

**Lintrac Services, Inc. and International Brotherhood
of Teamsters Local 710.** Case 13–CA–091818

April 17, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
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, a first amended charge, and a second amended charge filed by International Brotherhood of Teamsters Local 710 (the Union) on October 22, 2012, and January 18 and 31, 2013, respectively, the Acting General Counsel issued a complaint and notice of hearing on January 31, 2013, against Lintrac Services, Inc. (the Respondent), alleging that the Respondent violated Section 8(a)(5), (3), and (1) of the Act. The Respondent failed to file an answer.

On February 22, 2013, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on February 26, 2013, 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.

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 stated that unless an answer was received by February 14, 2013, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter and facsimile transmission dated February 15, 2013, notified the Respondent that unless an answer were received by the extended due date of February 21, 2013, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.¹

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

¹ The Acting General Counsel's Motion for Default Judgment and attached exhibits indicate that the complaint was served on an officer of the Respondent, Thomas Blackwell, by certified mail and was returned to sender marked "refused." It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003), and cases cited there.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Georgia corporation with an office and place of business in Northlake, Illinois, has been engaging in the maintenance and repair of tractor-trailer chaises and boxcars. During the past calendar year, a representative period, the Respondent purchased and received goods and materials at its Northlake, Illinois facility in excess of \$50,000 directly from points located outside of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, 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 supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Thomas Blackwell	Chief Financial Officer
Tim Burnett	Supervisor and/or Manager
Jason Tirado	Supervisor and/or Manager

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

All full-time and regular part-time mechanics employed by the Employer at its worksite currently located at 301 W. Lake St. Northlake, IL 60164; excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

From about August 14, to about August 21, 2012, a majority of the unit designated the Union as their exclusive collective-bargaining representative.

At all times since August 21, 2012, the Union has maintained majority status as the collective-bargaining representative of the unit.

Based on the acts and conduct alleged in paragraphs 13, 14, and 15 below, at all times since September 24, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Respondent engaged in the following conduct:

1. About September 24, 2012, the Respondent, by Jason Tirado, interrogated employees regarding their knowledge of the Union.

2. About September 25, 2012, the Respondent, by Tim Burnett, interrogated employees regarding their knowledge of the Union and threatened to interfere with employees' union activities due to their support of the Union and their union activities.

3. About September 26, 2012, the Respondent, by Tim Burnett:

(a) at a meeting for employees and at other times at the Respondent's location, solicited grievances from employees due to their support of the Union and their union activities and made a veiled threat of replacing employees due to their support of the union and their union activities.

(b) in the Respondent's yard, solicited grievances from employees due to their support of the Union and their union activities.

(c) interrogated employees about union activities when it asked employees to disclose to the Respondent other employees' support for and activities on behalf of the Union and made an implied offer of job promotion to employees.

4. About November 2012, the Respondent, by Jason Tirado, solicited signatures for an antiunion petition by telling employees to sign the petition; and interrogated employees regarding whether they signed the antiunion petition.

5. About December 17, 2012, the Respondent, by Jason Tirado, threatened to terminate employees due to their support of the Union and their union activities.

6. About September 24, 2012, the Respondent, by Jason Tirado, created a new written attendance policy and required employees to sign acknowledgement of the policy.

7. About September 28, 2012, the Respondent, by Jason Tirado and Thomas Blackwell, changed job requirements regarding driver's licenses.

8. The Respondent engaged in the conduct described in paragraphs 6 and 7 because employees of the Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

9. About September 26, 2012, the Respondent, by Tim Burnett, disciplined employee Demetrious Shaw.

10. About September 26, 2012, the Respondent, by Tim Burnett, terminated employee Nathanael Hernandez.

11. About October 11, 2012, the Respondent, by Jason Tirado and Thomas Blackwell, terminated employee Demetrious Shaw.

12. The Respondent engaged in the conduct described in paragraphs 9, 10, and 11 because the named employees of the Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

13. About September 24, 2012, the Union, by Bill Messina and Matthew Flynn, in person, requested that the Respondent, through Jason Tirado, voluntarily recognize the Union as the collective-bargaining representative of the unit.

14. The serious and substantial unfair labor practice conduct described in paragraphs 1 through 12 is such that there is only a slight possibility of traditional remedies erasing their effects and conducting a fair election. Therefore, on balance, the employees' sentiments regarding representation, having been expressed through authorization cards, would be protected better by issuance of a bargaining order.

15. The allegations described in paragraph 14 requesting the issuance of a bargaining order are supported by, among other things:

(a) Thomas Blackwell, Tim Burnett, and Jason Tirado are high ranking supervisors responsible for the discriminatory conduct described in paragraphs 1 through 12;

(b) The conduct described in paragraphs 1 through 12 has not been retracted;

(c) There are approximately 18 employees in the unit described above;

(d) The conduct described above in paragraphs 1 through 12 was immediately directed at approximately 18 employees;

Eighteen employees learned or were likely to learn of the conduct described in paragraphs 1 through 12.

The conduct described in paragraphs 1, 2, 3(a) through (c), and 6 through 12 followed immediately on the heels of the Respondent's knowledge of the Union's campaign.

The employees described in paragraphs 9 through 12 were leading organizers for the Union.

