

**Amalgamated Transit Union Local 1498, AFL–CIO
and Eugene Jones.** Case 18–CB–080309

August 31, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by Eugene Jones, the Charging Party, on May 4 and June 14, 2012, respectively, the Acting General Counsel issued the complaint on June 14, 2012, against Amalgamated Transit Union Local 1498, AFL–CIO, the Respondent, alleging that it has violated Section 8(b)(1)(A) of the Act. The Respondent failed to file an answer.

On July 13, 2012, the Acting General Counsel filed a Motion for Default Judgment, and Brief in Support with the Board. Thereafter, on July 23, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that the answer must be received by the Regional Office on or before June 28, 2012. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by an email dated July 2, 2012, notified the Respondent that unless an answer were received by July 9, 2012, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Jefferson Partners L.P., the Employer, has been a limited partnership with an office and place of business in Minneapolis, Minnesota, and various branch locations in the States of Minnesota, Kansas, North Dakota, South Dakota, and Arkansas, and has been

engaged in the interstate and intrastate transportation of passengers.

In conducting its operations described above, during the calendar year ending December 31, 2011, the Employer derived gross revenues in excess of \$250,000 from the transportation of passengers from the State of Minnesota directly to points outside the State of Minnesota.

We find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Richard Davis — Union President/Business Agent
Jay Keller — Union Representative

At all material times, by virtue of Section 9(a) of the Act, the Respondent has been the exclusive collective-bargaining representative of certain employees of the Employer, as described in article 3, Recognition, of the most recent collective-bargaining agreement (the Agreement), between the Employer and the Respondent. This Agreement was originally effective by its terms from March 1, 2009, to February 29, 2012, and has been extended by the parties until at least July 1, 2012.

The Agreement described above contains a union security clause in article 9, Maintenance of Membership, which requires, among other things, that employees apply for membership with the Respondent within 30 days of employment with the Employer. The Charging Party is covered by the union security clause.

The Respondent expends moneys collected pursuant to the union security clause described above on activities germane to collective bargaining, contract administration, and grievance adjustment (representational activities), and on activities not germane to collective bargaining, contract administration, and grievance adjustment (nonrepresentational activities).

Since about March 2012, the Respondent has failed to inform the Charging Party of the following information:

- (a) That he has the right to be or remain a nonmember;
- (b) That he has the right as a nonmember to object to paying for nonrepresentational activities and to obtain a reduction in fees for such nonrepresentational activities;

(c) That he has the right to be given sufficient information to enable him to intelligently decide whether to object; and

(d) That he has the right as a nonmember to be apprised of any internal union procedures for filing objections.

During the 6 months prior to the filing of the first amended charge on June 14, 2012, the Respondent has maintained and enforced a clause in its collective-bargaining agreement with the Employer requiring employees to be members of the Respondent.

Since about late March 2012, the Respondent has sought to collect and has collected retroactive dues from the Charging Party despite the fact that the Charging Party did not authorize the Respondent to do so.

Since about late March 2012, the Respondent has sought to collect and has collected retroactive dues from the Charging Party pursuant to the union security clause described above, despite the fact that the Respondent did not provide the Charging Party with the information described above.

Since about late March 2012, the Respondent has sought to collect and has collected current dues from the Charging Party pursuant to the union security clause described above, despite the fact that the Respondent did not provide the Charging Party with the information described above.

On about May 16, 2012, the Respondent, through its agent Jay Keller, in a telephone conversation, told the Charging Party that the Respondent would not accept his resignation from union membership until December 2012.

