

Artim Transportation System, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers, Local Union No. 800. Case 6-CA-14139

September 27, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND ZIMMERMAN

On December 11, 1981, Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions, as modified herein,² of the Ad-

¹ Respondent asserts that the Administrative Law Judge showed undue bias and prejudice against Respondent based upon the entire record. After a careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias existed merely because the Administrative Law Judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *N.L.R.B. v. Pittsburgh Steamship Company*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge mistakenly found that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its local unions, represented Respondent's employees. The contract, however, indicates that the recognized representative is the Teamsters National Freight Industry Negotiating Committee (the Negotiating Committee) representing local unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Further, although the Administrative Law Judge found that Respondent began to reduce the pay of its owner-operators in May 1980, Thomas Eatinger, Respondent's manager of operations, testified without contradiction that Respondent first implemented the new rates at its Johnstown and Pittsburgh locations on April 1, 1980. Finally, the Administrative Law Judge, in fn. 4 of his Decision, misstated that "When there is a . . . contract in effect the employer not only need not agree to any change the employer wishes to make . . ." It is clear from the context in which this finding was made, the phrase was meant to read "When there is a . . . contract in effect the union not only need not agree to any change the employer wishes to make . . ."

² In his remedy, the Administrative Law Judge failed to describe the manner in which his make-whole order is to be computed. Therefore, we shall order that Respondent reimburse all employees covered by the contract for sums they lost where they were paid less than the established rate under the contract in the manner set forth in *Ogle Protection Services, Inc.*, 183 NLRB 682, 683 (1970), with interest on sums due computed in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962). In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the amounts due based on the formula set forth therein.

ministrative Law Judge and to adopt his recommended Order.

We agree with the Administrative Law Judge's finding that Respondent did not effectively withdraw authority from the National Steel Carriers Association (the Association) to bargain on its behalf with the Teamsters National Freight Industry Negotiating Committee for the Eastern States Area Conference Rider (the Rider), and thus, that Respondent's implementation of changes in wage rate structures covered by the Rider without bargaining with the employees' duly designated collective-bargaining representative violated Section 8(a)(5) and (1) of the Act. The instant case is distinguishable from *Spector Freight System, Inc., Viking Division*, 260 NLRB 86 (1982); *Jones Motor Co., Inc.*, 260 NLRB 97 (1982); and *Branch Motor Express Company*, 260 NLRB 108 (1982), which also involved alleged refusals to bargain over changes in the same collective-bargaining agreement here at issue. The Board dismissed the complaints in those three cases, finding that the General Counsel did not make a *prima facie* showing that the individual respondents failed to bargain over changes in the collective-bargaining agreement. In those cases, each of the respondents admitted that it was bound to the contract and some evidence was produced in each case showing that the respondent bargained with one of the local unions, albeit not the respective employees' designated collective-bargaining representative. Because the General Counsel failed to foreclose the possibility that each of the respondents in those matters bargained and reached agreement with the authorized representative, we found that he did not make a *prima facie* case.

Here, in contrast to the respondents in the above-cited cases, Respondent refuses to acknowledge that it is bound to the contract covering the wage rates. Instead, Respondent asserts that it withdrew authority from the Association to bargain on its behalf for the Rider. Without evidence to the contrary, such a position necessarily indicates that Respondent did not attempt to bargain with the Negotiating Committee. Indeed, Respondent admitted that it did not seek approval from the Eastern Conference Competitive Board of the Eastern Conference Area Committee which was the committee authorized to approve proposed changes in the Rider. Further, there is no credible evidence that Respondent attempted to secure an independent agreement with any representative of the Union before implementing the changes in the wage rate structure. In these circumstances, there can be no question that Respondent implemented the changes without consulting in any manner with the Union. Thus, in contrast to *Spector*, *Jones*, and

Branch, supra, the General Counsel established a *prima facie* showing of an unlawful refusal to bargain which Respondent failed to rebut through credible evidence.

