

**Bayliss Trucking Corp., and Bayliss Fuel Oil Corp. and Coal, Gasoline, Fuel Oil Teamsters, Chauffeurs, Helpers, Oil Burner Installation, Maintenance, Servicemen and Helpers, Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Amalgamated Local Union 355, Intervenor.** Case 29-CA-1462

June 30, 1969

### DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS  
BROWN AND JENKINS

On May 12, 1969, Trial Examiner Abraham H. Maller issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent and the Intervenor filed exceptions to the Trial Examiner's Decision, with supporting briefs and the General Counsel and the Charging Party filed briefs in support of the Trial Examiner's Decision.

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

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 Trial Examiner's Decision, the exception, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions,<sup>1</sup> and recommendations of the Trial Examiner, with the following limited modification.

#### THE REMEDY

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 year of certification as beginning on the date the Respondent commences to bargain in good faith with the Union as the certified bargaining representative in the appropriate unit. See: *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enf. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S.

<sup>1</sup>Although we agree with the Trial Examiner's conclusion, we do so because an evaluation of all objective considerations establishes that the ballot used in the election did not constitute grounds for invalidating the results thereof

817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enf. 350 F.2d 57 (C.A. 10).

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Bayliss Trucking Corp., and Bayliss Fuel Oil Corp., its officers, agents, successors, and assigns, Brooklyn, New York, shall take the action set forth in the Trial Examiner's Recommended Order.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

ABRAHAM H. MALLER, Trial Examiner: On September 18, 1968, Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, herein called the Teamsters, filed a charge against Bayliss Trucking Corp., and Bayliss Fuel Oil Corp., herein collectively called the Respondent.<sup>1</sup> Upon said charge, the Regional Director for Region 29 of the National Labor Relations Board, herein called the Board, on September 25, 1968, issued on behalf of the General Counsel a complaint against the Respondent, alleging that the Teamsters had been certified as the exclusive collective-bargaining representative of the employees of the Respondent in an appropriate unit and that the Respondent had refused to bargain collectively with the Teamsters, in violation of Section 8(a)(5) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, *et seq.*) herein called the Act.<sup>2</sup> In its duly filed answer, Respondent denied the commission of any unfair labor practices and affirmatively alleged that it had filed timely objections to the conduct of the election pursuant to which the Teamsters had been certified, that the Regional Director had caused an investigation of the objections to be made, that said objections had raised substantial material and factual issues and that the Respondent had requested a hearing upon said objections, that in violation of due process and of the rights and remedies of the Respondent, the Regional Director and the Board had overruled said objections without conducting such hearing.

A brief statement of the background, including an antecedent representation proceeding, is necessary in order to put the subsequent proceedings in the instant case in their proper perspective. The Respondent and Amalgamated Local Union 355, herein called Amalgamated, had had a collective bargaining relationship for at least 7 years. Pursuant to a petition filed by the Teamsters under Section 9(c) of the Act, in Case 29-RC-989, and after a hearing, the Regional Director directed an election to determine whether the employees desired to be represented for collective-bargaining purposes by the Teamsters or by Amalgamated, or by neither. An election by secret ballot

<sup>1</sup>As found, *infra*, both companies operate as an integrated enterprise and constitute a single employer.

<sup>2</sup>The complaint also alleges generally that the Respondent interfered with, restrained, and coerced its employees in violation of Sec. 8(a)(1) of the Act. However, no evidence of any independent violations of Sec. 8(a)(1) of the Act was offered in evidence.

was conducted on June 6, 1968, in a unit of all drivers, servicemen, the dispatcher, and the mechanic employed by the Respondent at its Ronkonkoma, New York, location as of the payroll period ending May 1, 1968, excluding all office clerical employees, guards and supervisors as defined in the Act. The tally of ballots showed that there were 13 eligible voters, and that seven had voted in favor of Teamsters and five in favor of Amalgamated. Thereafter, Amalgamated filed timely objections to the conduct of the election, alleging that the ballot improperly listed Teamsters in the left position of the ballot, despite the fact that the parties had agreed, and the Board had approved, before the election that Amalgamated should have that position; that Amalgamated had notified its adherents among the voters of the fact that it would occupy the left side of the ballot; that the change of position on the ballot caused confusion among the voters, a confusion which was compounded by the similarity of the numbers of the two local unions, viz, 553 and 355. The Respondent joined in the objections of the Intervenor. After an investigation, the Regional Director on July 31, 1968, overruled the objections and certified Teamsters as the exclusive bargaining representative. On August 5, 1968, Amalgamated filed "exceptions" to the Regional Director's Supplemental Decision and Certification of Representative, and on August 19, Respondent requested review of that decision. On August 30, 1968, the Board denied the Amalgamated's "exceptions" and Respondent's request for review as not raising substantial issues warranting review.

