

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

LINTRAC SERVICES, INC.

Employer

and

Case 13-RC-089915

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 710**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.¹

I. ISSUE

The instant petition raises the issue of whether the Board has jurisdiction over an Employer that has refused to cooperate with the investigation of the current R-case proceeding, failed to be present at the election hearing after being duly served with notice of the hearing, and failed to provide any evidence to assist the Board in making its jurisdictional determination.

¹ Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. I find that Lintrac Services, Inc. (the Employer) is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The amended petition in this case names both Kram Intermodal Services, Inc., and Lintrac Services, Inc., as employers. According to the Georgia Secretary of State's website, Kram Intermodal Services, Inc. is the former name of Lintrac Services, Inc., and the latter is the current name of the business entity. Pursuant to the Federal Rules of Evidence 201(b)(2), judicial notice may be taken where the fact can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." I, therefore, take judicial notice that Kram Intermodal Services, Inc. and Lintrac Services, Inc. are the same business entities.
3. The record demonstrates that the Petitioner is a labor organization within the meaning of the Act. Union organizer/representative Matthew Flynn testified that he is employed by Petitioner and that Petitioner exists, at least in part, for the purposes of dealing with employers concerning employees' conditions of employment.
4. The Petitioner claims to represent certain employees of the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 6.

II. DECISION

For the reasons discussed in detail below, I find that the Board has statutory jurisdiction over the Employer pursuant to the long-standing principles articulated in *Tropicana Products, Inc.*, 122 NLRB 121 (1958). Accordingly, **IT IS HEREBY ORDERED** that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit as identified in Petitioner's amended petition:

All full-time and regular part-time mechanics employed by the Employer at its worksite currently located at 301 W. Lake St. Northlake, IL 60164; excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

III. STATEMENT OF THE FACTS

The record establishes that the Region properly served the Employer with all formal documents for this proceeding. On September 24, 2012, Petitioner filed a petition seeking to represent the bargaining unit described above. On September 25, 2012, the Region served the Employer with a copy of the petition and a Notice of Representation Hearing. The Petitioner later amended its petition on September 28, 2012, and the Region served the Employer with a copy of the amended petition on that same date. On October 5, 2012, the Region subpoenaed Thomas Blackwell, Chief Financial Officer for the Employer, to appear at the hearing. The subpoena was delivered certified mail, and in the record is a return receipt establishing the Employer received the subpoena on October 9, 2012. Also, on October 5, 2012, the Region issued and served the Employer with its order rescheduling the hearing to October 15, 2012.

When the hearing commenced on October 15, 2012, the Employer was not present. The record shows that Blackwell, at some point prior to the hearing, asked the Region to postpone the matter to the next day. The Hearing Officer accommodated the Employer's request and adjourned the hearing.

On October 16, 2012, when the parties reconvened, the Employer was not present.² In the Employer's absence, the Hearing Officer took evidence as to the nature of the Employer's operations from former employee Demetrius Shaw. After the October 16, 2012 hearing, the Region issued subpoenas to the Employer's customers and it re-opened the record on October 29, 2012, to receive documents in response to that subpoena. The Region also issued a second subpoena to Mr. Blackwell to provide documents that would establish the relationship between Kram Intermodal Services, Inc., and Lintrac Services, Inc. The Employer ignored the subpoena. Consequently, the Region took further testimonial evidence from former employee Demetrius Shaw on December 17, 2012, and from current employee Robert Gutierrez on January 4, 2013, regarding the Employer's participation in interstate commerce.³

² The record is silent as to whether the Employer communicated to the Region its anticipated absence for the October 16, 2012 hearing.

³ More specifically regarding the history of this case, on October 17, 2012, the Region issued an order resuming the hearing, and it re-opened the record on October 29, 2012 to receive into evidence documents from the Employer's customers provided in response to the Region's subpoenas. Following the October 29, 2012 hearing, the Region

Shaw and Gutierrez worked as mechanics under the direct supervision of Supervisor Jason Tirado. According to Shaw's observations of the Employer's business and his contacts with his supervisor and co-workers, he testified that the Employer's main office was located in Conley, Georgia, with additional offices located in El Paso, Texas, Kansas City, and Northlake, Illinois. Shaw and Gutierrez worked at the Employer's Northlake facility, and the Northlake employees are the subject of the instant petition.⁴

According to Shaw's testimony, the Employer employs approximately 17 employees at its Northlake facility, not including the supervisory staff. Of these 17 employees, about 12 to 13 work as mobile and box mechanics, two in a classification that Shaw testified to as roadability and two provide tire repair services. Shaw testified that the Employer has approximately six customers – APL, K-Line America, Inc., TRAC, Pacer, COCP, and United Parcel Service of America, Inc. The employees provide maintenance work for these customers out of a Union Pacific Railroad yard.⁵ Such maintenance work include maintaining and inspecting the customer's chassis, inspecting the chassis' brakes, tires, and lights, conducting pre-trip inspections of the chassis before the customer takes the chassis onto the road, and performing both minor and major mechanical repair work for the customer's chassis when needed.

Both Gutierrez and Shaw testified that during the late summer months of 2012 Northlake employees went with supervisor Jason Tirado to the Employer's offices in Conley, Georgia, and Kansas City to pick-up and drive back to the state of Illinois 10 gently used box trucks to replace their pick-up trucks. Gutierrez testified that sometime in August 2012 he, supervisor Tirado, and a co-worker each drove one of the Employer's pick-up trucks to Conley, Georgia, where they traded-in their trucks for one of the Employer's newer box trucks. Each worker drove a box truck back to Illinois. On their drive to Georgia they only stopped for gas and food and spent the night in Tennessee on their return trip home. Gutierrez testified that when they arrived in Georgia to swap-out the vehicles he heard owner Thomas [Blackwell] tell supervisor Tirado that he had gotten a good deal on the box trucks as each truck cost about \$7,000. The Employer paid Gutierrez \$150.00 for the trip and covered the cost of gas, meals and his lodging. Gutierrez also testified that but for mechanical problems with the vehicle he was traveling in to Kansas City he too would have driven back one of the three trucks that was located in Kansas City.