Accordingly, we find that Respondent's conduct violated Section 8(a)(5) and (1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Artim Transportation System, Inc., Mars, Johnstown, and Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT unilaterally change substantive conditions of employment of any of our owner-operators, while bypassing their established exclusive bargaining agent and doing violence to the collective-bargaining agreement in effect.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL make whole every owner-operator who was adversely affected by our unlawful departure from the terms and conditions of employment set out in the contract in effect from 1979 to 1982 between this company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its Local 800, with interest on all such reimbursement due.

ARTIM TRANSPORTATION SYSTEM,
INC.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge: A hearing in this proceeding was held on October 29, 1981, at Pittsburgh, Pennsylvania, on complaint of the General Counsel against Artim Transportation System, Inc., here called the Respondent or the Company. The complaint issued on February 26, 1981, upon a charge filed on December 22, 1980, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers Local Union No. 800, here called the Union or the Charging Party. The issue presented is whether the Respondent illegally bypassed the exclusive bargaining agent of its employees and established conditions of employment with them at variance with payment arrangements precisely set out in the current and then effective collective-bargaining agreement with the Union.

Upon the entire record and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

This Company, an Indiana corporation, is engaged as a common carrier in the intrastate and interstate transportation of freight and steel commodities, its facilities including locations in Mars and Johnstown, Pennsylvania. In the course of its operations it derives gross revenues in excess of \$50,000 for the transportation of freight in interstate commerce. I find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The essential question in this case is a plain factual one: In the spring of 1980 was the Respondent steel hauling trucking company party to, and therefore bound by, the National Master Freight Agreement and the Eastern Conference Area Iron and Steel Rider? The parties to that contract are explicitly identified in the document itself, received in evidence: for the employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its local unions, including Local 800, and for the employers a number of employer associations listed by name, plus any independent employer who might not be represented by a multiemployer organization and who chooses to sign the agreement on his own, individual behalf. It is a two-part agreement, each part separately signed; the first half is national in scope, encompassing all the States, and the second part applicable only to the eastern area of the country, which includes western Pennsylvania, where this Respondent operates two of its terminals not far from Pittsburgh.

Artim Transportation is now, and has long been, a member of National Steel Carriers Association (NSCA); through it as its authorized agent it has been party to successive contracts executed exactly like the one here in question for some years preceding April 1979, when this one was executed. In the past Artim was party not only to the National Teamsters contract plus its Eastern Conference Area Rider, but also to the National contract plus its Central Conference Area Rider. As a witness in this case Ralph Artim, president of his company, said that while in 1979 the NSCA did continue to bargain for him and did bind him for 3 more years—1979 to 1982—to the National contract plus the *Central* Conference Area Rider, it was not his bargaining agent at that moment for the *Eastern* Conference Area bargaining that took place. With no supporting document in evidence to verify his self-serving conclusionary statement, he said his Company was not bound by the 1979-82 Eastern Conference Area Rider because he did not sign it independently of his multiemployer association, he was not a "signatory," to use his repeated phrase.

In the light of the total record, I do not credit Artim where he is contradicted by any opposing witness on this record. He spoke of correspondence between himself and Teamsters agents, incidental to his partial, temporary withdrawal from the multiemployer bargaining process, but produced not a single copy of any related communication. Most of Artim's testimony consisted of argument, with leading questions put by his own lawyer. At one point he was asked to agree that "your power of attorney only authorized National Steel [NSCA] to negotiate with you with reference to the Central Conference." In his next question his counsel changed this and asked Artim to agree that "You had no power of attorney authorizing anybody to represent Artim Transportation with reference to any of the negotiations in the Eastern Conference." The first statement called for some kind of document showing a limitation upon authority affirmatively given, but no record of any kind was produced. The next, revised statement—that Artim gave "no power of attorney"—being a negative, did not call for positive proof and therefore served to avoid the fatal defect of the first statement. And so it went. Artim said he withdrew from the contract coverage before expiration of the 1976-79 Eastern Conference Area Rider "In conformity with the contract which allows for cancellation 90 days before the expiration date, which I did." He also said that after the 1979-82 contract was agreed to by the parties who in fact signed it—including, as set out above, the NSCA—Robert Dietrich, then in control of Local 800, "sent a couple of copies of the contract in the mail with a letter with a request to have it signed." If there were a word of truth in any of these statements by Artim, he would at least have produced one supporting document, some copy of what he said he received from Dietrich. He offered none.

