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**Jacmar Food Service Distribution and Food, Industrial & Beverage Warehouse Drivers and Clerical Employees, Teamsters Local 630, International Brotherhood of Teamsters.** Case 21–CA–193952

June 6, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE  
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 February 28, 2017, by Food, Industrial & Beverage Warehouse Drivers and Clerical Employees, Teamsters Local 630, International Brotherhood of Teamsters (the Union), the General Counsel issued the complaint on March 13, 2017, alleging that Jacmar Food Service Distribution (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain with it following the Union’s certification in Case 21–RC–175833. (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(d). *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 April 5, 2017, the General Counsel filed a Motion for Summary Judgment. On April 7, 2017, 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.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union’s certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the election process was not fair and valid because it involved Union coercion of employees, lacked the proper laboratory conditions for employees to exercise their free choice, and was conducted in a manner that was not neutral and did not safeguard the integrity of the ballots and the election process.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to ad-

duce 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.<sup>1</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation, with its principal offices and food warehouse facility located at 300 Baldwin Park Boulevard, City of Industry, California, the only facility involved herein, has been engaged in the business of food warehousing and distribution.<sup>2</sup>

In conducting its operations during the 12-month period ending May 16, 2016, a representative period, the Respondent sold and shipped from its City of Industry, California facility goods valued in excess of \$50,000 directly to points outside the State of California.

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.

<sup>1</sup> The Respondent’s request that the complaint be dismissed is therefore denied.

Chairman Miscimarra would have granted the Employer’s Request for Review in the underlying representation proceeding with respect to the Acting Regional Director’s decision to overrule, without a hearing, Objection 1, involving the solicitation of authorization cards, and Objection 4, alleging Board agent misconduct during the conduct of the election. While he remains of that view, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

<sup>2</sup> The Respondent’s answer denies in part the complaint allegations concerning the nature of its business operations and the appropriateness of the unit. It additionally denies the Union’s status as a labor organization. However, in the underlying representation proceeding, the Respondent stipulated that “[t]he Employer, Jacmar Food Service Distribution, a California corporation, with its principal offices and food warehouse facility located at 300 Baldwin Park Boulevard, City of Industry, California, the only facility involved herein, is engaged in the business of food warehousing and distribution.” Further, it stipulated that the unit is appropriate and that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. Accordingly, we find that the Respondent’s denials do not raise any issue warranting a hearing. *All American Service & Supplies, Inc.*, 340 NLRB 239, 239 fn. 2 (2003).

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the representation election held on May 26, 2016, the Union was certified on September 26, 2016,<sup>3</sup> as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time delivery drivers employed by the Respondent at its facility currently located at 300 Baldwin Park Boulevard, City of Industry, CA 91746.

Excluded: All other employees, warehouse employees; employees employed by an employment agency, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined by the Act.

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*

By letter and email dated February 23, 2017, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since that date, the Respondent has failed and refused to bargain with the Union.

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 February 23, 2017, 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 certifi-

<sup>3</sup> On February 22, 2017, the Board (Chairman Miscimarra, dissenting in part) denied the Respondent's Request for Review. 365 NLRB No. 35 (2017).

cation 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, Jacmar Food Service Distribution, City of Industry, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Food, Industrial & Beverage Warehouse Drivers and Clerical Employees, Teamsters Local 630, 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 delivery drivers employed by the Respondent at its facility currently located at 300 Baldwin Park Boulevard, City of Industry, CA 91746.

Excluded: All other employees, warehouse employees; employees employed by an employment agency, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in City of Industry, California, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous

<sup>4</sup> 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."

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 February 23, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 21 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. June 6, 2017

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Philip A. Miscimarra, Chairman

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Mark Gaston Pearce, Member

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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 Food, Industrial & Beverage Warehouse Drivers and Clerical Employees, Teamsters Local 630, International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of our 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 appropriate bargaining unit:

Included: All full-time and regular part-time delivery drivers employed by us at our facility currently located at 300 Baldwin Park Boulevard, City of Industry, CA 91746.

Excluded: All other employees, warehouse employees; employees employed by an employment agency, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined by the Act.

JACMAR FOOD SERVICE DISTRIBUTION

The Board's decision can be found at [www.nlr.gov/case/21-CA-193952](http://www.nlr.gov/case/21-CA-193952) 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.

