

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

EVENFLOW TRANSPORATION, INC. ¹

and

Case No. 2-CA-40128

**LOCAL 713, INTERNATIONAL BROTHERHOOD OF
TRADE UNIONS**

*Julie Y. Rivchin, Esq. and
Leah Jaffe, Esq.*, Counsels for the
Acting General Counsel
*Denise A. Forte, Esq. and
Scott P. Trivella, Esq.*, Counsels
for the Respondent

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in New York City on June 6 and 27 and July 5 to 6, 2011. The charge and the amended charge were filed on September 23 and November 22, 2010 and January 24 and March 9, 2011. The Complaint which was issued by the Regional Director on March 31, 2011 alleged as follows:

1. That on several occasions in August and September 2010, the Respondent by John Bizzarro, its General Manager, (a) solicited employee to discourage union activities among their coworkers and (b) interrogated employees about their union activities and the union activities of other employees.
2. That on or about September 23, 2010, the Respondent, for discriminatory reasons, discharged Julio Castro, Anthony Smith, Nelson Rodriguez, Luis Correa and Lindbergh Wallace.
3. That on or about October 1, 2010, the Respondent by Bizzarro (a) made a threat of unspecified reprisals to an employee and (b) made a threat of physical harm to an employees.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the brief filed, I make the following

¹ The Caption was amended at the hearing to correctly reflect the name of the Respondent.

² The record in this case consists of the transcript and any documents that have been received in evidence by me. In this regard the only post hearing document that was received by me was Respondent Exhibit 2, a letter dated June 3, 2010 with attached invoices. No other post hearing documents have been received as exhibits or considered.

Findings of Fact

I. Jurisdiction

5 The Parties agree and I find that the Respondent is an Employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. It also is agreed and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

10 The Respondent, Evenflow Transportation Management Inc., is a corporation that is a wholly owned subsidiary of another entity called EF Management, which in turn is owned by Julie Bizzarro and Jack Mahanian. Although not clear from the record, it seems that Julie Bizzarro and Jack Mahanian, on some undetermined date, purchased Evenflow from another individual whose name is Kenneth M. Hochbrueckner.

15 Julie Bizzarro's husband is John Bizzarro and he is the General Manager of Evenflow. From this record, it appears that he is charge, with two dispatchers, of operating the business on a day to day basis. His wife is, to a larger extent, responsible for bookkeeping and record keeping. The Company conducts its business from a facility located in Mount Vernon, New York.

20 Assisting in the day to day operations of the business, the Respondent utilizes two dispatchers whose names are Antonio Carrera and Leonardo DeSilva. These individuals assign the drivers to their daily tasks, rearrange their assignments when necessary, act as liaison between management office and the drivers, and are directly involved in the hiring of new employees. From the testimony in the record, it is my opinion that they are supervisors as defined in Section 2(11) of the Act and/or agents as defined in Section 2(13) of the Act.

25 The Respondent provides ambulette services for non-emergency transportation of patients or elderly people to and from various medical facilities. In or about March 2009, Evenflow merged with another company called Osiris and as a result, it took over the employees of Osiris and its customers. It also hired Antonio Carrera as a dispatcher as he was familiar with the Osiris accounts and the drivers who serviced them. The principle account that was taken over was Comprehensive Care Management, (called CCM). CCM has its principal office at Allerton Avenue in the Bronx. The contact person between the Respondent and CCM is Sheryl Davenport.

30 Unlike other accounts, the CCM account requires the use of 2, two man crews as this account provided transportation services for people in wheelchairs. When Evenflow took over the account, it also took over the "two man" crews who had received special training in dealing with wheelchair patients.³

35 According to Bizzarro, before the merger with Osiris, Evenflow employed about 12 drivers and that after the takeover it added 10 more drivers and two helpers who were utilized in the two man crews. Thus, before the layoffs that occurred on September 23, 2010, the Respondent employed about 24 people who directly performed the transportation services plus two dispatchers who directed their work.

50 ³ According to Davenport, the two man crews were not employed by Osiris but by another contractor. However, when Evenflow merged with Osiris, it was also given the two man crew work.

