

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

**LITTLE VILLAGE CAR WASH**

**Employer**

**and**

**Case 13-RC-104353**

**UNITED STEEL, PAPER & FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
AFL-CIO, CLC**

**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.<sup>1</sup>

**I. ISSUE**

The instant petition raises the issue of whether the Board has jurisdiction over an Employer that has refused to fully cooperate with the investigation of the current R-case proceeding by failing to be present at the first and third hearing dates after being duly served with the notice of the hearings, and while being present at the second and fourth hearing dates, but not providing documents that were responsive to the Region's subpoena and therefore failing to provide relevant evidence to assist the Board in making its jurisdictional determination.

**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

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<sup>1</sup> 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 Little Village Car Wash (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.
3. The record demonstrates that the Petitioner is a labor organization within the meaning of the Act. Union organizer/representative Ted Sautter 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. 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)(7) of the Act.

of the Regional Director for Region 13 in the following bargaining unit as identified in the Petitioner's petition:

All full-time and regular part-time employees employed by the Employer at its car wash facility currently located at 2600 West Cermak Road, Chicago, Illinois 60608; 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 May 3, 2013, Petitioner filed a petition seeking to represent the bargaining unit described above. On May 6, 2013, the Region served the Employer with a copy of the petition and a Notice of Representation Hearing. After several failed attempts to make contact with the Employer, the Region subpoenaed Octavio Rodriguez, Owner of the Employer, to appear the hearing. The subpoena and order scheduling the hearing for May 14, 2013 was hand delivered to Rodriguez on May 10, 2013.

The record shows that Rodriguez, at some point prior to the hearing, mentioned he would be out of the country for the May 14, 2013 hearing date. On May 13, 2013, Cesar Velarde, notified the Agency that he would be representing the Employer and had a conflict for the 9:00 a.m. start time. Velarde was informed that the Region would wait until 11:00 a.m. to open the hearing to allow him time to arrive.

After hearing no response from Velarde, the record was opened at 11:00 a.m. In the Employer's absence, the Hearing Officer took evidence as to the nature of the Employer's operations from current employee Julio Cesar Martinez, as well as evidence from the Union's Organizing Coordinator, Ted Sautter, and Casual Staff Organizer Joaquin Monarrez. Martinez testified that the Employer only operates one facility, a retail car wash located in Chicago, Illinois, with about 8-12 full and part-time employees, including one supervisor.<sup>2</sup> The employees wash and clean the inside and outside of vehicles, some by hand and some by machine. There are a few mechanics that operate from within the car wash facility. The Employer also sells soda, candy, and air fresheners inside the car wash facility. Martinez testified that they may wash about 400-450 cars in a busy week and 200-250 cars during a slow week.<sup>3</sup>

On May 20, 2013, the hearing continued with Rodriguez present for the Employer and Sautter and Monarrez present for the Union. Rodriguez testified that the Employer's business varied with the weather, and first estimated that during the busy months his business may wash about 1200 cars and during the slow months, it may wash about 200 cars. According to his testimony, from November to March are the busy months and from June to August are slower months. Rodriguez later revised his testimony to indicate that during busy months the Employer may wash about 3500 cars and wash 1000 cars during slow months.<sup>4</sup> He provided no documentation that would validate the amount of vehicles washed daily at the facility. He provided the names of a few companies that supply his cleaning products

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<sup>2</sup> Martinez did not know where supplies were purchased or with what frequency.

<sup>3</sup> Martinez testified that, depending on the size of the vehicle, to wash the outside of a car the Employer charges between \$8.00 and \$12.00 and to wash both the inside and outside of a car the Employer charges between \$13.00 and \$23.00.

<sup>4</sup> Rodriguez testified that the Employer charges between \$8 and 13 for a complete car wash, and charges \$15 for SUVs and \$18 for vans.

but could not determine at what frequency he make purchases or the dollar amount of his purchases.<sup>5</sup> Rodriguez testified that he has filed for an extension on his 2012 taxes and the only financial information he currently has is the gross income from his 2011 taxes, listed at \$470,923. When asked to estimate about how business has gone in 2012, he states that is has been “a lot worse” than 2011.<sup>6</sup>

To obtain more financial information for 2012, the Hearing Officer scheduled a hearing for June 3, 2013, a date which the Employer requested as convenient for it. The hearing was scheduled to begin at 9:00 a.m. The Hearing Officer waited until 11:00 a.m. to allow the Employer time to appear, but the Employer did not appear for the hearing. On June 4, 2013, the Region issued a subpoena for Ulises Villa, the Accountant for the Employer, requiring him to appear at the rescheduled June 11, 2013, hearing.

The hearing was reopened for the fourth time at 1:10 p.m. on June 11, 2013, with Sautter present for the Union and Rodriguez and Villa present for the Employer. The Employer produced Exhibit 6, which is a summary financial statement from January 1, 2012 to December 31, 2013.<sup>7</sup> This summary showed gross income for the period as \$298,251 and the operating expenses at \$385, 177.79, with a net income of negative -\$86,925.79. However, the Employer did not present documents to show how most of the numbers on the summary were derived, except that the Employer did provide several monthly invoices that show expenses paid out.

