

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

RAILSERVE, INC.

and

Case No. 04-CA-161485

UNITED STEEL WORKERS OF AMERICA
LOCAL 10-1

Randy Girer, Esq.,
for the General Counsel.
Timothy J. Sarsfield, Esq. (Thompson Coburn LLP),
for the Respondent.
Michael W. McGurrin, Esq., (Galfand Berger),
for the Charging Party.

DECISION

STATEMENT OF THE CASE

SUSAN A. FLYNN, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania between April 25 and 27, 2016. The United Steelworkers Local 10-1, the Charging Party Union, filed the initial charge on October 6, 2015; the first amended charge was filed on November 24, 2015 and the second amended charge on January 21, 2016. The General Counsel issued the complaint on January 29, 2016.

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing meet and bargain with the Union with reasonable frequency since April 2015. The complaint also alleges that Respondent violated these provisions of the Act by withdrawing recognition from the Union on November 20, 2015. It alleges that the employee decertification petition on which Respondent relies was causally related to the Respondent's refusal and failure to adequately meet and bargain with the Union. The Respondent filed an answer denying all material allegations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

5 The Respondent, a corporation, which is part of the Marmon Group of companies,
operates approximately 70-80 sites across the country, at which it performs switching and
transloading services. This case involves its facility at Eddystone, Pennsylvania, where it has a
contract with Philadelphia Energy Solutions (PES), the owner of that facility. Under that
10 contract, the Respondent's employees move crude oil by rail and then load the oil first into
storage tanks and then onto river barges for transport to refineries. In calendar year 2015, the
Respondent provided goods and services valued in excess of \$50,000 directly to customers
outside the Commonwealth of Pennsylvania. Respondent admits, and I find, that it is an
employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and
15 that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

 Respondent appears to have commenced its operations at the Eddystone facility in
February 2014. A representation election was conducted on August 12, 2014, in which 16
20 bargaining unit members voted in favor of representation by the Charging Party Union and 12
voted against such representation.

 On August 28, 2014, the Board certified the Charging Party Union as the exclusive
collective bargaining representative of a unit consisting of the Respondent's full-time and regular
25 part-time transloaders, operators, helpers, and controllers at the Eddystone facility. The day
afterwards, the Union requested a meeting to establish ground rules for collective bargaining
negotiations.

September 19, 2014, meeting (meeting # 1)

30 The parties met on September 19, 2014, and agreed on ground rules for the negotiations.
The Respondent was represented by Timothy Sarsfield, its attorney in this proceeding, and John
Roberts, a vice-president of the Respondent. The Union was represented by James Savage, then
the President of Local 10-1, and Carl Jones, a representative of the Steelworkers International
35 Union. Savage and the other local union officials who were involved in bargaining with the
Respondent were employees of Philadelphia Energy Solutions (PES). At the ground rules
meeting, the parties agreed that Railserve employees, Michael Grasso, Sr. and William
Zubrzycki, would attend the negotiations as part of the union team.

40 The parties also agreed that wages would be frozen during the negotiations. The
Respondent had a policy of reviewing employees' performance every 90 days and then, at its
discretion, raising the wages of individual employees. The Union sought to replace this with
across-the-board raises for all unit employees. The parties agreed to meet in October for a
45 single day.

October 23, 2014, meeting (meeting # 2)

The parties met for 6 ½ hours on October 23. At this meeting, the Union presented the Respondent with a complete contract proposal on non-economic issues.

The parties did not meet in November 2014. Union President Savage was unavailable for one week during this month due to his wedding and honeymoon. He suggested meeting on November 19 or 25 or December 1, 3, and 5. The company suggested December 17 as the next meeting date, and the Union agreed.

December 17, 2014, meeting (meeting # 3)

The Respondent was represented at the December 17 meeting by Gayle Schaumann, a labor relations expert from the Marmon Group. She was the Respondent's principal negotiator throughout the rest of the negotiations. None of Railserve's employees were unionized, and its managers had no experience in bargaining. Schaumann, however, had extensive experience in contract negotiations. Assisting her were Timothy Benjamin, the President of Railserve; Timothy Pullen, a vice president of Railserve for human resources; Matthew Palmer, the site manager for Eddystone; and Larry Williams, the assistant site manager.