But what in my considered judgment contributes more towards negating Artim's legal statement—that the contract in evidence did not bind him—is a statement by his counsel on the record, albeit not under oath. Both parts of the contract—the National and the Eastern Area portion—are signed by the NSCA. The second part—the

critical and here determinative one—reads: "For the employers: . . . National Steel Carriers Association Robert L. Coopes, Managing Director and Labor Counsel." On its face the contract contradicts the admitted member of NSCA, Artim. In the face of his signature appearing on that contract—precisely on the Eastern Conference Area part—lawyer Coopes, as counsel for the Respondent at this hearing, spoke as follows on the record: "I am the Managing Director of the National Steel Carriers Association, and I did not participate in the negotiations with the Eastern Conference during the period of 1979." Coopes made this statement after leading his client into saying he, Artim, had not authorized NSCA to speak for him except insofar as the Central Conference Area was concerned.

The Eastern Area Conference Rider—General Counsel's Exhibit 2—in print, 50 pages long, has been in circulation to who knows how many trucking companies and local unions throughout the eastern United States during the past 2 years, and not a scintilla of evidence that Coopes ever did anything to correct a mistake, if mistake it was, by anyone to have added his name to the document. I think it best not to comment at this stage upon the lawyer's statement. On the basis of the contract in evidence and the fact the Respondent's spokesmen cannot be believed, I find that throughout 1980 this trucking company was bound by the 1979 to 1982 Teamsters contract, including the Eastern Conference Area Rider.

That the Respondent deviated from the contract terms applicable to owner-operators is admitted. The contract calls for payment of 75 percent of the rate the Respondent receives from the shipper—26 percent for wages, 33 percent for tractor rental, 13 percent for trailer rental, and 3 percent for holidays, vacation, etc. In May 1980 the Company changed the 13 percent to 10 percent and told all of its employees they either did it this way or they could not work here at all. Newly hired men agreed, and the older owner operators signed an "addendum"—as the Respondent labeled it—to their vehicle leases reducing the percentage from 13 to 10 percent.¹

All of these employees of the Respondent at its eastern Pennsylvania locations, including Johnstown and Mars, have since that time been working at lowered basis and are still now being paid 3 percent less than the contract calls for. It was a unilateral change in existing, contractually established conditions of employment. And of course, the Respondent did it without regard to the bargaining agent. I find that, by its action in so reducing the

¹ In his devious talking as a witness Artim a number of times tried to create the impression he never had any owner-operators in the Eastern Conference Area from the day the contract was made in April 1979 to May 1980, when he said he hired 26 new men at his lower pay scale. This was one of his oblique ways of strengthening the assertion that the Eastern Conference Rider never applied to him. Not only was he evasive in his doubletalk as to the facts, but also there is direct, uncontradicted testimony by the Local 800 business agent that this Company did have a number of owner-operators at its Pennsylvania terminals all the time. More, Artim also said, and offered documents to prove, he had an "addendum" to existing leases signed for the very purpose of lowering the rental payments on existing leases. If he had to lower them, he certainly already had them. The more he talked, the less convincing Artim became.

pay of its owner-operators beginning in May 1980 and continuing to date, the Respondent has violated and is violating Section 8(a)(1) and (5) of the Act.² Although couched in terms of reducing a rental amount paid for the leasing of a trailer, the case at bar is no different from direct and plain reduction of an employee's hourly rate of pay for work performed. The owner-operator's 75 percent joined wages with truck costs and operating expenses. The vehicle costs remain the same so that, however phrased, the man who worked took less money home after each delivery run.³