5 The Union commenced organizing the employees in March and April of 2009. A Petition was filed by the Union on May 14, 2009 and a stipulated election agreement was approved by the Regional Director on June 3, 2009. At that time, the Employer was represented by Thomas P. Piekara. He signed the Stipulated Election Agreement on behalf of the Employer and this provided for the holding of an election on Thursday, June 25, 2009. The unit was described as follows:

10 Included: All full-time and regular part-time drivers employed by the Employer at and out of its facility located at 68 Sandford Boulevard, Mt. Vernon, New York.
Excluded: All other employees, including office clerical employees, managerial employees, confidential employees and guards, professional employees and supervisors as defined by the Act.

15 On April 30, 2009, before the election was to be held, the Union filed an unfair labor practice charge in Case No. 2-CA-39280. On July 14, 2010, the Respondent signed an informal settlement agreement that contained a non-admission clause. This provided for the posting of a notice for 60 days and it appears that the notice was posted on August 10, 2010. According to the testimony of Bizzarro, he believed that once the notice had been posted for the requisite
20 time, that the whole matter was over and that the Union would be gone.

25 Notwithstanding that belief, the Union restarted its organizing campaign in July and August of 2010 and met with employees, typically at the premises of CCM. According to the testimony of dispatcher Cabrera, he was aware of union agents talking to Evenflow's employees because he actually overheard such conversations. Therefore, as I have concluded that Cabrera is a supervisor or agent, I shall attribute his knowledge of the resumed union activity to the Respondent. *The Parksit Group*, 354 NLRB No. 90 fn 18 (2009).

30 In addition to imputing knowledge to the Respondent based on the testimony of Cabrera, I also conclude that the credible evidence shows that Bizzarro interrogated various employees about the union during the summer of 2010. ⁴

35 Anthony Smidth credibly testified that in August 2010, when he returned to the facility for the day, Cabrera asked him if he knew anything about people signing the papers again. He states that he said not really and that Cabrera said that Bizzarro wanted to speak to him. Smidth credibly testified that when he went back to the office, Bizzarro told him that the Union was getting ready to come around again and that he wanted Smidth to speak to the drivers and let them know to not sign any petition for the Union. He testified that Bizzarro asked him to let
40 him know if any employees signed a union petition.

45 Nelson Rodriguez credibly testified that in August 2010, John Bizzarro asked him about the Union and whether he had spoken to a union representative. Rodriguez replied that he had. Bizzarro then said that the union representative was a "creepy guy," that Rodriguez should stay away from him; and that Rodriguez should tell Bizzarro if any other employees spoke with union representatives.

50 ⁴ I was favorably impressed by the testimony and demeanor of the General Counsel's witnesses. They testified, in my opinion, in a forthright manner and their testimony was essentially mutually corroborative. Indeed, had they chosen to fabricate a common story, their testimony would likely have been a good deal more damaging to the Respondent. In contrast, I was not favorably impressed by the testimony of Bizzarro, who, in my opinion, showed a cavalier attitude to this legal proceeding.

5 Rodriguez testified that about two weeks later, Bizzarro again asked if he had spoken to union representative Carlos Rodriguez. According to Nelson Rodriguez, he ultimately had a third conversation with Bizzarro who again asked about the Union and to let him know if other employees were talking to the Union.

10 Julio Castro credibly testified that in or about June or July he spoke to Bizzarro, and was asked to let him know if the Union was coming around and that if anybody was talking to the Union, to let him know. Castro testified that Bizzarro said that he didn't want his company to be unionized and "that if he had to, he'd bring his dogs out to get the union out."

15 Castro testified that he had a second conversation with Bizzarro in the latter's office. He places this as taking place a couple of weeks after the first conversation and he states that Bizzarro stated that he wanted to know if anybody was talking to the Union and "if the Union was coming around to start their shit again." According to Castro, Bizzarro repeated the dog statement.

20 According to Castro, he had a third conversation with Bizzarro about two weeks before he was terminated. He testified that Bizzarro said that he didn't want the Union in his company and that "he'd call his dogs out from the street to come and get the Union out."