The Union was represented by Local President James Savage, Local Vice-President Nancy Minor, Carl Jones, and unit employees Grasso and Zubrzycki.

At this meeting, the Union made a wage proposal to the Respondent. At this and other sessions, the parties discussed matters not directly related to negotiating a collective bargaining agreement. At this particular meeting, a significant amount of time was spent discussing whether employees could wear union stickers on their hardhats.

January 20, 2015, meeting (meeting # 4)

On January 20, 2015, the parties met for 7 hours. Part of the time was spent discussing individual employees' disciplinary issues. The Respondent presented a proposal on non-economic issues.

Email exchange of February 5 & 17 (Joint exhibits 19 & 20)

On February 5, HR Vice-President Pullen wrote Union President Savage and International Representative Jones an email asking if February 26 was a good date for the next meeting. Savage replied:

Thursday, February 26 is fine. Additionally, I want you to look at your schedule now and give me dates that you are available after that. You've kicked this can down the road long enough. Time for you to start being an honest broker in these discussions.

Tim Pullen responded:

Here are dates for 3 months following our meeting on Thursday, February 26, 2015. This is after reviewing Railserve union members and management schedules for availability to meet.

5 Thursday, March 12, 2015

Tuesday, April 14, 2015

10 Thursday, May 21, 2015

We have had a number of productive sessions and have worked diligently to schedule meetings that meet your needs and those of the company, including not meeting in November due to your wedding/honeymoon as well as continuing to meet with Carl and the other union representatives when your attention was on the national refinery talks.

15

February 26, 2015, meeting (meeting #5)

The parties met for 7 ½ hours on February 26. About an hour was spent discussing the discipline of a Railserve employee.

20

March 12 meeting (meeting # 6)

At some point during the March 12 meeting, Nancy Minor, then the Local Union vice-president, told the Railserve representatives that meeting one day a month was not sufficient. (Tr. 263.) The company agreed to meet 1 ½ days a month. (Tr. 243; G.C. Exh. 16, p. 2.) There is no indication that the Union argued that 1 ½ days was insufficient.

25

On March 19, Pullen emailed Carl Jones asking if he would be available on April 14 and 15. Jones replied that he would be available on those days.

30

April 14 and 15 meetings (meetings #7 and #8)

The parties met for somewhere between 11 and 14 hours in April. Prior to the beginning of negotiations, they discussed the company's intention to discharge Michael Grasso, Sr., the lead in-house union negotiator. Respondent agreed that, instead of discharge, Grasso would receive a write-up and would have to make an apology. (Tr. 416-18.)

35

While union witnesses testified that Savage complained about the pace of negotiations and the Respondent's limited availability, the Respondent's witnesses denied that these issues were discussed. Carl Jones' testimony at Tr. 416-18 supports the Respondent's account. Moreover, there is no documentary evidence corroborating the union witnesses' assertions that scheduling was discussed. I decline to credit their accounts that it was.

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45

Change in the local union leadership

On April 22, 2015, James Savage and Nancy Minor were defeated by Ryan O’Callaghan and John McGrath for the positions of President and Vice-President of Local 10-1. Like their
 5 predecessors, O’Callaghan and McGrath are employees of Philadelphia Energy Solutions (PES).

Carl Jones informed the Respondent of this change via email on April 27. In this email he stated:

10 We will continue to meet as we have monthly to negotiate a first labor agreement for Railserve Eddystone. I will be handling the negotiations up front from here on in. I believe if we are sincere about negotiating a new contract we will be able to get one. We need to move forward and quit getting bogged down on issues that should be relatively
 15 easy to come to an agreement on. As you know Jim [Savage] gave you a complete set of contract proposals at the beginning of the negotiations and to date the company has not responded to many of the proposals. I want to move forward and start getting to the economics.

(Jt. Exh. 24.)