In the instant proceeding, following the filing of Respondent's answer, the General Counsel on November 1, 1968, filed a motion for summary judgment and for judgment on the pleadings. In essence, the basis of the motion was that the matters raised in the Respondent's answer related to the certification of the Teamsters, had been litigated in the representation proceeding, and could not be relitigated in the instant proceeding. Respondent filed a statement in opposition, and Amalgamated asked and was given leave to intervene, and filed an answer and an affidavit in opposition to the motion for summary judgment. Both the Respondent and the Intervenor contended that the *ex parte* overruling of the objections to the election violated due process. The Charging Party filed a letter in support of the motion for summary judgment; and the General Counsel filed a response to Amalgamated's opposition.

The General Counsel's motion was assigned to Trial Examiner Frederick U. Reel who, on December 18, 1968, issued an order denying the motion, together with an accompanying opinion. On January 17, 1969, the General Counsel took an appeal from the order denying the motion for summary judgment. On January 29, 1969, the Board issued an order denying the General Counsel's appeal from the order denying the motion for summary judgment.

Pursuant to notice a hearing was held before me at Brooklyn, New York, on March 3, 4, 5, and 6, 1969. The General Counsel, the Charging Party, the Respondent, and the Intervenor were represented and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument and to file briefs with me. Briefs were filed by all parties. Upon consideration of the entire record<sup>3</sup> and the briefs, and upon my observation of each of the witnesses, I make the following:

<sup>3</sup>The parties have filed a stipulation that the record be corrected in certain particulars. Upon consideration thereof, it is hereby ordered that

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

## I. THE BUSINESS OF THE RESPONDENT

At all times material herein, Bayliss Trucking Corp., and Bayliss Fuel Oil Corp., have maintained their principal office and place of business at 355 Ronkonkoma Avenue, in the Town of Ronkonkoma, New York, herein called the Ronkonkoma plant, where Bayliss Fuel Oil Corp., is engaged in the retail sale of fuel oil and Bayliss Trucking Corp., is engaged in performing delivery of fuel oil services primarily for Bayliss Fuel Oil Corp. Bayliss Trucking Corp., and Bayliss Fuel Oil Corp., are, and at all times material herein have been, affiliated businesses with common officers, ownership, directors and operators, and constitute a single integrated business enterprise; the said directors and operators formulate and administer a common labor policy for the aforesaid companies, affecting the employees of said companies. During the year immediately preceding the filing of the complaint herein, which period is representative of its annual operations generally, Bayliss Fuel Oil Corp., in the course and conduct of its annual operations, derived gross revenues therefrom in excess of \$500,000. During said year, which period is representative of its annual operations generally, Bayliss Fuel Oil Corp., in the course and conduct of its business, purchased and caused to be transported and delivered to the Ronkonkoma plant, fuel oil and other goods and materials valued in excess of \$50,000, of which goods and material valued in excess of \$50,000 were transported and delivered to it, and received from other enterprises, located in the State of New York, each of which other enterprises had received said goods and materials in interstate commerce directly from states of the United States other than the state in which it is located. Accordingly, I find and conclude that Bayliss Fuel Oil Corp., and Bayliss Trucking Corp., are an integrated enterprise constituting a single employer and are engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act for the Board to assert jurisdiction here.

## II. THE LABOR ORGANIZATION INVOLVED

Coal, Gasoline, Fuel Oil Teamsters, Chauffeurs, Helpers, Oil Burner Installation, Maintenance, Servicemen and Helpers, Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ISSUE

Whether the reversal of the positions of the rival unions on the election ballot caused such confusion among the eligible voters as to render the election untrustworthy.

