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NATIONAL LABOR
RELATIONS BOARD

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OFFICE OF APPEALS

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

AMERICAN RECLAMATION,

Employer,

vs.

PACKAGE AND GENERAL UTILITY
DRIVERS TEAMSTERS LOCAL UNION
NO. 396,

Petitioner.

NO. 31-RC-066361

EMPLOYER'S REQUEST FOR REVIEW

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I. INTRODUCTION

The National Labor Relations Board has carefully circumscribed its authority under the commerce clause, and has only taken those cases that have a substantial effect on interstate commerce.¹ “[A]t least the *de minimis* effect upon interstate commerce must be shown before jurisdiction is asserted.”² The record herein established that American Reclamation Inc. had **NO** (a) direct interstate inflow of goods and services, and **NO** (b) direct outflow of goods and services.

Although the issue of legal jurisdiction was presented to Region 31, the Decision totally failed to address or review this vital question. Region 31’s analysis was confined to indirect outflow and inflow but totally ignored the necessity of some direct outflow or inflow to satisfy the requirement of legal jurisdiction.. Pursuant to Rule 102.67(b), the Board is hereby requested to review and overrule the Region’s Decision.

II. STATEMENT OF FACTS

American Reclamation is a very small rubbish hauling company based in Los Angeles, California.³ The proposed bargaining unit includes approximately 57 workers – the entirety of American Reclamation’s non-clerical/office, non-management staff.⁴ Unlike its vastly larger, publicly-traded competitors (such as Waste Management, Inc.), American Reclamation is a small, local, family business that does not meet the jurisdictional threshold of the NLRA.

American Reclamation does not have any places of business, facilities, or offices outside the State of California.⁵ Likewise, it does not do any business outside California.⁶ All of the refuse collected by the Company is taken to locations within the same local area, and none out-

¹ See e.g., *NLRB v. Denver Building Trades Council*, 341 U.S. 675 (1951).

² Higgins, et al., *The Developing Labor Law*, 4th Ed, P.2213, citing, *NLRB v. First Termite Control Co.*, 646 F.2d 424 (9th Cir. 1981), *denying enforcement to*, 247 NLRB 684, 103 LRRM 1236 (1980).

³ Stipulation, Board Ex. 4; Transcript (“TR.”), p. 19.

⁴ See, Petition, *passim*; TR., p. 40:22-24.

⁵ TR., p. 19.

⁶ TR., p. 19:22-20:5.

of-state.⁷ The Company’s customers are local – even the “contracts” with local cities are only a permit to have individual contracts with small businesses and individuals in those localities.⁸ Likewise, the sole corporate contract discussed at the hearing was in fact a series of individual contracts with specific, local Smart & Final stores – all located in or near Los Angeles.⁹

The Company has not received services from outside California.¹⁰ Indeed, there is absolutely no direct outflow of the Company’s local rubbish hauling to customers outside of California.¹¹ Likewise, during the jurisdictional period, the Company made no purchases of goods from locations outside California.¹² Its trucks were purchased outside the jurisdictional time period, but even then from local, Los Angeles sources.¹³ As a result, all of the Company’s transactions are conducted solely locally, and are not interstate commerce.¹⁴

III. ARGUMENT

It is well-established and a doctrine of long standing that jurisdiction cannot be based solely on the volume of business a company does with other entities alone. In order to establish jurisdiction under the NLRA, “[s]ome proof of *legal* jurisdiction must be made.” (Italics in the original.) *Catalina Island Sightseeing Line*, 124 NLRB 813, 815 (1955). “[The Board] has considered only those cases that, in its opinion, have a substantial effect on commerce.”¹⁵ Addressing the standard and requirement for interstate commerce, the Developing Labor Law states:

The only absolute limitation on the exercise of jurisdiction over a labor dispute is that the employer’s activity in interstate commerce exceed the de minimis level.

⁷ TR., p. 20:6-17.

⁸ See, TR., p. 23:15-17.

⁹ TR., p. 34:4-14.

¹⁰ TR., p. 20:22-24.