The Hearing Officer confirmed that the documents the Employer has provided show expenses but do not show any gross revenue for 2012 or 2013. Rodriguez testified that no one indicated to him that he would need to bring anything else and he forgot. The Employer did provide partial daily sales receipts for the months of March May, June, July, and August 2012, respectively totaling about \$44,100; \$41,865; \$29,965; \$23,551; and \$24,056.<sup>8</sup> The Hearing Officer reminded him of the fact that a subpoena was issued to him as well as to his accountant and noted that the hearing was delayed until the afternoon instead of the morning to allow them extra time to gather their documents. Villa testified that the documents are kept in different locations making it difficult to locate them.<sup>9</sup>

Among the expenses demonstrated by the Employer included various purchases of supplies from Superior Auto Extras located in Memphis, Tennessee, totaling \$5508.69; electricity from ComEd totaling \$7787.58; and telephone service from AT&T totaling \$1944.37.

#### IV. ANALYSIS

The only issue presented is whether the Board has jurisdiction over the Employer. The facts of this case are analogous to those found 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

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<sup>5</sup> Purchases made from Home Depot in Maywood, Illinois and Restaurant Depot in Chicago, Illinois. Rodriguez mentions purchasing mechanic equipment in Indianapolis and that he leases a mechanic shop inside his car wash to Ricardo Ramirez and he takes an unspecified percentage of the sales from the mechanic.

<sup>6</sup> Rodriguez provided a few monthly bank statements but could not explain how which portion was for paychecks. The average account balance ranged from \$6,000 to \$19,000.

<sup>7</sup> Although the reference to December 31, 2013, a date in the future, is likely a typographical error, and should read “2012,” since the document is a summary that is unsupported by other evidence, I do not give it any evidentiary weight, and it is not necessary to resolve the correct date.

<sup>8</sup> These months did not include all the receipts for the month, as some of the figures were cut off in the process of copying, and receipts for other dates were missing entirely.

<sup>9</sup> Rodriguez asked if he can have a couple of days so that he can bring in his book where he writes all his sales.

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:

[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 set forth above, pursuant to *Tropicana*, the Board may assert jurisdiction over an employer who has refused to provide the Board with information relevant to the Board's jurisdictional determinations. Little Village Car Wash is such an employer.

As in *Tropicana*, in the present case the Region serviced the Employer with notice of the petition and hearing and ultimately rescheduled 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 additional documentation be provided. The Employer chose not to be present at the hearings held on May 14, 2013 and June 3, 2013, thus postponing the final hearing to June 11, 2013, where incomplete evidence was received regarding the Employer's participation in interstate commerce.

As a retail car wash, the appropriate discretionary jurisdictional standard that would apply would be the Board's retail standard, that is, annual gross revenue in excess of \$500,000. The evidence provided by the Employer for 2012 does not allow a direct determination of whether that standard has been met. For several reasons, the summary document showing gross revenues of \$298,251 is entitled to no evidentiary weight. It was clearly a document prepared for litigation, and absent the underlying documents used to compile that summary, it may be disregarded. Moreover, the surrounding circumstances make the stated revenue figure suspicious. The actual register receipts from five months provided by the Employer add up to \$163,537. Even assuming *arguendo* that it was fair to project annual revenue from those receipts, which, as shown below, I find that it is not, such projection would result in a figure significantly higher than that reported by the Employer.

Nor, given the incomplete and patchwork nature of the evidence provided can a reasonable projection of the Employer's annual gross revenue be drawn. In the first place, because of the missing days, the receipts provided do not paint a complete and accurate picture of the revenue for the months provided. Secondly, the data provided were largely for months the Employer admitted were "slow," and there is no way to accurately extrapolate the revenue for those slow months to the Employer's busy season, especially considering the contradictory accounts of how much business varied between the slow and busy seasons. Because of those flaws, projecting annual revenue from the incomplete evidence provided would likely result in a figure that significantly understated the correct amount. Given that the Employer several times failed to provide the evidence that was entirely within its control that would have

allowed the simple calculation of this figure, I find that the Employer has refused to provide information relevant to the Board's jurisdictional standard within the meaning of *Tropicana*, supra.

Furthermore, I find that the evidence amply demonstrates that the Employer is within the statutory jurisdiction of the Board. The purchases from Superior Auto Extras by themselves would satisfy the statutory minimum of purchases across state lines. In addition, the purchases from ComEd and AT&T, which themselves are directly in interstate commerce, would at the very least indirectly satisfy the statutory standard. Accordingly, I find that the Employer is an employer engaged in interstate commerce within the meaning of the Act.

## V. CONCLUSION

Based on the 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.<sup>10</sup> Those eligible to vote are all full-time and regular part-time employees employed by the Employer at its car wash facility currently located at 2600 West Cermak Road, Chicago, Illinois 60608; 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 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 we months before the election

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<sup>10</sup> 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 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 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 **July 1, 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.

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 United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO.

## **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 14<sup>th</sup> Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **July 8, 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 not 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 website at [www.nlr.gov](http://www.nlr.gov). On the home page for 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 24<sup>th</sup> day of June 2013.

*/s/ Peter Sung Ohr*

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