## IV. RESPONDENT'S REFUSAL TO BARGAIN

If the foregoing issue is decided in the affirmative, then the complaint herein must be dismissed. On the other hand, if the issue is decided in the negative, it automatically follows that the Respondent has violated Section 8(a)(5) of the Act, as it admittedly refused to bargain with the certified Union.

the record be corrected as set forth in the stipulation.

**A. The Appropriate Unit**

In the representation proceeding, Case 29-RC-989, the Regional Director found that the following employees of the Respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers, servicemen, the dispatcher, and the mechanic employed by the Respondent at its Ronkonkoma, New York, location, excluding office clerical employees, guards and supervisors as defined in the Act.

Although the Respondent in its answer to the complaint, denied the appropriateness of the foregoing unit, that issue was not litigable in the instant proceeding. The Board and the courts have held that in the absence of newly discovered or previously unavailable evidence, issues which were or could have been raised in the related representation proceeding may not be litigated in an unfair labor practice proceeding. *State Farm Mutual Automobile Insurance Company*, 163 NLRB No 94; *United States Rubber Company*, 155 NLRB 1298, 1300; *Collins & Aikman Corp.*, 160 NLRB 1750, 1752; *Pittsburg Plate Glass Co., v. N.L.R.B.*, 314 U.S.

146, 158. Furthermore, Respondent at the outset of the hearing herein, conceded that the issue as to the appropriate unit was not litigable in the instant proceeding in view of the Regional Director's determination in the representation case, but stated that it had raised the issue solely for the purpose of preserving its position should this case go to the Court of Appeals. I therefore find and conclude that the unit described above is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

**B. The Election**

On May 15, 1968, a preelection conference was held at the office of Region 29. Although there is some dispute as to precisely what occurred at that conference, there is agreement that Amalgamated received the choice of position on the ballot and chose the left side. Thereafter, on May 28, 9 days before the election, the Regional Director sent to all parties and their attorneys an official notice of election containing a sample of the ballot to be used in the election. On the sample ballot the positions of the two Unions were inadvertently reversed and appear as follows:

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

COAL, GASOLINE, FUEL OIL TEAMSTERS, CHAUFFEURS, HELPERS, OIL BURNER INSTALLATION, MAINTENANCE, SERVICEMEN AND HELPERS LOCAL 553, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Local 553, International Brotherhood of Teamsters) <div style="text-align: center; margin-top: 20px;"> <input type="checkbox"/> </div>	NEITHER <div style="text-align: center; margin-top: 20px;"> <input type="checkbox"/> </div>	AMALGAMATED LOCAL UNION 355 <div style="text-align: center; margin-top: 20px;"> <input type="checkbox"/> </div>
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Although no party raised an objection to the form of the ballot prior to the election, it is the contention of the Respondent and the Intervenor that the change of positions caused confusion in the minds of the voters, resulting in an invalid election.

When the notice of election, containing a sample of the ballot, was received by the Respondent, it was posted above the dispatcher's window on the Respondent's premises. Respondent's Vice President Schiliro admitted that the notice was posted "a few days" before the election. Adjacent to the notice of election, Schiliro also posted his own notice requesting all of the employees to read the Board's notice and to sign Respondent's notice to indicate that they had done so. Some seven or eight employees signed their names on Respondent's notice.

Henry Stirt, representative of the Amalgamated, notified employees Frank Topputo, Theodore Bunin, and Walter Hoff that Amalgamated would appear on the left side of the ballot.<sup>4</sup> According to Stirt, his conversation with Topputo occurred one morning "right after" the preelection conference of May 15, 1968. Topputo, however, testified that this conversation occurred on the morning preceding the election. Considering the fact that the Regional Director had mailed to Amalgamated, as well as the other parties, a copy of the notice of election and sample ballot, it is difficult to understand why Stirt should have told Topputo the day before the election that Amalgamated would appear on the left side of the ballot,

or if, as Stirt claims, the conversation occurred "right after" May 15, why he did not correct the information he had given to Topputo as well as to any other employee that he may have so told.