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May 20 and 21 meetings (meetings #9 and #10)

On May 21, the parties met from about 1 p.m. until about 3:30 or 4 p.m. The Respondents’ representatives flew to Philadelphia from Chicago (Schaumann), Atlanta (Pullen),
 25 or another location (Benjamin) on the morning of May 20.¹ O’Callaghan and McGrath represented the Union along with International Representative Jones and Railserve employees Grasso and Zubrzycki.

Carl Jones asked the Respondent to negotiate for 2 ½ days in the future. Gayle
 30 Schaumann responded that she would look into this. (Tr. 29; Jt. Exh. 25, p. 2, G.C. Exh. 8, p. 8.) Jones suggested that the next negotiation sessions take place June 22 and 23. The Respondent reserved a conference room beginning at 1:00 p.m. on June 22 and from 8:00 – 3:00 on June 23.

On June 15, Jones informed Pullen that the Union could not meet on June 22 and 23 due
 35 to a scheduling conflict. This apparently referred to emergency negotiations with PES. Jones wrote to Pullen, “If we could schedule three days for July that would be great.” (Jt. Exh. 27.) Pullen responded on June 30, that the company was prepared to meet on July 20 starting at 1:00 p.m. and on July 21. The company proposed moving the meetings back one day. Jones responded that the Union could meet on July 21 and 22.

40

¹ This was standard operating procedure for the Respondent’s representatives once the parties started meeting on 2 days. Many of the second day sessions ended around 4:00 p.m. so that the company representatives could leave Philadelphia that afternoon.

July 21 and 22 meetings (meetings #11 and #12)

The parties met for about 4 hours on July 21 and 6 hours on July 22. The Respondent was represented on July 21 by Gayle Schaumann, Timothy Pullen, and the local site managers, Matt Palmer and Larry Williams. Pullen did not attend the July 22 session. At these sessions, the parties signed a number of tentative agreements including one concerning health insurance.

At the end of the July 22 session, O'Callaghan asked Gayle Schaumann to ask "the higher ups" for more negotiating days in August. Schaumann said she would try. O'Callaghan said that if they did not get more dates, the Union would file an unfair labor practice charge alleging that the Respondent was not bargaining in good faith and would also bring an inflatable rat to Respondent's gate. (Tr. 27-29, 373, 454-55, 510-11; G.C. Exh. 6, pp. 2-3.)²

August 18 and 19 meetings (meetings #13 and #14)

Due to his approaching retirement, USWA International Representative Carl Jones was not involved in the parties' collective bargaining negotiations after the July meetings. Nobody from the International played any significant role in the negotiations afterwards. Sometime in late July, Ryan O'Callaghan called Gayle Schumann asking when she intended to meet for further negotiations. Tim Pullen responded to O'Callaghan on August 4:

Railsolve proposes August 18 and 19 as dates for the next meeting. As we have done we propose meeting the afternoon of the 18th and bargaining however long is needed on that day and then meet for the day on the 19th. This is the process we have followed for the last 6 months and we believe it has led to fruitful discussion between the parties. More importantly, we have made significant progress on the contract. At our last session both sides signed off on a number of contract provisions and we put out proposals concerning vacation and holidays. If you wish to explain why you think longer sessions are needed I would be glad to listen. I realize we missed a session in June but that was at the union's request and I think the progress we made at the last session made up for that missed session...

(Jt. Exh. 38.)

On August 7, O'Callaghan responded that August 18 and 19 were good for the Union. (Jt. Exh. 39.)

² It is uncontroverted that O'Callaghan asked for more meeting dates and threatened to bring an inflatable rat to the Respondent's facility if this request was not met. (Tr. 454-55.) However, Larry Williams testified that the threat regarding the filing of the ULP charge only pertained to the Union's request for a copy of Railsolve's contract with Eddystone and a list of all Railsolve's facilities in the United States. He denied that O'Callaghan made any reference to filing a charge about the progress of bargaining. I discredit Williams' testimony on this point because it is internally inconsistent and belied by Schaumann's notes. (Tr. 454-57; G.C. Exh. 6, pp. 2-3.) Schaumann did not testify in this proceeding. Although she apparently is retired, Respondent did not establish that she was unavailable to testify. In any event I credit the testimony of O'Callaghan and Jones that the Union threatened to file an ULP charge on July 22 if the Respondent did not agree to meet more often.

