

**Yellow Cab Company of Nevada, Inc. and Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO. Case 31-CA-10778**

July 1, 1981

### DECISION AND ORDER

Upon a charge filed on January 15, 1981, by Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO, herein called the Union, and duly served on Yellow Cab Company of Nevada, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint and notice of hearing on February 9, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on November 19, 1980, following a Board election in Case 31-RC-4785, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about December 4, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. Thereafter, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 23, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on March 25, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 31-RC-4785, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

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

#### Ruling on the Motion for Summary Judgment

Respondent in its answer to the complaint admits the request and refusal to bargain with the Union. However, in its answer to the complaint and response to the Notice To Show Cause, Respondent attacks the Union's certification, reiterating its contentions in the underlying representation proceeding that the Acting Regional Director erred in directing an election and that the Regional Director erred in overruling its subsequent objections to the election.

Review of the record herein, including the representation proceeding in Case 31-RC-4785, reveals that on May 27, 1980, the Union filed a representation petition under Section 9 of the National Labor Relations Act. On July 8, 1980, the Acting Regional Director issued his Decision and Direction of Election in which he found, *inter alia*, that the Union was a labor organization within the meaning of the Act and that there was no contract bar to the petition. Accordingly, the Acting Regional Director directed an election in the unit stipulated to be appropriate.

Thereafter, Respondent filed a request for review of the Acting Regional Director's decision in which it contended that the Acting Regional Director had erred in failing to dismiss the petition because of an inadequate showing of interest and in failing to find that there was a contract bar to the petition. By telegraphic order dated August 1, 1980, the Board denied Respondent's request for review.

Pursuant to the Acting Regional Director's decision an election was held on August 16, 1980. At the conclusion of the balloting the tally revealed that 134 votes had been cast for, and 89 votes against, the Union, with 1 challenged ballot. Thereafter, Respondent filed objections to conduct affecting the results of the election, in which it reiterated its arguments previously made in its request for review of the Acting Regional Director's decision and additionally alleged in substance that the Union made illegal promises of benefits, made unlawful offers to waive initiation fees, seriously misrepresented material facts, compromised the neutrality of the National Labor Relations Board, and that the election results were not reflective of true employee sentiment. After investigation, the Regional Director, on November 19, 1980, issued his Supplemental Decision and Certification of Representation, in which he overruled Respondent's objections in their entirety and certified the Union as exclusive bargaining representative of the employ-

ees in the appropriate unit. Thereafter, Respondent filed a request for review of the Regional Director's supplemental decision, which the Board denied by telegraphic order on December 30, 1980. It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

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.<sup>2</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

In this proceeding Respondent contends that it is entitled to a hearing on its objections to the election. Prior to denying Respondent's request for review, the Board considered the Regional Director's supplemental decision and the matters raised in the request for review, including Respondent's contention that a hearing on its objections was warranted.

By denying Respondent's request for review, the Board necessarily found that the objections raised no substantial or material issues warranting a hearing.<sup>3</sup> Further, it is well established that the parties do not have an absolute right to a hearing on objections to an election. It is only when the moving party presents a *prima facie* showing of substantial and material issues which would warrant setting aside the election that it is entitled to an evidentiary hearing. It is clear that, absent arbitrary action, this qualified right to a hearing satisfied the constitutional requirements of due process.<sup>4</sup> Accordingly, we grant the Motion for Summary Judgment.

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

<sup>2</sup> 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).

<sup>3</sup> See, *Madisonville Concrete Co., A Division of Corum & Edwards, Inc.*, 220 NLRB 668 (1975); *Evansville Auto Parts, Inc.*, 217 NLRB 660 (1975).

<sup>4</sup> *GTE Lenkurt, Inc.*, 218 NLRB 929 (1975); *Heavenly Valley Ski Area, a California Corporation, and Heavenly Valley, a Partnership*, 215 NLRB 734 (1974); *Amalgamated Clothing Workers of America, Winfield Manufacturing Company, Inc. v. N.L.R.B.*, 424 F.2d 818, 828 (D.C.Cir. 1970).

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Respondent is a Nevada corporation with an office and principal place of business in Las Vegas, Nevada, where it is engaged in the business of providing taxi service. Respondent, in the course and conduct of its business operations, annually derives gross revenues in excess of \$500,000 and annually purchases and receives goods or services valued in excess of \$50,000 from firms located within the State of Nevada, which firms receive such goods in substantially the same form directly from outside the State of Nevada.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO, 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 Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All cab drivers employed by the Employer in the State of Nevada operating out of the Employer's Las Vegas, Nevada, facility; excluding guards, all other employees and supervisors as defined in the Act.

##### 2. The certification

On August 16, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 31, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on November 19, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

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

Commencing on or about November 26, 1980, and at all times thereafter, including specifically November 26, 1980, and January 7, 1981, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about December 4, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since December 4, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

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

*Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

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

CONCLUSIONS OF LAW

1. Yellow Cab Company of Nevada, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All cab drivers employed by the Employer in the State of Nevada operating out of the Employer's Las Vegas, Nevada, facility; excluding guards, all other employees, 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 November 19, 1980, 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 December 4, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Yellow Cab Company of Nevada, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Industrial, Techni-

cal and Professional Employees Division, National Maritime Union of America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All cab drivers employed by the Employer in the State of Nevada operating out of the Employer's Las Vegas, Nevada, facility; excluding guards, all other employees 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 Las Vegas, Nevada, facility, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

<sup>5</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

## 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 Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO, 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 cab drivers employed by the Employer in the State of Nevada operating out of the Employer's Las Vegas, Nevada, facility; excluding guards, all other employees and supervisors as defined in the Act.

YELLOW CAB COMPANY OF NEVADA,  
INC.