25 The testimony of the General Counsel's witnesses shows that because of a late wage payment that they describe as having occurred in the first or second week of September, 2010, they arranged to have a meeting with a union organizer for September 24, 2010 at a gas station located near the Respondent's facility. This meeting did not occur because on September 23, five of the employees were let go. Either on September 23 or 24, the five alleged discriminatees were told by Bizzarro or Mahanian that they were being let go because the Company was losing too much money.

30 Mr. Bizzarro testified that he, his wife and Mahanian decided to lay off the five employees because of economic reasons. He further testified that he selected these five individuals for a variety of different reasons. According to Bizzarro's testimony, the decision to make these staff reductions was made in September, 2010.

35 In the case of Lindbergh Wallace, Bizzarro testified that he was chosen because Wallace had previously advised the Company that he was relocating to North Carolina to care of his sick father.⁵

40 In the case of Nelson Rodriguez, Bizzarro testified that he was chosen because he had been told by another employee that Rodriguez was seen selling drugs and because Rodriguez had filed a false motor vehicle report in relation to an accident involving the vehicle that he was driving for the Company.

45 In the case of Luis Correa, Bizzarro testified that he was selected because he was a relatively new employee.

50 In the case of Julio Castro, Bizzarro testified that he was selected because he was told that Castro had taken the company vehicle to City Island and was selling pina colodas from the back of the van.

⁵ This was essentially conceded by Wallace.

I note that the Respondent conceded that none of these employees would have been laid off or discharged for these reasons except for the fact that there was a need to reduce the number of employees “when it became financially strapped.”

5 I also note that Bizzarro, at a latter point in his testimony, gave a different reason for selecting these individuals for layoff. On cross examination, he asserted that the Company decided to drop the two-man assist crews that worked drove people in wheelchairs. Thus, in this version, four of the five employees were chosen for layoff because they happened to be assigned to the two man crews that worked on the CCM accounts that the Respondent decided
10 to drop.

In any event, the Company basically cites two circumstances that led to its economic distress. The first was the fact that CCM was overdue on its payments to the tune of about \$100,000. The second was the “sudden” realization that the Company might owe a substantial
15 amount of money to the IRS in back taxes. This according to Bizzarro first came to his attention in or about June 2010 when a tax auditor showed up on the Company’s doorstep after which a customer received what is analogous to a garnishment on money owed to the Respondent.

20 With respect to the CCM account, there is really no dispute that as of May 2010, CCM owed about \$100,000 to Evenflow for work that had been performed. As noted above, the CCM account was obtained by the Respondent when it acquired Oasis.

25 According to CCM’s employee, Cheryl Davenport, the problem came to a head in May 2010 when she had a conversation with Bizzarro about late payments. In this connection, she testified that the problem largely was the result of the Respondent’s computer system which failed to generate the proper invoices by which CCM could authorize Medicaid to make payments to the Respondent.

30 By letter dated June 3, 2010, Bizzarro sent Davenport some invoices for trips that were denied payment and stated in substance that Evenflow couldn’t carry such a large balance and continue to provide the best service possible. He stated that the Company will not continue full service.

35 According to Davenport, she and two assistants took the invoices and started to “reconcile” the Respondent’s claims with its own records. (To make sure that the trips claimed to have been made by the Respondent, actually occurred). It is important to note that this is not a situation where long overdue payments are typically a prelude to non-payment. When the accounts were reconciled, the Respondent would be paid for any and all trips that it performed on the CCM account. These payments are made by Medicaid and there is no question but that
40 the payments would be made as soon as CCM confirmed that the services were provided.

45 Notwithstanding, Bizzarro’s letter to Davenport dated June 3, the Respondent continued to service the CCM account using the same number of employees and continuing to provide the two man crews for people with wheelchairs. Indeed, there is evidence that at least two new drivers were hired in June 2010. (Juan Torres and Christopher Terry).⁶

50 ⁶ The Respondent failed to comply fully with a subpoena duces tecum in relation to the General Counsel’s demand that it produce payroll records for a period of time before and after September 2010. Therefore, because of the Respondent’s non-compliance, the record does not show, apart from Torres and Terry, whether and when other people were hired before or after the layoffs or discharges of the five discriminatees.

