of which, with two minor exceptions, had been disposed of by prior agreement.

On October 13, Feins telephoned Keaton, indicating that Respondent was requesting changes in the agreement. The changes were forwarded to the Employer in a document entitled "Max Rudolph Proposals." Respondent has refused and continues

to refuse to sign the documents transmitted to it on September 18.

The parties have attached all of the pertinent documents to the stipulation as exhibits. A comparison of the documents Employer transmitted on September 8 with those it transmitted on September 18 establishes that the language changes to the basic agreement consisted of minor technical and grammatical adjustments along with a correction in erroneous paragraph numbering. The accompanying letter was amended to provide for the filing and processing of a grievance on behalf of a discharged employee under the terms of the new agreement and to provide that any run over 250 miles shall be considered a "longline" run.

Respondent's October 13 proposal sets forth requests for what appear to be substantial changes in the provisions dealing with seniority and compensation for the owner-drivers. Under the terms of the September 1 agreement, article 41, section 2(a), the Employer would continue its past practice of assigning work according to seniority. It stated, "In accordance with this practice all drivers including owner-operators, employed pursuant to Article 59 shall have seniority from the first day of their most recent continuous employment as drivers or from the first day of continuous operation as owner/operators, whichever is earlier." Under the October 13 proposal two boards would be established, one for the owner-drivers and the other for remaining drivers. The owner-drivers were to be given a preference for citrus hauls while the other drivers were to be given a preference for paper hauls.

The October 13 proposal requested changes in the provisions for compensation of the owner-operators including: (1) an amendment to the provisions' 70 percent on paper hauls which would provide that if the minimum mileage rate in the over-the-road supplement would produce more revenue, the higher rate would be paid; (2) a request for a letter stating that the owner-operators will continue to be paid a minimum of \$500 each month; and (3) an implied request in the form of a question, "What will be done concerning fire, theft, and collision insurance?" citing the provision in the proposed agreement listing the other expenses the Employer agreed to pay. Also included were requests for provisions providing for increased control by the owner-drivers over the use of their trucks.

Respondent contends that ratification by Respondent's members was a condition precedent to the effectuation of any agreement, the Employer was aware of this fact, and the Employer had knowledge that its employees had not fully ratified the agreement; therefore no agreement had been

effectuated. It further contends that since the employees had not fully ratified the agreement, the Respondent requested additional modifications on September 14, September 18, and October 13, in the continuing process of collective bargaining.

The General Counsel and the Employer contend that there was an agreement on September 1, and all that remained was the drafting and execution of the agreement. The Employer also contends that the request by Respondent for minor technical changes in the final agreement demonstrates that both parties understood that there was full agreement.

In our opinion the parties reached a binding agreement on September 1. As of August 23, the parties were in complete agreement except for the compensation and other economic benefits for the owner-operators. Respondent represented to the Employer that all other terms were agreeable to the unit employees. On August 23, the parties agreed upon the economic benefits for the owner-operators. When the economic benefit proposals were submitted to the owner-operators they stated that they were acceptable if the Employer would guarantee to advance \$500 per month whether or not the owner-operators worked, and would pay 70-percent gross on paper hauls. On August 28, Bauerlein informed Employer of these conditions for acceptance. On August 31, Keaton told Bauerlein that the 70 percent of gross on paper runs was acceptable but not the \$500 guaranteed advance. On September 1, in separate telephone conversations, both Feins and Bauerlein told Keaton that they had an agreement and that Keaton should draft the contract.

Respondent contends that the Employer was aware that the agreement had not been ratified when, on September 1, Feins and Bauerlein told Keaton that they had an agreement. However, there is nothing in the stipulation which would indicate that the Employer was aware that it had not been ratified. On the contrary, we are compelled to infer that the agreement had been ratified prior to the September 1 telephone calls. At all other stages of the negotiations the proposals were submitted to the employees prior to final acceptance. In fact, the additional conditions requested by the Respondent on August 28 were as the result of requests by the employees when the proposals were submitted to them after the negotiations were completed. Under these circumstances it would be unreasonable to

believe that both Feins and Bauerlein would indicate acceptance and request Keaton to draft the agreement unless the employees had ratified the agreement. As there were only 7 owner-operators in the unit, and only 16 total, there is no reason to believe that Respondent had not obtained their approval during the 1-day period between the August 31 and September 1 telephone calls.

