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Con-way Freight Inc. and Teamsters Local 657, Affiliated with International Brotherhood of Teamsters. Case 16–CA–159605

November 27, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on September 9, 2015, by Teamsters Local 657, affiliated with International Brotherhood of Teamsters (the Union), the General Counsel issued the complaint on September 10, 2015, alleging that Con-way Freight Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain following the Union’s certification in Case 16–RC–133896. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On September 25, 2015, the General Counsel filed a Motion for Summary Judgment. On October 1, 2015, 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 a response.

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

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union’s certification based on its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate*

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Delaware corporation with an office and place of business in Laredo, Texas (the facility), and has been engaged in the business of providing freight services across North America.

In conducting its operations during the 12-month period ending August 31, 2015, the Respondent derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Texas directly to points outside the State of Texas.

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

We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on September 12, 2014, the Union was certified on July 8, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time line haul and p&d drivers, and dock workers (including those who load, unload, those who handle over, short & damaged goods, and those who handle weights & inspection) employed by the Respondent at its facility located at 1472 Mines Road, Laredo, Texas.

Excluded: Office clerical employees, employees not on Con-way’s payroll, managers, guards and supervisors as defined in the Act.

¹ In its answer to the complaint, the Respondent admits the filing of the charge, but denies service of the charge. We note, however, that the complaint was timely served within the Sec. 10(b) period on the Respondent’s counsel, and that the Respondent filed a timely answer to the complaint. Thus, even assuming that the Respondent was not properly served with a copy of the charge, we find that the Respondent’s denial of service does not create a genuine issue of material fact warranting a hearing or constitute grounds for dismissal of the complaint. See *Buckeye Plastic Molding*, 299 NLRB 1053, 1053 (1990) (the failure to make timely service of a charge on a respondent will be cured by timely service within the 10(b) period of a complaint on the respondent, absent a showing that the respondent is prejudiced by such circumstances). Here, there has been no assertion, much less a showing, of prejudice to the Respondent.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

About July 17, 2015, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit.

Since about July 17, 2015, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since July 17, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Con-way Freight Inc., Laredo, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Teamsters, Local 657, affiliated with International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) 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 on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time line haul and p&d drivers, and dock workers (including those who load, unload, those who handle over, short & damaged goods, and those who handle weights & inspection) employed by the Respondent at its facility located at 1472 Mines Road, Laredo, Texas.

Excluded: Office clerical employees, employees not on Con-way's payroll, managers, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Laredo, Texas, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 16, 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 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 July 17, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 16 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.

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."

Dated, Washington, D.C., November 27, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
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 Teamsters, Local 657, affiliated with International Brotherhood of Teamsters as the exclusive collective-

bargaining representative of the employees in the bargaining unit.

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 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

Included: All full-time and regular part-time line haul and p&d drivers, and dock workers (including those who load, unload, those who handle over, short & damaged goods, and those who handle weights & inspection) employed at our facility located at 1472 Mines Road, Laredo, Texas.

Excluded: Office clerical employees, employees not on our payroll, managers, guards and supervisors as defined in the Act.

CON-WAY FREIGHT INC.

The Board's decision can be found at www.nlr.gov/case/16-CA-159605 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