16. Since about September 24, 2012, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSIONS OF LAW

1. By the conduct described in paragraphs 1 through 5, the Respondent has been interfering with, restraining,

and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By the conduct described in paragraphs 6 through 12, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

3. By the conduct described in paragraph 16, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act.

4. The Respondent's unfair labor practices 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 violated Section 8(a)(5) and (1) of the Act by failing and refusing, since about September 24, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent, on request, to bargain with the Union as the exclusive collective-bargaining representative of the unit employees concerning terms and conditions of employment and, if an understanding is reached, to embody the understanding in a signed agreement. Accord: *Stevens Creek Chrysler Jeep Dodge*, 357 NLRB 633 (2011) (finding Gissel bargaining order appropriate where possibility of fair election was slight due to respondent's hallmark violations), *enfd. sub nom. Mathew Enterprise v. NLRB*, ___ Fed. Appx ___, 2012 WL 6599551 (D.C. Cir. Dec. 14, 2012); *MZ Movers, Inc.*, 330 NLRB 309, 310-312 (1999); see generally *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

In addition, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by creating a new written attendance policy, by requiring employees to sign an acknowledgement of the policy, and by changing job requirements regarding driver's licenses, we shall order the Respondent to rescind these discriminatory actions and notify its employees in writing that the new attendance policy and new licensing requirements are no longer in force.

Having also found that the Respondent violated Section 8(a)(3) and (1) of the Act by disciplining and termi-

nating Demetrious Shaw, and by terminating Nathanael Hernandez, we shall order the Respondent to rescind Shaw's discriminatory discipline and to offer Shaw and Hernandez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make whole Shaw and Hernandez for any loss of earnings or other benefits suffered as a result of the Respondent's unlawful actions against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Additionally, in accordance with our recent decision in *Latino Express, Inc.*, 359 NLRB 518 (2012), we shall order the Respondent to compensate Shaw and Hernandez for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for Shaw and Hernandez.

Finally, the Respondent shall also be required to remove from its files all references to the unlawful discipline of Shaw and the unlawful terminations of Shaw and Hernandez. The Respondent shall notify Shaw and Hernandez in writing that this has been done and that the unlawful references will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Lintrac Services, Inc., Northlake, Illinois, and Conley, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Teamsters Local 710 (the Union) as the exclusive collective-bargaining representative of the employees in the unit.

(b) Interrogating employees about their union activities and their knowledge of the Union.

(c) Threatening to interfere with employees' union activities.

(d) Soliciting grievances from employees and impliedly promising to remedy those grievances in order to discourage employees' support of the Union and their union activities.

(e) Impliedly threatening to replace employees due to their support of the Union and their union activities.

(f) Impliedly offering job promotions to employees in order to discourage employees' support of the Union and their union activities.

(g) Soliciting employees' signatures for an antiunion petition.

(h) Interrogating employees regarding whether they signed the antiunion petition.

(i) Threatening to terminate employees due to their support of the Union and their union activities.

(j) Creating a new written attendance policy and requiring employees to sign acknowledgement of the policy, because employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(k) Changing job requirements regarding driver's licenses because employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(l) Disciplining employees because they assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(m) Terminating employees because they assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(n) In any like or related manner interfering with, 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) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time mechanics employed by the Employer at its worksite currently located at 301 W. Lake St. Northlake, IL 60164; excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Rescind the new attendance policy and notify its employees in writing that the policy is no longer in force.

(c) Rescind the change in job requirements regarding driver's licenses and notify its employees in writing that those requirements are no longer in force.

(d) Rescind the discipline of Demetrious Shaw

(e) Within 14 days from the date of this Order, offer Nathanael Hernandez and Demetrious Shaw full reinstatement to their former jobs or, if those jobs no longer

exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(f) Make whole Nathanael Hernandez and Demetrious Shaw for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(g) Compensate Nathanael Hernandez and Demetrious Shaw for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for Hernandez and Shaw.

(h) Within 14 days from the date of this Order, remove from its files any references to the unlawful terminations of Nathanael Hernandez and Demetrious Shaw, and the unlawful discipline of Demetrious Shaw, and within 3 days thereafter notify each of them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, post at its facility in Northlake, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, 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 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 employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these

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."

proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 24, 2012.

(k) 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 attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO 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 with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Teamsters Local 710 (the Union) as the exclusive collective-bargaining representative of the employees in the unit.

WE WILL NOT interrogate employees about their union activities and their knowledge of the Union.

WE WILL NOT threaten to interfere with employees' union activities.

WE WILL NOT solicit grievances from employees and impliedly promise to remedy those grievances in order to discourage employees' support of the Union and their union activities.

WE WILL NOT impliedly threaten to replace employees due to their support of the Union and their union activities.

WE WILL NOT impliedly offer job promotions to employees in order to discourage employees' support of the Union and their union activities.

WE WILL NOT solicit employees' signatures for an anti-union petition.

WE WILL NOT interrogate employees regarding whether they signed the antiunion petition.

WE WILL NOT threaten to terminate employees due to their support of the Union and their union activities.

WE WILL NOT create a new written attendance policy and require employees to sign acknowledgement of the policy because employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT change job requirements regarding driver's licenses because employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT discipline employees because they assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT terminate employees because they assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

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

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time mechanics employed by us at our worksite currently located at 301 W. Lake St. Northlake, IL 60164; excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL rescind the new attendance policy and notify you in writing that the policy is no longer in force.

WE WILL rescind the change in job requirements regarding driver's licenses and notify you in writing that those requirements are no longer in force.

WE WILL rescind the discipline of Demetrious Shaw.

WE WILL, within 14 days from the date of the Board's Order, offer Nathanael Hernandez and Demetrious Shaw full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Nathanael Hernandez and Demetrious Shaw for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL compensate Nathanael Hernandez and Demetrious Shaw for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file

a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for Hernandez and Shaw.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful terminations of Nathanael Hernandez and Deme-

trious Shaw, and the unlawful discipline of Demetrious Shaw, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that our unlawful conduct will not be used against them in any way.

LINTRAC SERVICES, INC.