We find that by the above conduct, the Respondent has restrained and coerced employees of the Employer in the exercise of the rights guaranteed in Section 7 of the Act.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

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

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(b)(1)(A) of the Act by failing to inform Charging Party Eugene Jones of his rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), and *Communications Workers v. Beck*, 487 U.S. 735 (1988), we shall order it to provide him with the required notice. To remedy the Respondent's collection of dues from Jones without informing him of the above rights, we shall order it to allow him to retroactively resign his membership and obtain objector status starting 6 months before the filing of the first charge on May 4, 2012, and, should he file a *Beck* objection, reimburse him for any dues collected in excess of those spent solely on representational activities. We shall also order the Respondent to give immediate effect to Jones' resignation. Finally, any amounts to be reimbursed under our Order are to be with interest at the rate prescribed in *New Horizons for the Retarded*, 287 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).¹

ORDER

The National Labor Relations Board orders that the Respondent, Amalgamated Transit Union Local 1498, AFL-CIO, Independence, Missouri, its officers, agents, and representatives, shall:

1. Cease and desist from

(a) Failing to inform employees whom it seeks to obligate to pay dues and fees under a union-security clause of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers, and of the right of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Respondent's duties as bargaining agent, and to obtain a reduction in dues and fees for such activities.

(b) Failing to recognize and give effect to employees' resignations from union membership in a timely fashion.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Eugene Jones, in writing, of his right to be and remain a nonmember, and of the rights of nonmem-

¹ The Acting General Counsel has requested that we order the Respondent to (1) request that the Employer renegotiate the union security clause; (2) notify the Employer that it will not seek to enforce the clause; and, (3) notify employees covered by the agreement that it will not seek to enforce the clause against them. Because the Acting General Counsel has not shown that the Board's traditional remedies are insufficient to remedy the Respondent's violations, and because union security clauses that track the language of Sec. 8(a)(3), as here, do not on their face violate the Act, we deny this request. See *Marquez v. Screen Actors Guild*, 525 U.S. 33, 48 (1998) (holding that a union does not violate its duty of fair representation by negotiating a union security clause that tracks the language of Sec. 8(a)(3) without explicitly mentioning an employee's rights under *General Motors* and *Beck*).

bers to object to paying for union activities not germane to the Respondent's duties as bargaining agent, and to obtain a reduction in dues and fees for such activities. In addition, this notice must include sufficient information to enable Jones intelligently to decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) Give full effect to Eugene Jones' resignation as of May 16, 2012.

(c) Inform Eugene Jones of his right to resign his union membership and file a *Beck* objection retroactively as set forth in the remedy section of this decision.

(d) Should Eugene Jones file a *Beck* objection, reimburse Jones, with interest, for any dues or fees collected for nonrepresentational activities, with interest, as set forth in the remedy section of this decision.

(e) Within 14 days after service by the Region, post at its facility in Independence, Missouri, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members and employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means.³ Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 14 days after service by the Region, deliver to the Regional Director for Region 18 signed copies of the notice in sufficient number for posting by the Employer at its Minneapolis, Minnesota facility, if it wishes, in all places where notices to employees are customarily posted.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at

testing to the steps that the Respondent has taken to comply.

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to inform you of your right to be and remain nonmembers, and of the right of nonmembers to object to the paying of dues for nonrepresentational activities.

WE WILL NOT fail to recognize and give effect to your resignations from union membership in a timely fashion.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL notify Eugene Jones, in writing, of his right to be and remain a nonmember, and of the rights of nonmembers to object to paying for union activities not germane to our duties as bargaining agent, and to obtain a reduction in dues and fees for such activities. In addition, this notice will contain sufficient information to enable him to intelligently decide whether to object, as well as a description of any of our internal procedures for filing objections.

WE WILL give full effect to Eugene Jones' resignation as of May 16, 2012.

WE WILL inform Eugene Jones of his right to retroactively resign his union membership and file an objection to paying dues for nonrepresentational activities.

WE WILL, should Eugene Jones retroactively file an objection to paying dues for nonrepresentational activities, reimburse Jones for any dues collected from him in excess of the amount used for representational activities, plus interest.

AMALGAMATED TRANSIT UNION LOCAL 1498,
AFL-CIO

² If 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."

³ For the reasons stated in his dissenting opinion decision in *J. Picini Flooring*, 356 NLRB 11 (2010), Member Hayes would not require electronic distribution of the notice.