

ABC Freight Forwarding Corporation, Blue Ribbon Express, Inc., and Midland Forwarding Corporation and Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent). Case 13-CA-10674

November 12, 1971

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

Upon a charge filed on June 8, 1971, by Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent), herein called the Union, and duly served on ABC Freight Forwarding Corporation (herein called ABC), Blue Ribbon Express, Inc. (herein called Blue Ribbon), and Midland Forwarding Corporation (herein called Midland), collectively herein called the Respondents, the Acting General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on August 6, 1971, against Respondents, alleging that Respondents had engaged in and were 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, complaint, and notice of hearing before a Trial Examiner were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 20, 1971, following a Board election in Case 13-RC-12356, the Union was duly certified as the exclusive collective-bargaining representative of Respondents' employees in the unit found appropriate;¹ and that, commencing on or about June 1, 1971, and at all times thereafter, Respondents have refused, and continue to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting them to do so. On August 16, 1971, Respondents filed their answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 27, 1971, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, submitting that the Respondents are seeking to relitigate issues which the parties fully and exhaustively have litigated in Case 13-RC-12356. Subsequently, on September 1, 1971, 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. Respondents thereafter filed a response to Notice To Show Cause.

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 proceeding to a three-member panel.

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

**Ruling on the Motion for Summary
Judgment**

In their answer to the complaint and in their response to the Notice To Show Cause, Respondents contend that the certification issued to the Union on May 20, 1971, is invalid because the Regional Director erred in including two statutory supervisors in the single bargaining unit of the three Respondents which the Regional Director improperly found to be appropriate. We find that Respondents' contentions in these respects are identical to those it raised, and which were litigated and decided, in the underlying representation proceeding and must, accordingly, be denied.

The record in Case 13-RC-12356 indicates that, after a hearing in which Respondents participated, the Regional Director issued a Decision and Direction of Election on April 14, 1971, in which he found that the three Respondent corporations named herein constituted a single employer for purposes of collective bargaining, that employees of three corporations constituted an appropriate unit, and that the two individuals here in question were neither managerial employees nor supervisors as defined in the Act. Thereafter, Respondents filed a request for review of the Regional Director's Decision and Direction of Election and a supporting brief, in which they stated that two issues were raised in the representation proceeding: the appropriateness of a joint employer unit and the supervisory status of the two individuals. The Union filed a statement in opposition to the request. The request for review, however, appealed only the supervisory status issue. By telegram dated May 3, 1971, the Board denied the request for review on the ground that it raised no substantial issues warranting review. Upon our review of the record in this proceeding and the record in Case 13-RC-12356, we adhere to that view and find no reason to disturb the findings and conclusions of the Regional Director.

In their response to the Notice To Show Cause, Respondents state that they do not waive their right to

¹ Official notice is taken of the record in the representation proceeding, Case 13-RC-12356, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4,

1968); *Golden Age Beverage Co.*, 167 NLRB 151, *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1967); *Follett Corp.*, 164 NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRB.

a full hearing on the issues of the supervisory status of the two individuals involved herein or on the joint employer issue determined in a representation proceeding, Case 13-RC-12022, antecedent to the one underlying this case. Considering this disclaimer of waiver a request for an evidentiary hearing, we find that no issue posed by Respondents herein raises substantial questions which would warrant a hearing.

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 proceeding.²

All issues raised by the Respondents in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondents do not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor do they 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 the Respondents have not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

The Respondents, ABC, Blue Ribbon, and Midland, are corporations organized under the laws of New York, Delaware, and Missouri, respectively. The Board asserted jurisdiction over Respondents on April 14, 1971, in Case 13-RC-12356 and determined therein that Respondents were a single employer. Respondents, with principal offices in New York, New York, maintain various facilities in other states including the Chicago terminal involved in this proceeding located at 1514 South Canal Street, Chicago, Illinois. During the past year in the course of their freight forwarding business within the State of Illinois, each of the Respondents derived gross income in excess of \$50,000 from operations involving common carriers who were directly in interstate commerce.

We find, on the basis of the foregoing, that Respondents are, and have been at all times material herein, a single 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

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

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

All freight salesmen employed by ABC, Blue Ribbon, and Midland at its Chicago terminal, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On May 12, 1971, a majority of the employees of Respondents in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 13, designated the Union as their representative for the purpose of collective bargaining with the Respondents. The Union was certified as the collective-bargaining representative of the employees in said unit on May 20, 1971, 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 Respondents' Refusal*

Commencing on or about May 24, 1971, and at all times thereafter, the Union has requested the Respondents 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 1, 1971, and continuing at all times thereafter to date, the Respondents have refused and continue 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 the Respondents have, since June 1, 1971, 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, Respondents have

² 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)

engaged in and are 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 Respondents set forth in section III, above, occurring in connection with their 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 Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that they 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 Respondents commence 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; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enf.d. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421, enf.d. 350 F.2d 57 (C.A. 10).

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

CONCLUSIONS OF LAW

1. ABC Freight Forwarding Corporation, Blue Ribbon Express, Inc., and Midland Forwarding Corporation are a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) is a labor organization within the meaning of Section 2(5) of the Act.

3. All freight salesmen employed by ABC, Blue Ribbon, and Midland at its Chicago terminal, excluding office clerical employees, professional employees, 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 20, 1971, 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 1, 1971, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondents in the appropriate unit, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby have engaged in and are 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 Respondents, ABC Freight Forwarding Corporation, Blue Ribbon Express, Inc., and Midland Forwarding Corporation, their 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 Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) as the exclusive bargaining representative of its employees in the following appropriate unit:

All freight salesmen employed by ABC, Blue Ribbon, and Midland at its Chicago terminal, excluding office clerical employees, professional employees, 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 Chicago terminal copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondents' representatives, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ 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 be changed to 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 Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) 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 freight salesmen employed by ABC, Blue Ribbon, and Midland at its Chicago terminal, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

ABC FREIGHT
FORWARDING
CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

BLUE RIBBON EXPRESS,
INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

MIDLAND FORWARDING
CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Everett McKinley Dirksen Building, Room 881, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 312-353-7572.