The parties met for approximately 4 hours on August 18, and 7 hours on August 19. At the end of the meeting, O'Callaghan said that if the Respondent would like to meet more often, the union representatives would make themselves available. (Tr. 442.)

5 August 28 marked the one-year anniversary of the Union's certification. After that date, its presumptive representation of the majority of unit employees was subject to rebuttal.

10 On August 29, Pullen wrote to O'Callaghan proposing the afternoon of September 28 and 29 until 3:30 p.m. as the next meeting dates. O'Callaghan responded on September 2:

As I have stated before we would like to have more days to negotiate. But if September 28 and 29 is the best you can do we will be there.

(Jt. Exh. 45.)

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September 28 and 29 meetings (meetings #15 and #16)

20 On September 10, 2015, Railserve President Timothy Benjamin sent a letter to Railserve employees about the status of negotiations. (Tr. 291-92.) The letter noted that there had been no wage increases since the August 2014 election because the parties had agreed to a wage freeze. Benjamin explained that "every word of every sentence of every paragraph in the contract has to be negotiated." He opined that the Union's wage proposal was unrealistic. Objectively, the letter gives no indication that collective bargaining negotiations were likely to be concluded anytime soon. (Jt. Exh. 46.)

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The parties met for about 7 hours on September 28 (the only meeting that went into the evening) and 7 hours on September 29. Five tentative agreements were signed.

30

The Union files the initial unfair labor practice charge in this case on October 6, 2015

On October 6, the Union filed unfair labor practice charge 04-CA-161485. It alleged that the Respondent was violating Sections 8(a)(1), (a)(5) and 8(d) as follows:

35

Not bargaining in good faith and refusing to provide information necessary for the Union to appraise the company's position on mandatory subjects of bargaining;

The company only agrees to meet one to one and a half days per month as (sic) has done so for approximately one year. (emphasis added)

40

...The Union has on numerous occasions, asked for raises, sick time, changes to the drug and alcohol policy, the Family Medical Leave Act and other mandatory subjects. (see attached)

45

The company has consistently refused to discuss such issues taking the position that their contract with Eddystone precludes changes in those and other areas. The Union has requested a copy of the contract with Railserve and Eddystone to assess the company's position on numerous issues. Railserve refuses to provide [a] copy of the contract.

Additionally the company has violated the Act by dealing directly with employees. Management tells employees that the Union will be out in October and management has asked employees to sign a decertification petition.³

5 On October 12, the Respondent proposed October 27 and 28 for the next negotiating sessions.

Meetings of October 27 and 28 (meetings #17 and #18)

10 The meeting on October 27 started at about 1:30 and ended at about 6:50 p.m., despite the Union's request that negotiations continue after dinner. At the start of the meeting, Tim Pullen announced that Larry Williams was replacing Matt Palmer as the Respondent's site leader at Eddystone. This is significant in that employees complained about Palmer to the Union. Also, at the bargaining table the Union complained to the Respondent about the manner in which
15 Palmer treated employees.

The October 28 session began at about 8:30 a.m. and ended at about 3 p.m.

Proposed November meeting dates

20 In response to Ryan O'Callaghan's inquiry, on November 6, Tim Pullen proposed that the next bargaining sessions take place either on November 17 (starting at 1:30) and 18 (ending at 3:30). Alternatively, he proposed November 30 and December 1. Three days later, O'Callaghan accepted the latter dates. He reiterated that the Union would like to meet for more
25 than a day and a half. (Jt. Exh. 55.)

Events leading to the Respondent's withdrawal of recognition on November 20, 2015

30 Sometime in early November 2015, the Respondent posted an opening for a supervisory crew leader position. On November 7, Mike Grasso, Sr., resigned his position with the Union. Larry Williams replaced Matt Palmer as the site leader at Railserve's Eddystone facility on November 9.

35 Respondent interviewed 16 unit employees, including Grasso, for the crew leader position on November 16 and 17. Between November 17 and 20, the Respondent received a decertification petition signed by a majority (19 out of 31) of the Railserve unit employees. On November 20, Respondent withdrew recognition of the Union and cancelled the November 30/December 1 bargaining sessions.

