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**Enterprise Leasing Company–Southeast, LLC and
International Brotherhood of Teamsters, Local
391.** Case 11–CA–073779

April 18, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the Union on February 3, 2012,¹ the Acting General Counsel issued the complaint on February 27, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 11–RC–006746.² (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On March 14, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On March 16, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.³

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to ad-

duce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).⁴

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a company with an office and place of business located at the Raleigh-Durham airport in Raleigh, North Carolina, has been engaged in the rental of vehicles at the Raleigh-Durham airport.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods and materials valued in excess of \$5000 directly from points located outside the State of North Carolina.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, International Brotherhood of Teamsters, Local 391 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on December 16 and 17, 2010, the Union was certified on December 29, 2011, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All hourly full-time and regular part-time greeter, exit booth agents, counter representatives, rental agents, handheld agents, bus drivers, service agents, customer service representatives, push/pullers and mechanics employed by the Employer at its Alamo and National

¹ The Union also filed an amended charge on February 22, 2012, but it was later withdrawn.

² 357 NLRB No. 159 (2011).

³ The Respondent filed a motion in opposition to the motion for summary judgment and a motion to disqualify Members Block, Flynn, and Griffin from ruling in this proceeding, arguing that their recess appointments to the Board by the President was in violation of Arts. I and II of the United States Constitution. For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (2012), we reject this argument. Accordingly, the motion to disqualify is denied.

⁴ The Respondent’s motion that the complaint be dismissed in its entirety is therefore denied.

Member Griffin did not participate in the underlying representation proceeding, and Member Hayes dissented in part from the Board’s Decision and Certification of Representative in the underlying representation proceeding. They agree, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is therefore appropriate.

car rental facility located at its Raleigh-Durham airport facility; but excluding all salaried employees, technical employees, office clerical employees, and guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

At all material times, Adam Schneider held the position of regional vice president of the Respondent and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

About January 17, 2012, the Union, by letter, requested that the Respondent recognize the Union and bargain collectively with it. Since about January 23, 2012, the Respondent has refused to recognize and bargain with it. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since January 23, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Enterprise Leasing Company-Southeast,

LLC, Raleigh, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Teamsters, Local 391, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

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

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

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All hourly full-time and regular part-time greeter, exit booth agents, counter representatives, rental agents, handheld agents, bus drivers, service agents, customer service representatives, push/pullers and mechanics employed by the Employer at its Alamo and National car rental facility located at its Raleigh-Durham airport facility; but excluding all salaried employees, technical employees, office clerical employees, and guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended.

(b) Within 14 days after service by the Region, post at its facility in Raleigh, North Carolina, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 11, 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.⁶ 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

⁵ 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."

⁶ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

the pendency of these proceedings, the Respondent has gone out of business or closed its 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 January 23, 2012.

(c) 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.

Dated, Washington, D.C. April 18, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Teamsters, Local 391, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All hourly full-time and regular part-time greeter, exit booth agents, counter representatives, rental agents, handheld agents, bus drivers, service agents, customer service representatives, push/pullers and mechanics employed by us at our Alamo and National car rental facility located at our Raleigh-Durham airport facility; but excluding all salaried employees, technical employees, office clerical employees, and guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended.

ENTERPRISE LEASING COMPANY–SOUTHEAST, LLC