



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
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April 5, 2013

Acting Executive Secretary Gary Shinnors
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Re: Elmhurst Dairy, Inc.
Case No. 29-CA-090017

Dear Mr. Shinnors:

On December 4, 2012, the Regional Director of Region 29, Brooklyn, issued a Complaint and Notice of Hearing in the above-captioned matter alleging that Elmhurst Dairy, Inc., ("the Respondent") violated Sections 8(a)(1), 8(a)(5) and 8(d) of the Act by laying off employees without notifying Milk Wagon Drivers and Dairy Employees, Local 854, International Brotherhood of Teamsters ("the Union"), without giving the Union an opportunity to bargain and without the Union's consent, as the parties' CBA provides a specific protocol governing layoffs. The Complaint also alleged that the Employer unilaterally notified employees that it would pay the first six months of COBRA health insurance premiums without bargaining with the Union in violation of the Act.

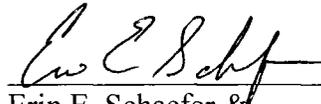
On December 21, 2012, Respondent filed a Motion for Summary Judgment arguing that the matter should be deferred to the grievance arbitration process set forth in the collective bargaining agreement it maintains with the Union. On January 4, 2013, the undersigned filed an Opposition to Respondent's Motion for Summary Judgment, arguing that deferral to the grievance arbitration process is not appropriate under Board law because Respondent's conduct constitutes a repudiation of the principles of collective bargaining and a repudiation of the parties' collective bargaining agreement. On January 8, 2013, Respondent filed a Reply to the Acting General Counsel's Opposition. On January 18, 2013, the Board issued a Notice to Show Cause why Respondent's Motion for Summary Judgment should not be granted. On February 1, 2013, the undersigned submitted a Response to the Notice to Show Cause. The Respondent's Motion is still pending before the Board.

We write now to advise the Board that on March 27, 2013, the Region issued another Complaint against Respondent in Case No. 29-CA-096925, alleging that Respondent has hired new employees rather than recalling bargaining unit employees laid off in September 2012, as

required by the recall provisions of collective bargaining agreement, in violation of Section 8(a)(1), 8(a)(5) and 8(d) of the Act. That Complaint is attached hereto. Respondent's additional conduct is further evidence of Respondent's continued repudiation of the parties' collective bargaining agreement with the Union and its rejection of its obligations set forth in Section 8(d) of the Act.

In light of this recently issued Complaint, we respectfully request that the Board deny the Respondent's Motion in Case No. 29-CA-090017 and remand the matter to the Region for a full hearing before an Administrative Law Judge on the issues raised by the outstanding complaints in this matter.

Respectfully submitted,



Erin E. Schaefer &
Henry J. Powell
Counsels for the Acting General Counsel
National Labor Relations Board
Region 29
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Enclosure: Complaint and Notice of Hearing in Case No. 29-CA-096925

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ELMHURST DAIRY, INC.

And

Case Nos. 29-CA-096925

**MILK WAGON DRIVERS AND DAIRY
EMPLOYEES, LOCAL 584, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

COMPLAINT AND NOTICE OF HEARING

Milk Wagon Drivers and Dairy Employees, Local 584, International Brotherhood of Teamsters, herein called the Union, has charged that Elmhurst Dairy, Inc., herein called Respondent, has been engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 *et seq.*, herein called the Act. Based thereon, the Acting General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in Case No. 29-CA-096925 was filed by the Union on January 23, 2013, and a copy was served by regular mail on Respondent on January 24, 2013.

2. At all material times, Respondent, a domestic corporation with a place of business located at 155-25 Styler Road, Jamaica, New York, herein called its Jamaica facility, and the only location involved herein, has been engaged in the operation of a dairy processing plant.

3. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations, sold goods valued in excess of \$50,000 directly to customers located outside the State of New York.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. The following employees of the Union, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All utility craft group (utility, pasteurizer, foreman), maintenance craft group (mechanic, apprentice, foreman) employees, employed by Respondent at its Jamaica facility and excluding laboratory employees and all other employees, guards and supervisors, as defined in the Act.

7. At all material times, the Union has been the designated collective-bargaining representative of the Unit. Such recognition has been embodied in successive collective bargaining agreements, the most recent of which expires on August 31, 2015.

8. At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the Unit, for the purposes of collective bargaining.

9. Paragraph 13 of the collective bargaining agreement referred to above in paragraph 7 states, inter alia:

Layoff and recall shall be in accord with the appropriate company seniority list, provided, however, that the employees have the skills, ability and qualifications to perform the work.

10. On September 16, 2012, Respondent laid off 42 employees in the Unit.

11. (a) Respondent hired the following employees on the dates listed below:

Kenneth Gray	12/27/12
Clive Goulbourne	12/27/12
Dvone Jemmott	12/27/12
Edward Meertens	12/21/12
Andres Sanchez	12/21/12

(b) Respondent hired the employees listed above in subparagraph (a) to do work performed by employees in the utility classification without first recalling an employee in order of seniority from the list of those utility employees laid off on September 16, 2012, as required by paragraph 13 of the collective bargaining agreement referred to above in paragraph 9.

12. (a) From December 26, 2012, to a date in about early 2013, the exact date being presently unknown, Respondent employed the following employees in the utility classification to do utility work without first recalling a qualified employee in order of seniority from the list of those utility employees laid off on September 16, 2012:

1. Roy Hilton
2. Megil Winter.

(b) From December 21, 2012, to a date in about early 2013, the exact date being presently unknown, Respondent employed the following employees in the utility classification to do utility work without first recalling a qualified employee in order of seniority from the list of those utility employees laid off on September 16, 2012:

1. Roy Johnson
2. Anthony Jones
3. Joseph Moore
4. Jose Pagan

13. Respondent hired the employees described above in paragraphs 11 and 12 in violation of the terms of the contract provision set forth above in paragraph 9.

14. The subjects set forth above in paragraphs 11 and 12 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

15. By hiring employees as described above in paragraphs 11 and 12, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph 7 and violated Paragraph 13 of the parties' collective bargaining agreement, as set forth above in paragraph 9.

16. Respondent engaged in the conduct described above in paragraphs 11, 12 and 15 without the Union's consent.

17. By the conduct described above in paragraphs 11 and 12, Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the Unit within the meaning of Section

8(d) of the Act, and thereby has been engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (5) of the Act.

18. The unfair labor practices of Respondent, described above, affect commerce within the meaning of Sections 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraph 11 and 12 the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there be no discrimination.

The Acting General Counsel further seeks, as part of the remedy for the allegations in paragraphs 11 and 12, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Consolidated Amended Complaint. The Answer must be received by this office on or before April 10, 2013, or postmarked on or before April 9, 2012. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's

website at <http://www.nlr.gov>, click on the E-Gov tab, select E-Filing, and then follow the detailed instructions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an Answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

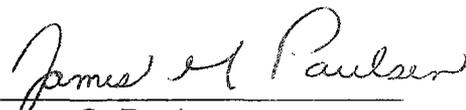
Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may not be filed by facsimile transmission. If no Answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the Consolidated Amended Complaint are true.

Any request for extension of time to file an Answer must, pursuant to Section 102.111(b) of the Board's Rules and Regulations, be received by close of business, April 10, 2013. The request should be in writing and addressed to the Regional Director of Region 29.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on Tuesday, June 4, 2013, at 9:30 a.m. at Two MetroTech Center, Suite 5100, Brooklyn, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, each Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Amended Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4068. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Brooklyn, New York, March 27, 2013.



James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, NY 11201