The balloting was conducted on June 6, 1968, between 5 and 6 p.m., in Respondent's warehouse. Immediately prior to the election, the Board agent conducting the election exhibited the ballot to the employees then present, explicitly pointing out that the Teamsters union was on the left side of the ballot, "neither" in the center, and Amalgamated was on the right side.<sup>5</sup>

<sup>4</sup>Stirt also testified that he so notified employee Carmine Della Sala, and Topputo testified that he likewise had informed employees Howard Goldman and William Skoch of this fact. However, employees Della Sala, Goldman, and Skoch denied being told this by anyone. I credit their denials.

<sup>5</sup>The credited testimony of employees Saulle, LaPorte, Pernice, Della Sala, Goldman, Buteau, and Skoch. Goldman's testimony is not affected by an inadvertent error in his pretrial statement to the effect that "Local 553 [Teamsters] was on the left, neither in the middle, and Local 553 was on the right." The error, he explained, is attributable to his haste caused by his child's illness at that time. In addition, Employee Buteau testified that he arrived at the warehouse between 5:15 and 5:30 p.m., was given a ballot by the Board agent who explained to him that Teamsters was on the left side, and Amalgamated was on the right side. I do not credit the contrary evidence. Topputo, the observer for the Intervenor, testified on behalf of the Intervenor that the Board agent failed to explain the composition of the ballot. Although he testified in his direct examination that he saw the ballot for the first time when he himself voted, after most

Of the 12 employees who voted in the election, 11 testified at the hearing. I am satisfied, after a careful review of the evidence, that none of the employees who voted was confused by the positions of the unions on the ballot. All of the employees were literate. During the hearing, the parties, their counsel, and the witnesses referred to the Unions by their local numbers, viz, 553 and 355. It must be conceded that the striking similarity of the numbers of the two locals, in itself, might result in some confusion. However, this result would obtain, in any event, even if there had been no reversal of the positions of the unions on the ballot. Nevertheless, the essential fact is that the two unions did not appear on the ballot only by their local numbers. As indicated above, the full names of the Unions were used. In the case of Teamsters, the full name of the Union appears on the ballot: "COAL, GASOLINE, FUEL OIL TEAMSTERS, CHAUFFEURS, HELPERS, OIL BURNER INSTALLATION, MAINTENANCE, SERVICEMEN AND HELPERS, LOCAL 553, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Local 553, International Brotherhood of Teamsters)." Similarly, in the case of Amalgamated, its full name, which is much shorter than that of the Teamsters, appeared: "AMALGAMATED LOCAL UNION 355." Furthermore, since Amalgamated had represented the employees for more than 7 years, it is difficult to believe that they would be unfamiliar with its name. Thus, the probability of confusion by similarity of numbers was substantially diminished, if not completely eradicated.

Seven employees who voted in the election testified on behalf of the General Counsel: Saule, LaPorte, Pernice, Della Sala, Goldman, Buteau, and Skoch. It is clear from their testimony that the reversal of the positions of the two unions did not cause any confusion in their minds when they voted. Of the seven, the Intervenor claims that Della Sala, Skoch, and Goldman were told that Amalgamated would appear on the left side of the ballot. I have noted above that these three employees unequivocally denied being told this by anyone. But assuming, *arguendo*, that they had been so informed, it is clear from their testimony that they were not misled thereby when they voted. All three had read the notice of election which included a copy of the ballot. All three testified that the Board agent had explained the positions

of the eligible employees had voted, he admitted on cross examination that the Board agent did show the ballot to the employees and instructed them how to fold it. Employee Bunin, another witness for the Intervenor, could not recall the time he arrived at the polling place, but testified that he received no instructions concerning the ballot from the Board agent prior to his voting. Employee Hoff, testifying for the Intervenor, could not recall whether the ballot was shown to the employees or whether the respective positions of the unions on the ballot was pointed out. Amalgamated's Representative Stirt admitted that he "wasn't in hearing distance because I was on the other side of the table . . . talking to maybe one of the men there." He admitted that the Board agent had exhibited the yellow ballot. Respondent's Vice President Schiliro testified that he did not see or hear the Board agent point out the position of the unions on the ballot, but admitted on cross-examination that he did not recall a single thing the Board agent said to anybody prior to the opening of the polls, because he was totally involved in setting up the warehouse for the election during this entire period. Attorney Mandelker, representing the Respondent, testified that no explanation was given to the employees while he was in the polling area. However, Attorney Mandelker admitted that he left the polling area at 4:57 p.m., when all persons except eligible voters, were asked to leave the premises. It is quite conceivable that the Board agent's instructions were given to the employees after Attorney Mandelker left the premises and before the voting began.

of the Unions on the ballot prior to the election. In addition, Skoch testified that he read the ballot before he voted. I therefore find and conclude that none of these seven employees was confused by the change of position of the Unions on the ballot.