Thomas Eatinger, its operations manager, also testified for the Respondent. He said, clearly, that from the day the contract in question was signed up to the spring of 1980 his Company paid all owner-operators the 75 percent as called for in the Eastern Conference Area Rider. He went on that on a number of occasions from November 1979 through May 1980 he met with Richard Wallace, the Local 800 business agent, "about different forms of relief, the 72 percent The results of the Rider attempt were negative" Eatinger then added that Wallace, and Dietrich, the other union agent, told him the reduced rate would be "fine" with them, provided the drivers did not file any grievances about it. How could employees file grievances unless there were a contract in effect? What "relief" was he seeking if no contract bound him? Wallace did recall there was widespread talk in western Pennsylvania about one trucking company after another feeling an economic pinch and trying to reduce the percentage payments to owner-drivers throughout the over-the-road industry. But as to Eatinger, Wallace denied having received any request to reduce the amount in this instance; he also denied having agreed to the change at all.⁴ I credit the union agent against Eatinger. The last thing a Teamsters business agent would do is personally and individually, on behalf of the Teamsters, agree to a lessening of pay for regular truckdrivers. And besides, with saying he was sent by his superiors "to conduct negotiations" with Local 800 in "late 1979," Eatinger was repeating the refrain that this Company was not a party to the existing area contract.

² While every 8(a)(5) violation is technically also a refusal-to-bargain situation, there is no occasion here to set out in detail a description of the appropriate bargaining unit. The pertinent contract refers to it only as all-inclusive, multiemployer and nationwide in scope. In any event, the question here stands apart from any unit issue.

³ The frivolity of the Respondent's defense is best illustrated in its answer to the complaint. It says it does not know whether Teamsters Local 800 is or is not a union; it denies that its operations manager or its eastern regional manager is a supervisor or agent of the Company, it contends that there can be no unfair labor practice findings because what it did it did with "new" employees—meaning, I suppose, drivers who had not worked for it before. It would demean this Decision to respond to such statements here. More: The answer says "the Union cannot represent equipment," and that therefore any contractual agreements, addendum or not, relating to payment for vehicle rental to the drivers have no relationship to any collective-bargaining agreement. And the fact the Respondent told its employees they either made their trucks available to the employer's benefit for so much and no more or they were fired is conveniently overlooked. On none of these "affirmative defenses," as the answer calls them, did the Respondent offer anything in support at the hearing; indeed, there was no reference to them at all.

⁴ When there is a collective-bargaining contract in effect the employer not only need not agree to any change the employer wishes to make in its terms, but he is also under no legal obligation to talk about it at all. Cf. *Tide Water Associated Oil Company*, 85 NLRB 1096 (1949).

His credibility therefore suffers fundamentally, as does that of Artim.

THE REMEDY

The Respondent must be ordered to revert to the precise contractual provisions applicable to its dealings with all owner-operators in its employ as set out in its 1979-82 National Master Freight Agreement and Eastern Conference Area Iron and Steel Rider. It must stop paying its employees less than provided for in that Teamsters contract and resume giving them the full 75 percent of shipping rate for every run. And of course, the Respondent must make whole every driver who has been paid less than the established rate; in every instance where the driver was given only 72 percent instead of 75 percent, the Company must pay him that additional 3 percent now, with interest.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, 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.

CONCLUSIONS OF LAW

1. By unilaterally reducing the contractually established compensation for its owner operators, while bypassing their exclusive bargaining agent, the Respondent has violated and is violating Section 8(a)(5) and (1) of the Act.

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

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER⁵

The Respondent, Artim Transportation Systems, Inc., Mars, Johnstown, and Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally reducing the contractually established compensation for its owner-operators, while bypassing their exclusive bargaining agent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

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

⁵ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Pay every one of its owner-operator drivers vehicle rental, wages, and all other forms of compensation precisely in conformity with the terms of the 1979-82 National Master Freight Agreement and Eastern Conference Area Iron and Steel Rider, the collective-bargaining contract between the Respondent and the Teamsters Union.

(b) Make whole every driver who was adversely affected by the Respondent's unlawful departure from the terms and conditions of employment set out in that contract between it and the Teamsters Union, with interest, in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and with interest as computed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

(d) Post at each of its terminals in Mars and Johnston, Pennsylvania, copies of the attached notice marked "Appendix."⁶ Copies of said notice on forms provided by the Regional Director for Region 6, after being duly signed by its authorized representative, shall be posted by it 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 it to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order what steps the Respondent has taken to comply herewith.

⁶ 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."