40 On November 22, Respondent selected Michael Grasso, Sr., for the supervisory crew leader position. In April, it had been a confrontation between Grasso and Palmer that led Respondent to consider terminating Grasso.

³ The Region issued a complaint only on the allegation of insufficiently frequent meetings and the subsequent withdrawal of recognition.

III. DISCUSSION AND ANALYSIS

There are 2 basic issues in this case: 1) did the Respondent violate Section 8(a)(5) and (1) by refusing the Union's requests to meet more frequently and for longer sessions; and 2) if Respondent did violate Section 8(a)(5), is there a causal relationship between the Union's loss of majority support in November 2015 and the unfair labor practice.

Respondent violated Section 8(a)(5) and (1) by refusing and failing to meet at reasonable times to bargain with the Union

Section 8(d) of the Act requires that an employer and the representative of employees meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. The Board considers the totality of the circumstances when determining whether a party has satisfied its duty to meet at reasonable times. The number of bargaining sessions held is not necessarily determinative. *Calex Corp.*, 322 NLRB 977, 978 (1997), *enfd.* 144 F. 3d 904 (6th Cir. 1998); *Garden Ridge Management*, 347 NLRB 131, 131-132 (2006).

As in *Garden Management*, *supra*, I find that the Respondent in this case violated the Act by failing to meet with the Union at reasonable times. I base this conclusion on the Respondent's refusal to increase the frequency and length of the bargaining sessions despite repeated requests by the Union that it do so in June (Carl Jones' request for 3 sessions in July); July (O'Callaghan's exchange with Gayle Schaumann on July 22), August (O'Callaghan's statement at the end of the August 19 meeting); September (O'Callaghan's September 2 email); October (the Union's October 6 unfair labor practice charge), and November (O'Callaghan's response to Tim Pullen on November 9).

I reject the Respondent's attempt to put the burden back on the Union as to why additional and longer meetings were necessary. Carl Jones' email of April 27 satisfactorily explained the Union's reasons for wanting more progress in the bargaining than was occurring. The Union was not required to repeat this explanation. Moreover, the Respondent's September 10, 2015, letter to Railsolve employees is a tacit acknowledgement that bargaining was proceeding at a snail's pace. Progress had been made during the negotiations in that there were 18 tentative agreements signed. However, there were many unresolved issues, including virtually all the economic issues that would have been more likely resolved, had the Respondent agreed to meet more frequently.

The bargaining sessions in this case were completely dependent on the Respondent's coordination of the schedules of the Respondent's negotiators, Schaumann, Benjamin, and Pullen, none of whom were based in Philadelphia. Although the Respondent is generally entitled to choose whoever it wants to bargain a contract, the Respondent's insistence of limiting the number and length of bargaining sessions to satisfy the schedules of its out-of-town negotiators is not a valid excuse for its refusal to meet more often and for longer sessions.

Respondent did not lawfully withdraw recognition from the Union

An employer may not lawfully withdraw recognition from a union where it has committed unfair labor practices that are likely to affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself. *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996). In determining whether a causal relationship exists between unremedied unfair labor practices and the loss of union support, the Board considers the following factors: 1) the length of time between the unfair labor practice and the withdrawal of recognition; 2) the nature of the violations, including the possibility of a detrimental or lasting effect on employees; 3) the tendency of the violation to cause employee disaffection; and 4) the effect of the unlawful conduct on employees' morale, organizational activities and membership in the union. *Master Slack Corp.*, 271 NLRB 78, 84 (1984).

The record in this case establishes such a causal relationship. First, the unfair labor practice was ongoing at the time the Respondent withdrew recognition; it was continuing to ignore the Union's request for more frequent and longer bargaining sessions.⁴ Second, the violation was likely to have a detrimental effect on employees; i.e., the longer bargaining dragged on, the longer no unit employee would get a wage increase. Third, the possibility that there would be no wage increases for the foreseeable future was likely to cause employee disaffection with the Union. As to the fourth factor, the record indicates that employee interest in the Union decreased as bargaining dragged on. The attendance of unit employees at union meetings decreased between July and October. (G.C. Exhs. 4 and 5; Tr. 61-64.) Also, the Respondent's posting of a supervisory non-unit position in November drew an unprecedented response. (Tr. 468-69; R. Exh. 1.) This is also an indication that the dragged-out negotiations and lack of a prospect of a wage increase significantly lowered unit employees' interest in representation by the Charging Party.