In addition, Bauerlein's requests for only minor technical changes after Keaton had drafted the agreement would indicate that there was complete agreement.² Therefore, we find that the Respondent had ratified the agreement prior to the Employer being informed on September 1 that they had an agreement.

In our opinion, the October 13 proposals constitute an attempt by Respondent to modify the agreement previously entered into on September 1.

When an oral agreement is reached as to all terms of the collective-bargaining agreement, each party is obligated, at the request of the other, to reduce the agreement to writing and the refusal to do so constitutes an unfair labor practice.³ We find that the Respondent's failure to execute the agreement constitutes a violation of Section 8(b)(3). We shall therefore order the Respondent to execute the agreement entered into on September 1.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Employer's 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 thereof.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. It has been found that the Respondent has refused to bargain collectively with Max Rudolph, d/b/a Max Rudolph Trucking Company, as the exclusive representative of all employees in the appropriate unit by refusing to execute the collective-bargaining

² Respondent's contention that the request for additional modifications on September 14 and 18 indicated a continuing process of collective bargaining is without merit. The changes requested were minor and in line with an effort to properly set forth the exact terms of the agreement previously entered into.

³ *H. J. Heinz Co. v. N.L.R.B.*, 311 U.S. 514, 523-524; *Los Angeles Mailers' Union No. 9*, 155 NLRB 684; *Enterprise Association of Pipefitters, Local No. 638*, 170 NLRB No. 385.

agreement upon between it and the aforesaid Employer on September 1, 1967. As the proposed collective-bargaining agreement and accompanying letter transmitted by the Employer to the Respondent on September 18, 1967, embody the terms of the agreement reached on September 1, 1967, we shall order the Respondent to execute those documents.⁴

CONCLUSIONS OF LAW

1. Max Rudolph d/b/a Max Rudolph Trucking Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Chauffeurs, Teamsters and Helpers Union, Local 186, affiliated with the 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 freight drivers working at or out of Rudolph's terminal in Santa Paula, California, excluding all other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Respondent has been since April 17, 1967, and at all times thereafter, the exclusive collective-bargaining representative of all the employees in the unit described above for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 13, 1967, and at all times thereafter, to execute the collective-bargaining agreement with the Employer to which the Respondent had previously agreed, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(3) of the Act, as amended.

6. 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, Chauffeurs, Teamsters and Helpers Union, Local 186, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing upon request of the Employer to execute the collective-bargaining agreement agreed to on September 1, 1967, as embodied in the proposed collective-bargaining agreement and accompanying letter transmitted to it by the Employer on September 18, 1967.

(b) In any like manner refusing to bargain with the Employer in accordance with the requirements of the Act.

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

(a) If requested to do so by the Employer, forthwith sign and execute the proposed collective-bargaining agreement and accompanying letter transmitted to it by the Employer on September 18, 1967.

(b) Post at Respondent's offices and meeting places copies of the attached notice marked "Appendix."⁵ Copies of said notice, to be furnished by the Regional Director for Region 31, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members 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) Mail to the Regional Director for Region 31 signed copies of the notice for posting by the Employer, said Employer being willing, at all locations where notices to its employees are customarily posted.

(d) Notify the Regional Director for Region 31, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

⁴ As noted above, Respondent contends that the September 14 and 18 request for modifications in the proposed agreement transmitted to it by the Employer on September 18 (involving the language changes which we have found to be minor and an effort to properly set forth the exact terms of the agreement reached) demonstrates the continuing process of collective bargaining. It does not contend that the documents transmitted on Sep-

tember 18 incorrectly set forth the terms as agreed to by the negotiators as of that date.

⁵ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

DECISIONS OF NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO ALL MEMBERS OF CHAUFFEURS, TEAMSTERS AND HELPERS UNION, LOCAL 186, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

CHAUFFEURS, TEAMSTERS AND HELPERS UNION, LOCAL 186, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Labor Organization)

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

Dated

By

(Representative) (Title)

WE WILL, upon request by Max Rudolph, d/b/a Max Rudolph Trucking Company, execute the agreement reached on September 1, 1967, as embodied in the proposed collective-bargaining agreement and accompanying letter transmitted to us by said Employer on September 18, 1967.

The bargaining unit is:

All freight drivers working at or out of Rudolph's terminal in Santa Paula, California, excluding all other employees, guards, and supervisors, as defined in the Act.

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

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 10th Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California 90014, Telephone 688-5800.