Shaw and three co-workers, including supervisor Tirado, traveled to Georgia on a trip separate from Gutierrez's. Shaw testified that sometime in September 2012 they drove a rental truck to Georgia to pick-up box trucks from the Employer's Conley office, and each drove a box truck home to Illinois. Like Gutierrez, they spent the night at a hotel on their return trip, and the

issued a second subpoena to Thomas Blackwell seeking evidence regarding the business relationship between Kram Intermodal Services and Lintrac Services. The Region re-opened the record on November 20, 2012, but the Employer was not present for that hearing date, and it did not present any evidence responsive to the subpoena. Consequently, the Region issued an order closing the hearing on November 21, 2012. It later revoked that order, and the Region re-convened the hearing on the dates of December 17, 2012 and January 4 and 15, 2013, pursuant to a series of orders rescheduling the hearing. The Region served the Employer with the above-mentioned orders.

⁴ Shaw began his employment with the Employer on January 30, 2012, and worked at the Northlake facility until his termination on October 11, 2012. The basis for Shaw's termination appears to be unrelated to my jurisdictional determination.

⁵ The record is silent as to whether this yard is owned or leased by Union Pacific.

Employer paid for their food, gas and lodging. Shaw testified that the Employer paid him \$150.00 for the trip plus incentive pay, which was \$5.00 per hour for 20 hours. Both Shaw and Gutierrez testified that their box trucks came equipped with a welder, compressor, and other tools. Once back in Illinois, the Northlake employees drove the newer box trucks around the yard to assist them in performing their job duties. The Employer presented no evidence to rebut this testimony.

IV. ANALYSIS

The only issue presented is whether the Board has jurisdiction over the Employer. The facts of this case are analogous to those in *Tropicana, supra*. In *Tropicana*, the hearing officer took evidence, in the absence of the employer, from a union representative regarding the employer's business operations. *Id.* at 122. Although the evidence showed the employer shipping goods across state lines, it failed to establish the dollar amount of those shipments. *Id.* Nonetheless, the failure to prove the value of the interstate commerce did not prohibit the Board from asserting jurisdiction. The Board held that the requirement of proving the value of goods shipped in interstate commerce was to satisfy a jurisdictional standard adopted by the Board as an administrative aid to facilitate its jurisdictional determinations in order that it might reduce the amount of resources used to investigate questions of jurisdiction. *Id.* at 122. Said standard was in no way adopted to preclude the Board from asserting statutory jurisdiction where legal jurisdiction alone was proven and asserting jurisdiction would effectuate the policies of the Act. *Id.* at 123. The Board went on to hold that:

[I]t best effectuates the policies of the Act, and promotes the prompt handling of cases, to assert jurisdiction in any case in which an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determination, where the record developed at a hearing, duly noticed, scheduled and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards.

Id.

In applying the above principles to the facts of this case, I find that the Board has statutory jurisdiction over the Employer. As in *Tropicana*, in the present case the Region served the Employer with notice of the petition and hearing and ultimately postponed the hearing, at the Employer's request, to give the Employer an opportunity to participate in the hearing and present evidence on its behalf. The Employer ignored not only this brief postponement, but also two subpoenas requiring its presence, and it chose not to be present at the hearings held on October 16, 2012, December 17, 2012, and January 4, 2013, where testimonial evidence was received regarding the Employer's participation in interstate commerce. In the Employer's absence, employees testified that the Employer maintains a customer list of at least six companies and employs 17 employees, excluding its supervisory staff. The evidence also showed the Employer acquired and received 10 vehicles across state lines, each with an estimated market value of \$7,000. The Employer paid its Northlake employees for their work performed in Georgia, and

then used those vehicles acquired in Conley, Georgia and Kansas City at its facility in Northlake, Illinois. This evidence alone supports the finding of statutory jurisdiction, and there is no evidence in the record establishing the contrary.⁶

V. CONCLUSION

Based on above evidence, I find that the Board has statutory jurisdiction over this Employer.

VI. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁷ Those eligible to vote are all full-time and regular part-time mechanics employed by the Employer at its worksite currently located at 301 W. Lake St. Northlake, IL 60164; excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status as strikers but who have been permanently replaced, as well as their

⁶ Based on the record evidence, it appears that the Employer purchased 10 trucks worth \$7,000 each, and moved them across state lines to use in its business. That alone establishes that it purchased and received goods valued in excess of \$50,000 from states other than the state of Illinois, where it does business in the instant case. Further, it appears that it paid employees \$250 each (\$100 in wages plus a \$150 bonus) to drive these trucks across state lines. Ten employees performing those driving duties would account for a further \$2500 in interstate commerce. The Employer also paid unspecified but substantial amounts for lodging, food, and fuel for each of these trips. I find that each of these three expenditures (the trucks, the wages, and the lodging, food, and fuel) separately, or together, is sufficient to establish statutory jurisdiction over the Employer.

⁷ In order to assure 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 that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 13 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 209 South La Salle Street, Suite 900, Chicago, Illinois 60604-1443 on or before **February 5, 2013**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Brotherhood of Teamsters, Local 710.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **February 12, 2013**.

In the Regional Office's initial correspondence, the parties were advised that the Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 29th day of January, 2013.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
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