5 A somewhat similar situation involves the tax issue. According to Bizzarro, he did not know that there was a tax issue until the Spring of 2010 when the IRS agent came to the premises and handed him an envelope relating to back taxes. In connection with the tax issue, the IRS agent sent a Notice of Levy dated June 17, 2010 to a customer of the Respondent named Neighborhood Health Providers LLC. This apparently is similar to a garnishment and required that Neighborhood to send money it owed to the Respondent to the IRS instead.

10 Notwithstanding the Notice of Levy, the Respondent continued to provide services to Neighborhood and there is no evidence that any of Respondent's other customers, including CCM, were required to pay money owed to the Respondent to the IRS. Also, there is no evidence to show that this tax levy had any substantial affect on the Respondent's business operations. In the meantime, according to Bizzarro, the alleged tax liability is being handled by a tax attorney who is located in Florida. ⁷

15 The Respondent produced no evidence to show that the amounts owed by CCM or the amounts diverted to the IRS comprised a significant portion of its business. Moreover, the CCM accounts were going to be paid eventually by Medicaid and I can't see why the Company, if it was in financial straits, would choose to reduce its services to CCM and thereby reduce its own revenues in the long run. The fact is that CCM was not a "deadbeat" customer that was not likely to pay what it owed. That money, which had been withheld due mostly through the fault of the Respondent, would eventually be paid after confirmation that the services were provided.

25 According to Bizzarro, both alleged financial problems came to his attention in the Spring of 2011. Nevertheless, the evidence shows that the Company hired two drivers thereafter and as far as we know, it may have hired others whose names might appear on the unproduced payroll records. It was not until September 2010, almost five months later, that the decision was made to lay off these five employees. And this occurred after the Respondent became aware that the Union had restarted its organizing campaign in or about August 2010. In terms of timing, it is significant that the employees were told of their terminations one day before a scheduled meeting between employees and a union representative. ⁸

30 With respect to the five alleged discriminatees, the credible evidence shows that in August and September 2010, (a) the Respondent had knowledge of the Union's restarted organizing campaign; (b) that the Respondent's General Manager expressed animus towards the Union; and (c) that the timing of the terminations was consistent with an anti-union motivation. It therefore is my opinion that the General Counsel has made out a prima facie case. Therefore, in accordance with *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the burden shifts to the Respondent to show that these employees would have been laid off or discharged for reasons other than their union or protected concerted activity.

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⁷ The General Counsel subpoenaed any documents relating to the IRS claims. Apart from the Notice of Levy dated June 17, 2010, the Respondent has failed to comply. On June 2, 2011, I issued an order attached hereto as Appendix A denying the Respondent's Petition to Revoke as to this and other information.

50 ⁸ Mr. Cabrera, the dispatcher testified that he was told by Bizzarro that that the employees were laid off because we were trying to cut back and "we wasn't producing as much as we were before." It seems that he wasn't told anything about the financial issues that Bizzarro testified about.

For the reasons stated above, it is my opinion that the Respondent has not met its burden and I therefore conclude that by terminating the employment of the five alleged discriminatees, the Respondent has violated Section 8(a)(1) & (3) of the Act.

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Conclusions of Law

1. By interrogating employees about their union sympathies and activities and by asking employees to report on the union activities of others, the Respondent has illegally interrogated employees in violation of Section 8(a)(1) of the Act.

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2. By threatening employees with physical harm,⁹ the Respondent has threatened employees in retaliation for their union activities and has violated Section 8(a)(1) of the Act.

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3. By discharging employees because of their union activities or support, the Respondent has violated Section 8(a)(1) and (3) of the Act.

4. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

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Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

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The Respondent having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1187 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

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On these findings of fact and conclusions of law and on the entire record, I issue the following conclusions and recommended¹⁰

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ORDER

The Respondent, Evenflow Transportation Inc., its officers, agents and assigns, shall

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1. Cease and desist from

(a) Interrogating employees about their union sympathies and activities.