We now turn to a consideration of the testimony of the employees called as witnesses by the Intervenor. Employee Frank Topputo, a high school graduate and an observer for Amalgamated, testified that he did not recall looking at the ballot when he went into the polling booth, presumably because "I was instructed on position of the ballot." However, Topputo admitted on further questioning that "I only went by the numbers." This would negate his earlier testimony that he presumably went by the positions of the unions on the ballot. And if, as he said, he went only by the numbers, than obviously he was not confused by the change of positions. I therefore find and conclude that the change of the positions of the unions on the ballot did not confuse Topputo.

Employee Theodore Bunin, called as a witness by the Intervenor, testified that he had been told by Amalgamated Representative Stirt that Amalgamated would appear on the left side of the ballot. However, he testified further that when he went in to vote, he found that the ballot was not as he was supposed to be that "it was sort of confusing . . . I was told one thing and I find it another way." He testified further that he "looked it [the ballot] over good and I signed it where I wanted to." I therefore find and conclude that Employee Bunin was not confused by the change of the positions of the unions on the ballot.

Employee Walter Hoff testified that he was confused when he voted because he had been told one thing, and found it to be the opposite, that "it made me think a little bit." Hoff admitted reading the ballot before he went into the polling booth. Furthermore, Hoff admitted in a pretrial statement that "I went into the voting booth, read the ballot and saw that Local 553 was on the left, neither in the middle and Local 355 on the right-hand side. I placed an "x" in the box of my choice and knew exactly who I voted for. It was clear on the ballot, the difference between the 2 unions." In sum, I find and conclude that Hoff was not confused by the change of positions of the unions on the ballot.

John McDowell, Respondent's dispatcher, was called as a witness by the Intervenor. Although he testified that Amalgamated Representative Stirt had spoken to him before the election about the positions of the unions on the ballot, he was not sure what Stirt had told him and "didn't expect to see it in any particular place." McDowell testified further that he came in to vote in the midst of a period of illness and that he was "confused" because of his illness. In addition, he testified that he was in a hurry to get it over with and "possibly" picked the wrong box and did not read the ballot. McDowell admitted that he saw "something like" the notice of election containing the sample ballot posted above the dispatcher's window at Respondent's premises. From all the foregoing, I find and conclude that while McDowell may have been confused at the time he voted, whatever confusion he experienced, if any, stemmed from his illness and not from the change of the positions of the unions on the ballot.

The Intervenor and the Respondent rely principally upon the case of *Dedman Foundry & Machine Company*, 52 NLRB 609. That case is factually distinguishable from the instant proceeding. In that case, the ballots were

incorrectly printed and listed three unions instead of two. The union appearing in the left-hand column was not involved in the election. In order to correct the ballots, the union listed in the left-hand column was crossed out before the ballots were given to the voters. The union listed in the third column filed objections, alleging that some of the voters were lacking in sufficient education to ballot accurately by the use of printed instructions, and that in order to avoid any possible misunderstanding on the part of the employees, it had instructed them to designate and vote in the second square; that a substantial number of the employees faithfully followed these instructions, and, notwithstanding the fact that the first square on the ballot had been scratched through, such employees checked the second square which contained the name of the rival union. In these circumstances, the Board held that there was no way to be certain that some of the employees were not confused or misled by the corrected ballots. These circumstances did not exist in the instant case. As previously noted, all of the employees were literate. In addition, the names of the two unions appearing on the ballot were completely dissimilar, and the employees should have been familiar with the name of Amalgamated which had represented them for more than 7 years.

