

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

PROFESSIONAL TRANSPORTATION, INC.

and

Case 12-CA-101034

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 512

**COUNSEL FOR THE GENERAL COUNSEL'S CROSS-EXCEPTIONS  
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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Counsel for the General Counsel hereby files cross-exceptions to the Decision of the Administrative Law Judge (ALJ) in the matter of Professional Transportation, Inc., Case 12-CA-101034 reported at JD(ATL)-27-13, and issued on October 22, 2013.<sup>1</sup> These cross-exceptions are limited to the ALJ's recommended remedy, Order and Notice to Employees. Each cross-exception is accompanied by a brief supporting argument.

### **Cross-Exception 1**

The ALJ erred by failing to fully remedy Respondent's unfair labor practices by failing to specify in paragraph 1(c) of his recommended Order and in his recommended Notice to Employees, the nature of the improper conditions which Respondent must cease and desist from imposing on bargaining, and by merely prohibiting Respondent from imposing "improper conditions" on bargaining. (JD 11:14; JD Appendix).<sup>2</sup> The Board Order should require Respondent to cease and desist from insisting that the Union agree that if a court of competent jurisdiction determines that the Board lacked a proper quorum at the time the Union was certified as the collective-bargaining representative of the above-described unit, any collective-bargaining agreement that had been reached would be null and void and recognition of the Union would be considered withdrawn, and cease and desist from insisting that the Union agree to any other improper conditions for bargaining. The ALJ properly found that Respondent placed the aforementioned specific unlawful conditions on bargaining. (JD 8:15 to

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<sup>1</sup> Counsel for the General Counsel is concurrently filing an Answering Brief to Respondent's Exceptions to the Administrative Law Judge's Decision. This is to further notify the Board that on November 22, 2013, a petition for injunctive relief pursuant to Section 10(j) of the Act, pending the issuance of a final Board Order in this matter, was filed in the United States District Court for the Middle District of Florida, Jacksonville Division, in *Diaz v. Professional Transportation, Inc.*, Case 3:13-cv-01447-UAMH-JRK. The Section 10(j) petition remains pending.

<sup>2</sup> As used herein JD refers to the ALJ's Decision, the following numbers refers to the page and/or line numbers of the ALJ's decision, For example, JD 3:5-7 refers to page 3, lines 5 to 7 of the ALJ's Decision.

9:33). A complete description of the unlawful conditions that Respondent should be prohibited from imposing on bargaining should be set forth in the Board Order to ensure that Respondent does not insist on the same or similar conditions in the future.

### **Cross-Exception 2**

The ALJ erred by failing to include a bargaining schedule in his recommended remedy, Order and Notice to Employees, requiring Respondent, on request, to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of Respondent's bargaining unit employees not less than 24 hours per month, for at least 6 hours per bargaining session, or, in the alternative, on another schedule to which the Union agrees, with respect to wages, hours of work, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. (JD 10-12; JD Appendix).

The International Brotherhood of Teamsters, Local 512 (the Union) was certified as the exclusive collective-bargaining representative of the unit employees on June 5, 2012. (JD 3:5-7). Background evidence found by the ALJ establishes that the parties' first bargaining session was not held until September 25, 2012, despite the June 5, certification. Although the Union offered 33 proposals at the first bargaining session, Respondent did not offer any counter-proposals until the third bargaining session held on November 16, 2012. The last substantive bargaining session was held on January 24, 2013, and Respondent unlawfully cancelled the next seven bargaining sessions for various reasons. (JD 7:10-33). Respondent then unlawfully conditioned further bargaining based on the Union's acceptance of Respondent's position that if the Supreme Court upholds *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. January 25,

2013), any agreement reached in bargaining and the certification of the Union will be considered null and void and Respondent will have no further obligation to bargain with the Union. Based on these facts, the ALJ correctly found that Respondent considered meeting and bargaining with the Union for an initial contract to be an inconvenience, that Respondent engaged in dilatory tactics in violation of its duty to meet and bargain with the Union, that Respondent placed improper conditions on bargaining, and that Respondent failed and refused to bargain with the Union in good faith, all in violation of Section 8(a)(1) and (5) of the Act. (JD 7:10 to 9:33; JD 10:8-18). The ALJ also appropriately recommended a one year extension of the Union's certification. (JD 10:20-34).

However, the ALJ failed to require a bargaining schedule remedy and recommended only that Respondent be ordered to bargain "at reasonable times and places." (JD 11:22-26). A bargaining schedule is needed to fully remedy Respondent's unfair labor practices. Almost 18 months have passed since the Union was initially certified, yet Respondent has only met and bargained with the Union on four occasions, and has unlawfully cancelled all meetings scheduled after January 2013, almost a year ago, except for the June 4, 2013 meeting on which Respondent placed unlawful conditions. Respondent has demonstrated a propensity for engaging in dilatory tactics. Because of the length of time that has passed, Respondent's repeated cancellation of meetings and continuing unlawful conduct, and to ensure that the Respondent meet and bargain with the Union on a regular and timely basis, the Board should require that Respondent, on request, meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of Respondent's employees with respect to wages,

hours of work, and other terms and conditions of employment, for not less than 24 hours per month, for at least 6 hours per bargaining session, or, in the alternative, on another schedule to which the Union agrees, and, if an understanding is reached, embody the understanding in a signed agreement. See e.g., *Straight Creek Mining, Inc. v. NLRB*, 2001 WL 1262218, at \*1 (6<sup>th</sup> Cir. 2001) (ordering bargaining at least one day per week); *NLRB v. H & H Pretzel Co.*, 936 F.2d 573, 1991 WL 111249 at \*2 (6<sup>th</sup> Cir. 1991) (unpublished) (ordering bargaining at least three days per week); *NLRB v. Johnson Mfg. Co. of Lubbock*, 511 F.2d 153, 156 (5<sup>th</sup> Cir. 1975), cert. denied 423 U.S. 867 (1975) (ordering bargaining in “reasonably consecutive sessions”); *NLRB v. Metlox Mfg. Co.*, 1973 WL 3146, at \*1 (9<sup>th</sup> Cir. 1973) (ordering bargaining on consecutive days).

### **Conclusion**

For the reasons set forth above, Counsel for the General Counsel respectfully requests that the Board grant General Counsel’s cross-exceptions in their entirety and modify the ALJ’s recommended Order and Notice to Employees accordingly. Finally, the General Counsel seeks all other relief deemed appropriate to remedy Respondent’s violations of the Act.

DATED at Tampa, Florida, this 3<sup>rd</sup> day of December, 2013.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that **Counsel for the General Counsel's Cross-Exceptions** in the matter of Professional Transportation, Inc., Case 12-CA-101034, was electronically filed and served by electronic mail on 3<sup>rd</sup> day of December, 2013, as set forth below:

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