Finally, the fact that the Respondent's unfair labor practice may not have been the only reason for the decertification petition is irrelevant. The Board will not analyze quantitatively the effect of the unlawful cause once it has been found. *Bronco Wine Company*, 256 NLRB 53, 54 fn. 8 (1981); *Wright Line*, 251 NLRB 1083, 1089 fn. 14 (1980).

CONCLUSIONS OF LAW

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

2. UNITED STEEL WORKERS OF AMERICA LOCAL 10-1 is a labor organization within the meaning of Section 2(5) of the Act.

⁴ This distinguishes the instant case from *Garden Ridge Management*, 347 NLRB 131, 134 (2006) which is relied upon by the Respondent. In that case, the employer's last refusal to meet more frequently occurred in December 2002. The employer did not receive a decertification petition until 5 months later in late April 2003. Due to this, the Board declined to find a causal relationship between the employer's unfair labor practice and the withdrawal of recognition. In this case, by contrast, the Union asked for more frequent meetings in each of the six months preceding the decertification petition. These requests were ignored or refused by RAILSERVE.

3. By failing and refusing to meet at reasonable times to bargain with the Union with respect to wages, hours, and other terms and conditions of employment, the Respondent violated Section 8(a)(5) and (1) of the Act.

5 4. By unlawfully withdrawing recognition from the Union on November 20, 2015, the Respondent violated Section 8(a)(5) and(1) of the Act.

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

10 REMEDY

15 Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

20 The Respondent shall recognize and bargain with the Union for a period of at least five months, which corresponds to the period in which it failed to meet at reasonable times with the Union prior to its withdrawal of recognition (July to November 2015). During this period, the Respondent shall meet with the Union at least 3 times each month for bargaining sessions of at least 8 hours (corresponding to Carl Jones' June request for meetings in July 2015).

25 On the Union's request, the Respondent must rescind any unilateral change made regarding any mandatory subject of bargaining since November 20, 2015.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

30 ORDER

35 The Respondent, Railserve, Inc., Eddystone, Pennsylvania, its officers, agents, successors, and assigns, shall

35 1. Cease and desist from

(a) Failing and refusing to meet at reasonable times with the Union to bargain a collective bargaining agreement.

40 (b) Withdrawing recognition of the Union for any reason causally related to an unremedied unfair labor practice.

(c) 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.

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

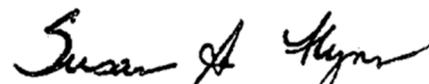
(a) On request, bargain in good faith with the Union at reasonable times but not less than 3 times a month for 5 months, for not less than a total of 24 hours a month from the date of the Board’s Order in this case.

(b) On request of the Union, rescind any unilateral change made in unit employees’ wages, hours, or other terms and conditions of employment made since November 20, 2015.

(c) Within 14 days after service by the Region, post at its Eddystone , Pennsylvania facility copies of the attached notice marked “Appendix.”⁶ Copies of the notice, on forms provided by the Regional Director for Region 4, 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, the 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. In the event that, during the pendency of these proceedings, 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 June 15, 2015.

(d) 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.

Dated, Washington, D.C., December 30, 2016



Susan A. Flynn
Administrative Law Judge

⁶ 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.”

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 or refuse to meet at reasonable times with the Union, United Steel Workers of America Local 10-1, to bargain a collective bargaining agreement.

WE WILL NOT withdraw recognition from the Union for any reason causally related to an unremedied unfair labor practice.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL meet at reasonable times with the Union for a period of 5 months, not less than 3 times a month and not less than 24 hours per month, to negotiate a collective bargaining agreement.

WE WILL upon request of the Union rescind any unilateral changes in wages, hours or other terms and conditions of your employment that we have implemented since November 20, 2015.

RAILSERVE, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/04-CA-161485 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.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.