The more recent case of *V. LaRosa & Sons, Inc.*, 121 NLRB 671, is much closer to the facts of the instant case. In that case, the rival unions on the ballot had the identical local number (not merely similar as in the instant case). The petitioning union had sought its name on the ballot with the local number following its affiliation, *viz.*, American Bakery and Confectionery Workers International Union, Local 492, AFL-CIO. Instead, the Board printed the ballot with the local number preceding the affiliation, *viz.*, Local 492, American Bakery and Confectionery Workers International Union, AFL-CIO. The Intervenor was known by its local number preceding its affiliation, *viz.*, Local 492, Bakery and Confectionery Workers International Union of America. The petitioner claimed that this printing error caused voters to choose the intervenor when, in fact, they meant to choose the petitioner. Three employees submitted affidavits that they had voted for the wrong union because of the printing error. In addition, the petitioner claimed that 17 of the 76 voters could not read or write English. The Board refused to set aside the election, noting that the notices of election were posted in the plant sufficiently in advance of the election for all eligibles to familiarize themselves with the respective choices on the ballot (as here), that other than the local numbers, the names of the unions were dissimilar (as here); that no issue was raised by the petitioner concerning the alleged error until after the election (as here), that no voter requested aid from the Board agent to read or interpret the ballot (as here), that all observers signed the certification of conduct of election (as here), and that the voters were not unduly rushed or handicapped in casting their ballots (as here).

In sum, I find and conclude that the election was fairly conducted and that none of the employees was confused by the reversal of positions of the unions on the ballot. As the Teamsters was properly certified as the exclusive bargaining representative of the Respondent's employees in an appropriate unit, the Respondent was required to bargain with it and, failing to do so, violated Section 8(a)(5) and (1) of the Act.

<sup>1</sup>The language of par. 1(b) of the Recommended Order follows that prescribed by the Supreme Court of the United States in *N.L.R.B. v. Express Pub. Co.*, 312 U.S. 426, 439.

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

The activities of the Respondent set forth in section IV, above, occurring in connection with the operations of the Respondent set forth 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 thereof.

#### VI. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies 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, I recommend that the Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing, upon request, to bargain collectively with Coal, Gasoline, Fuel Oil Teamsters, Chauffeurs, Helpers, Oil Burner Installation, Maintenance, Servicemen and Helpers, Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of all employees in the following appropriate unit:

All drivers, servicemen, the dispatcher, and the mechanic employed by the Respondent at its Ronkonkoma, New York, location, excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) In any manner interfering with the efforts of the above-named Union to bargain collectively with the Respondent on behalf of the employees in the above-described unit.<sup>4</sup>

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with Coal, Gasoline, Fuel Oil Teamsters, Chauffeurs, Helpers, Oil Burner Installation, Maintenance, Servicemen and Helpers, Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the appropriate unit with respect to rates of pay, wages, hours of employment and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Ronkonkoma, New York, facility copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by an authorized representative of the Respondent, 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 employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are

<sup>4</sup>In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further

not altered, defaced, or covered by any other material.  
 (c) Notify the Regional Director, in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply herewith.<sup>8</sup>

event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

"In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT refuse, upon request, to bargain collectively with Coal, Gasoline, Fuel Oil Teamsters, Chauffeurs, Helpers, Oil Burner Installation, Maintenance, Servicemen and Helpers, Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of all employees in the following appropriate unit:

All drivers, servicemen, the dispatcher, and the mechanic employed by us at our facility at Ronkonkoma, New York, excluding office clerical

employees, guards and supervisors as defined in the Act.

WE WILL NOT in any manner interfere thewith efforts of Coal, Gasoline, Fuel Oil Teamsters, Chauffeurs, Helpers, Oil Burner Installation, Maintenance, Servicemen and Helpers, Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America to bargain collectively as the exclusive representative of the employees in the bargaining unit described above.

WE WILL, upon request, bargain collectively with Coal, Gasoline, Fuel Oil Teamsters, Chauffeurs, Helpers, Oil Burner Installation, Maintenance, Servicemen and Helpers, Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

BAYLISS TRUCKING CORP.  
 BAYLISS FUEL OIL CORP.  
 (Employer)

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

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 employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 596-3535.