¹¹ TR., p. 20:18-21.

¹² TR., p. 20:25-21:3.

¹³ TR., p. 52:15-54:13; 58:13-61:13; 62:2-14.

¹⁴ TR., p. 21:12-14.

¹⁵ *How To Take A Case Before The NLRB*, p. 51 (emphasis added).

Developing Labor Law, 4th Ed., Chapter 27, Jurisdiction: Coverage Of The Act, p. 2153 (emphasis added). Since virtually the inception of the National Labor Relations Board, both the Board and courts have required that there be more than a de minimis level of interstate commerce. *NLRB v. Fainblatt*, 306 U.S. 601, 607 (1939).

The Ninth Circuit adopted this view. In *Hiatt v Schlecht*, the Ninth Circuit confirmed that no jurisdiction was found where the Oregon company neither (a) purchased any goods from suppliers outside California, nor (b) delivered any goods to customers outside California. *Hiatt v Schlecht*, 400 F.2d 875 (9th Cir. 1968) All business transactions were deemed to be intrastate, therefore, no *legal* jurisdiction existed. *See also, Longshoremen Local 27*, 285 NLRB 353 (1987). That some products purchased by Hiatt may have been made outside the state was irrelevant. 400 F.2d at 876-77. As stated by the Ninth Circuit: “[m]any authorities require a direct purchase of materials from another state, usually in comparatively substantial quantities, to find jurisdiction. The size of a particular business or the actual dollar value of commerce conducted alone is not determinative of the question.” *Id.* (citing cases, footnotes omitted).

American Reclamation is precisely the type of company protected by the Board from the overreaching jurisdiction claimed here. American Reclamation is a small, intensely local company. Its employees, customers, suppliers all are narrowly contained within the State of California – indeed, within a few miles of the Company’s Los Angeles location. American Reclamation is not involved in interstate commerce, its employees, trucks, and purchasing do not extend across state lines.

The Union sought a stipulation of the irrelevant statement that certain customers “meet the Board’s direct jurisdictional standards.” *See, Stipulation*. However, whether a particular customer might be subject to the NLRA does not per se determine whether American Reclamation is covered. In *Hiatt*, for example, there was evidence that some of the plumbing fixtures purchased by the employer were manufactured out-of-state. Whether those selling the products obtained them from another state was not relevant to jurisdiction over Hiatt, who had purchased them locally. 400 F.2d at 876. In essence, the Union contends that even a small, local

IV. CONCLUSION

The record herein established that American Reclamation did nothing directly outside of California. The Decision by Region 31 looked at interstate commerce only by the customers of the Company. However said Decision's record fails to satisfy the *de minimis* requirement of interstate commerce by American Reclamation established by the Board, the Supreme Court, and the Ninth Circuit. This petition must be dismissed due to the total absence of direct interstate commerce by the Company. Although required, *legal* jurisdiction is totally absent.

DATED this 15th day of November, 2011.



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Attorney for Employer

DECLARATION OF SERVICE

I declare that on November 15 , 2011, I caused a true copy of the foregoing REQUEST FOR REVIEW to be served on the following in the manner indicated:

Amanda Lively
16501 Ventura Blvd., Suite 304
Encino, CA 91436
Region 31, NLRB
11150 W. Olympic, Suite 700
Los Angeles, CA 90064-1824

- Via Messenger
- Via Fax
- Via U.S. Mail
- Via ECF Notification
- Via E-mail
- Via Overnight Delivery

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

DATED this 15th day of November, 2011.



Diane L. Cole

ORDER SECTION
NLRB

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B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

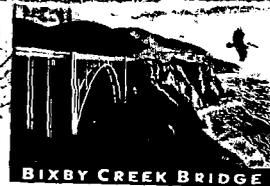
Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 31 Regional Office, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **November 15, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website, www.nlr.gov,² by mail, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or e-mail, in which

² To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.

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Flat Rate <input checked="" type="checkbox"/> or Weight	<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	\$ 18.30	
3.3 lbs. 0.25 ozs	Int'l Alpha Country Code	Acceptance Emp Initials	
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