

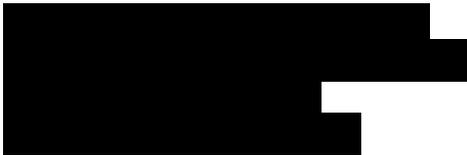


UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 N CENTRAL AVE
STE 1400
PHOENIX, AZ 85004-3019

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

November 14, 2013



Re: ABC Union Cab Company, Inc., Ace Cab, Inc., Vegas-Western Cab, Inc., A-N.L.V. Cab Company and Virgin Valley Cab Company, Inc., a single Employer
Case 28-CA-108504

Dear Mr. Winder:

We have carefully investigated and considered the charge filed by you on behalf of your client Tazios Tessema alleging that the above-named Employer, ABC Union Cab Company, Inc., Ace Cab, Inc., Vegas-Western Cab, Inc., A-N.L.V. Cab Company and Virgin Valley Cab Company, Inc., a single Employer, has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted and I am dismissing the charge for the following reasons:

The charge, as written, alleged that within the past six months, the above-named Employer, by its agents, representatives, and/or supervisors, violated Section 8(a)(1) of the Act by contesting the unemployment of its discharged striking employees; violated Section 8(a)(2) of the Act by dominating the United Steelworkers International Union and its Local 711A (Union); violated Section 8(a)(3) of the Act by discharging its striking employees; and violated Section 8(a)(5) of the Act by agreeing to a collective-bargaining agreement with the Union that was contrary to the wishes of the majority of employees the Union represented.

The investigation disclosed that the Union represents employees of the five companies that the Employer manages and that the parties agreed to a single collective-bargaining agreement covering these employees. The evidence also disclosed that prior to the expiration of 2012 collective-bargaining agreement, the Employer commenced negotiations for a new collective-bargaining agreement with the Union which was represented by a four-member bargaining committee and a representative of the International Union. In March 2013, the International representative entered into a new agreement with the Employer. There is no dispute that this agreement was not presented to the membership for ratification, but the Union's bylaws and the International's constitution permit such action. Thereafter, approximately 371 employees went out on strike. The Union disavowed the strike and urged the striking employees to return to

work. Prior to the strike, by letter dated March 11, the Union advised employees that they should give the new contract a chance and that it believed the idea of going on strike was based on misinformation and misguided goals. On March 21, the Union again stressed to the striking employees that it did not condone, authorize, approve, support, or ratify a strike; warned employees that they could lose their jobs if any of them participated in a strike; and again asked employees to give the contract a chance to succeed. On April 1, three days after the strike commenced, the Union sent another letter, urging employees to stop the strike and return to work. The employees rejected the Union's appeal and the Employer discharged these striking employees. Thereafter, the Union filed grievances and was instrumental in securing a settlement. Most of the employees were permitted to return to work. Consistent with its decision to discharge the striking employees, the Employer contested the unemployment claims filed by these employees.

Based on the foregoing, there is insufficient evidence to establish that the Employer violated the Act. In this regard, the investigation failed to show that by entering into a new collective-bargaining agreement, the Employer dominated the Union and/or the International or that it has bargained in bad faith. Indeed, there was no requirement that either the Union or its International conduct a contract ratification vote. Further, the evidence fails to establish that this was a condition precedent to reaching agreement or that the parties could not mutually agree that this condition would no longer apply. Accordingly, since the strike was in direct opposition to the Union's position and strategy, it was unprotected as proscribed by the exclusivity principle of Section 9(a) of the Act. It is well established that a union, as the exclusive representative of employees in dealing with an employer, has a legitimate interest in speaking with one voice, and that an employer likewise has an interest in bargaining with one duly elected representative. See *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50, 69-70 (1975). Consistent with this principle, otherwise protected dissident employee activity can lose the protection of the Act if employees are attempting to bargain directly with the employer or the employees' position is inconsistent with the union's position. *Coca Cola Puerto Rico Bottlers*, 358 NLRB No. 129, slip op. at 3 (2012). Here, the strike to protest the contract and the absence of a ratification vote was in direct opposition to the Union's decision to execute the contract without a ratification vote and its strategy and objective to enforce the contract through the grievance and arbitration procedure. Since the strike was unprotected, the Employer did not violate the Act by discharging the striking employees and by contesting their unemployment. I am, therefore, refusing to issue complaint in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on E-

November 14, 2013

File Documents, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **November 29, 2013**. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than November 27, 2013.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before November 29, 2013**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure

ABC Union Cab Company, Inc., Ace Cab, - 4 -
Inc., Vegas-Western Cab, Inc., A-N.L.V.
Cab Company and Virgin Valley Cab
Company, Inc., a single Employer
Case 28-CA-108504

November 14, 2013

cc:

[REDACTED]

[REDACTED]

[REDACTED]

General Counsel
Office of Appeals
Franklin Court Building
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570

CAO/CCS/dr

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)