

Safe Transportation, Inc. and Local 414, International Brotherhood of Teamsters, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 25-CA-8244

May 9, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND MURPHY

Upon a charge filed on September 7, 1976, by Local 414, International Brotherhood of Teamsters, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Safe Transportation, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint and notice of hearing on October 28, 1976, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on March 11, 1976, following a Board election in Case 25-RC-6158 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about March 12, 1976, and at all times thereafter, the Respondent did refuse, and continues to refuse, to bargain collectively with the Union as the exclusive collective-bargaining representative, in that the Respondent, by refusing to advise the Union of the Respondent's acceptance, rejection, or proposed modification of the terms of an agreement agreed upon on August 5, 1976, negotiated with the Union in bad faith and with no intention of entering into any final or binding collective-bargaining agreement. The Respondent failed to file an answer within 10 days from the service of the complaint as required by Section 102.20 of the Board's Rules and Regulations, Series 8, as amended.

On January 6, 1977, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 19, 1977, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for

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Summary Judgment should not be granted. Respondent's counsel thereafter filed a letter response to Notice To Show Cause stating in effect that Respondent was going out of business and could no longer afford his services.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on the Respondent and its counsel, specifically states that unless an answer to the complaint is filed within 10 days from service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true, and may so be found by the Board." According to the uncontroverted allegations of the Motion for Summary Judgment, when the Respondent failed to file an answer to the complaint within the stated time, the Respondent as a courtesy was advised on January 4 and 5, 1977, by telephone, of the necessity of filing an answer. As of January 6, 1977, the date of the Motion for Summary Judgment, no communication or answer had been received from the Respondent. Nor has any answer been filed to date. No good cause to the contrary having been shown for the failure to file an answer, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted to be true and are so found to be true.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of the laws of the State of Indiana.

At all times material herein, the Respondent has maintained its principal office and place of business at Fort Wayne, Indiana, herein called the facility, and is, and has been at all times material herein, continuously engaged at the facility in the business of providing and performing transportation and delivery services and related services.

During the past year preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, provided and performed transportation and delivery services for nonretail customers located in the State of Indiana valued at in excess of \$50,000, each of which customers in turn during the same representative period of time manufactured and shipped from their respective Indiana locations, directly to points located outside the State of Indiana, goods valued at in excess of \$50,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local 414, International Brotherhood of Teamsters, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All pickup and delivery employees and all dock porter employees of the Respondent employed at the facility, exclusive of all office clerical employees, all professional employees, all salesmen, and all guards and supervisors as defined in the Act.

2. The certification

On December 23, 1975, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 25, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on March 11, 1976, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about March 12, 1976, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about March 12, 1976, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit, in that the Respondent, by refusing to advise the Union of the Respondent's acceptance, rejection, or proposed modification of the terms of an agreement agreed upon on August 5, 1976, negotiated with the Union in bad faith and with no intention of entering into any final or binding collective-bargaining agreement.

Accordingly, we find that the Respondent has, since March 12, 1976, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Safe Transportation, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 414, International Brotherhood of Teamsters, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All pickup and delivery employees and all dock porter employees of the Respondent employed at the facility, exclusive of all office clerical employees, all professional employees, all salesmen, and all guards and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since March 11, 1976, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 12, 1976, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of

Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent Safe Transportation, Inc., Fort Wayne, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 414, International Brotherhood of Teamsters, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All pickup and delivery employees and all dock porter employees of the Respondent employed at the facility, exclusive of all office clerical employees, all professional employees, all salesmen, and all guards and all supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at 1016 S. Harrison Street, Fort Wayne, Indiana, copies of the attached notice marked "Appendix."¹ Copies of said notice, on forms provided by the Regional Director for Region 25,

¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 414, International Brotherhood of Teamsters, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as

the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All pickup and delivery employees and all dock porter employees of the Respondent at the facility, exclusive of all office clerical employees, all professional employees, all salesmen, and all guards and all supervisors as defined in the Act.

SAFE TRANSPORTATION,
INC.