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(b) Asking employees to report on the union activities or support of other employees.

⁹ I conclude that the statements about calling out his dogs, can reasonably be construed by the employees as a threat of physical harm.

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¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Threatening employees with physical harm because of their union activities or support.

5 (d) Discharging employees because of their activities on behalf of, or support for Local 713, International Brotherhood of Teamsters or any other labor organization.

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

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

(a) Within 14 days from the date of this Order, offer Julio Castro, Anthony Smith, Nelson Rodriguez, Luis Correa and Lindbergh Wallace, full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

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(b) Make the employees listed above, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the Remedy section of this Decision

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(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against the employees named above and within three days thereafter, notify them in writing, that this has been done and that the discharges will not be used against them in any way.

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(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

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(e) Within 14 days after service by the Region, post at its Bronx, New York facility, copies of the attached notice marked "Appendix B" ¹¹ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2010.

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¹¹ If 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."

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(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated, Washington, D.C. August 30, 2011

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Raymond P. Green
Administrative Law Judge

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Appendix A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**EVENFLOW TRANSPORTATION
MANAGEMENT**

And

Case No. 2-CA-40128

**LOCAL 713, INTERNATIONAL
BROTHERHOOD OF TRADE
UNIONS**

ORDER

On April 21, 2011, the Respondent filed a Petition to Revoke a Subpoena that the General Counsel issued on April 19, 2011. The General Counsel thereafter filed a response on May 3, 2011. The Respondent petitions to revoke the Subpoena with respect to items 9 through 13; 21 through 30; and 32 through 36.

The Complaint which issued on March 31, 2011 alleged as follows:

1. That on several occasions in August and September 2010, the Respondent by John Bizzarro, its General Manager, (a) solicited employee to discourage union activities among their coworkers and (b) interrogated employees about their union activities and the union activities of other employees.
2. That on or about September 23, 2010, the Respondent, for discriminatory reasons, discharged Julio Castro, Anthony Smith, Nelson Rodriguez, Luis Correa and Lindbergh Wallace.
3. That on or about October 1, 2010, the Respondent by Bizzarro, (a) made a threat of unspecified reprisals to an employee and (b) made a threat of physical harm to an employees.

Items 9(a) and 9(b)

In essence, these call for the production of documents showing layoffs from January 1, 2008 to the present and documents, including personal files, of employees who were laid off plus any documents showing the basis of the selection of employees for such layoffs.

Notwithstanding the Respondent's claim that documents concerning past layoffs are irrelevant, it is my opinion that such documents may be relevant to show what if any past practice existed and to what extent if any, the Respondent conformed or deviated from any past practice. Accordingly, the Petition to revoke is denied in this respect.

Items 10, 11, 12 and 13

Assuming that the individuals alleged to have been illegally laid off in September 2010, were not selected at random, the documents that the General Counsel seeks could all be

relevant to determine what if any factors were used to select these particular employees for layoff and whether the factors used are supported by objective evidence. Any personal policy manuals or promulgated rules regarding employee conduct would obviously be relevant. To the extent that the Respondent asserts that a reason for choosing these people was due to their past work performance and/or past disciplinary actions, it would be relevant to know whether other employees chosen or not chosen for layoffs in 2009 and 2010 had similar or different work histories. Further, as this apparently was an involuntary termination, it would be relevant to know what criteria were used in other involuntary terminations. As to the time period requested, I do not think that this is overly broad or burdensome.

Items 21, 22, 23, 24, 26, 27 and 34

In substance, the General Counsel seeks documents regarding (a) the purchase of Oasis Transportation; (b) all non-privileged documents showing any due diligence performed by Respondent on Oasis, including documents showing customer lists, assets, purchase price, taxes owed etc.; (c) documents showing efforts by the Respondent to collect debts and accounts receivable from Comprehensive Care Management; and (d) documents relating to certain IRS claims.

The Respondent in its statements to the Region attributed the layoffs to its financial condition and attributed part of its financial difficulties to the acquisition of Oasis in early 2009. It stated among other things, that Oasis owed back taxes that the IRS sought to recover from the Respondent and that Comprehensive Care Management (CCM), an Oasis customer, was in arrears in its payments.

Notwithstanding the Respondent's position statements, I do not think that the purchase and sale documents involving Oasis and the Respondent are relevant to this proceeding. I assume that all parties agree that there was such a sale and it is my opinion that the details of the sale, including the purchase price, are not relevant. Nor do I think that it is relevant for the Respondent to produce documents regarding its due diligence in purchasing Oasis. In my opinion this would not be relevant.

However, to the extent that the Respondent has claimed that certain taxes previously owed by Oasis have been claimed from the Respondent by the IRS, any documents relating to IRS claims on Oasis and the Respondent should be produced.

Also, because the Respondent has asserted that its financial problems in 2010 were partially a result of its difficulty in collecting moneys that CCM owed to Oasis and/or the Respondent, any documents supporting those assertions would be relevant and should be produced.

In one of its position statements, the Respondent asserted that it was under serious financial strain in other areas, including IRS levies and liabilities. The Respondent has made its position clear regarding the IRS matter and its alleged difficulties in collecting money from CCM. But it has not asserted what if any other liabilities may be involved. To the extent that it claims that it was or may have been subject to liabilities that resulted from the purchase of Oasis, then the documents called for in paragraph 34 could be relevant. As it also possible that such communications may have no relevance at all, the Respondent can present them to me for in camera inspection.

Item 26 of the subpoena calls for the production of documents sufficient to show CCM's patient transport verification procedure and process. As of now, I do not understand what this means and I will defer on this item until the hearing.

For the reasons stated above, I am partially granting and partially denying the Petition to Revoke with respect to items 21, 22, 23, 24, and 34 of the Subpoena and deferring decision with respect to item 26 of the Subpoena.

Items 28, 29 and 30

In its statement of position to the Region, the Respondent asserted that "as the Company struggled due to the IRS levies and other financial strains it sought additional capital infusions from its owners." Items 28 through 30 call for the production of any documents that would show that this assertion was true. Accordingly, as the subpoena calls for items directly relevant to the Respondent's claims, the Petition to revoke is denied in this regard.

Items 32, 33, 35 and 36

The Respondent has asserted that it laid off the five individuals named in the Complaint because of its financial situation at the time. Therefore documents showing the Respondent's financial situation at the time would be relevant. In this regard annual reports and/or annual audited financial and income/loss statements, plus federal and state tax returns for the period in question would clearly be relevant. However, many of the other documents called for in these paragraphs of the subpoena are extremely broad and burdensome. As such, I will not require the Respondent to produce documents, except as described above, at the opening of the hearing. If there is good reason during the course of the hearing to have some or all of the documents produced, I will entertain argument as appropriate.

With respect to the Company's alleged financial condition as a reason for the layoffs is concerned, I note that payroll records that would show the number of employees and the hours of employment for a reasonable period of time before and after the layoffs, will normally be far more enlightening than financial documents such as bank books, bank statements, account applications, cancelled checks, loan applications, etc.

June 2, 2011

Raymond P. Green
Administrative Law Judge

Appendix B

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge employees because of their union activity or to discourage employees from engaging in union or protected concerted activity.

WE WILL NOT interrogate employees about their union sympathies or activities.

WE WILL NOT ask employees to report to us about the union activities or sympathies of other employees.

WE WILL NOT threaten employees with physical harm in retaliation for their union activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL make whole Julio Castro, Anthony Smith, Nelson Rodriguez, Luis Correa and Lindbergh Wallace for the loss of earnings they suffered as a result of the discrimination against them.

WE WILL reinstate the above named employees to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL remove from our files any reference to the unlawful discharges of the above named employees and notify them, in writing, that this has been done and that these actions will not be used against them in any way.

Evenflow Transportation Inc.

(Employer)

Dated _____

By _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

26 Federal Plaza, Federal Building, Room 3614

New York, New York 10278-0104

Hours: 8:45 a.m. to 5:15 p.m.

212-264-0300.

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 ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, 212-264-0346.