

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

ABF FREIGHT SYSTEM, INC.

and

CASES 09–CA–208379  
09–CA–210267

GENERAL TRUCK DRIVERS, WAREHOUSEMEN,  
HELPERS, SALES AND SERVICE, AND CASINO  
EMPLOYEES AND INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS (IBT), LOCAL 957

*Zuzana Murarova, Esq.*, for the General Counsel.

*Mark Theodore, Esq. and Sophia Alonso, Esq.*

(*Proskauer Rose, LLP*), New York, New York,  
for the Respondent.

*John R. Doll, Esq. (Doll, Jansen & Fort)*, Dayton, Ohio,  
for the Charging Party.

BENCH DECISION AND CERTIFICATION

Statement of the Case

**KELTNER W. LOCKE, Administrative Law Judge:** I heard this case on June 13, 2018, in Cincinnati, Ohio. After the parties rested, I heard oral argument, and on July 27, 2018, issued a bench decision pursuant to Section 102.35(a)(10) of the Board’s Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as “Appendix A”, the portion of the transcript containing this decision.<sup>1</sup> The Remedy, Order, and notice provisions are set forth below.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to

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<sup>1</sup> The bench decision appears in uncorrected form at pp. 369 through 386 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

effectuate the policies of the Act, including posting the notice to employees attached hereto as Appendix B. The Respondent must also furnish to the Union, without further delay, the information which the Union requested on about September 23, 2017.

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**CONCLUSIONS OF LAW**

1. The Respondent, ABF Freight System, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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2. The International Brotherhood of Teamsters and its constituent local union, General Truck Drivers, Warehousemen, Helpers, Sales and Service, and Casino Employees, Local 957 (the Charging Party), are labor organizations within the meaning of Section 2(5) of the Act.

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3. At all times since April 1, 2008, the International Brotherhood of Teamsters has been the exclusive collective bargaining representative, within the meaning of Section 9(a) of the Act, of a unit of the Respondent’s employees which is an appropriate unit within the meaning of Section 9(b) of the Act, and has discharged its duties as exclusive bargaining representative through its constituent local union, General Truck Drivers, Warehousemen, Helpers, Sales and Service, and Casino Employees, Local 957.

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4. The Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish information which the Charging Party requested, and which was relevant to the Charging Party’s performance of its duties as exclusive bargaining representative of an appropriate unit of the Respondent’s employees, and which was necessary for that purpose.

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5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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6. The Respondent did not engage in any unfair labor practices alleged in the consolidated complaint not specifically found.

On the findings of fact and conclusions of law, and on the entire record in this case, I issue the following recommended<sup>2</sup>

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**ORDER**

The Respondent, ABF Freight System, Inc., [city, state, of Respondent]its officers, agents, successors, and assigns, shall

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1. Cease and desist from

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<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, these 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.

(a) Failing and refusing to furnish the Charging Party with information it has requested which is relevant to the performance of its duties as the exclusive bargaining representative of an appropriate unit of the Respondent's employees, and which is necessary for that purpose.

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(b) 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.

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(a) Within 14 days after service by the Region, post at its facilities in, copies of the attached notice marked "Appendix B."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB 11 (2010). 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 September 28, 2017. *Excel Container, Inc.*, 325 NLRB 17 (1997).

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(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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Dated Washington, D.C., August 20, 2018



Keltner W. Locke  
Administrative Law Judge

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<sup>3</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."

## **APPENDIX A Bench Decision**

This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations. I find that the Respondent did not make an unlawful unilateral change when it installed video cameras in employees' break rooms, but that it did violate section 8(a)(5) and (1) by failing and refusing to furnish the Union with requested relevant information necessary for the Union to perform its duties as exclusive bargaining representative.

### **Procedural History**

This case began on October 23, 2016, when the Charging Party, General Truck Drivers, Warehousemen, Helpers, Sales and Service, and Casino Employees, Local 957, a local of the International Brotherhood of Teamsters, filed an unfair labor practice charge alleging that the Respondent, ABF Freight Systems, Inc., had made unlawful unilateral changes in the terms and conditions of employment of bargaining unit employees by installing cameras in the break room/locker room of the Respondent's facility in Dayton, Ohio. The Board's Cincinnati office docketed this charge as Case 09-CA-208379. For brevity, I will refer to the local Union as the Local Union or Local 957, and will refer to the International Brotherhood of Teamsters as the International Union. The Local Union and International Union together will be referred to simply as the Union.

On November 21, 2017, the Union filed an additional unfair labor practice charge against the Respondent. The Board docketed this charge as Case 09-CA-210267. It alleged that the Respondent had failed and refused to furnish the Union with information the Union had requested which was relevant to the performance of the Union's duties as exclusive bargaining representative.

On February 27, 2018, the Regional Director for Region 9 of the Board, acting on behalf of the Board's General Counsel, issued an Order consolidating cases, consolidated complaint and notice of hearing. The Respondent filed a timely answer.

On June 13, 2018, a hearing opened before me in Cincinnati, Ohio. The parties finished presenting evidence on that day and I adjourned the hearing until July 25, 2018, when it resumed by telephone conference call so that counsel could present oral argument. I then adjourned the hearing until today, July 27, 2018, when it resumed again by telephone for issuance of this bench decision.

### **Admitted Allegations**

In its answer, the Respondent admitted many of the allegations raised in the complaint. Based on those admissions, I find that the General Counsel has proven the allegations set forth in Complaint paragraphs 1(a), (b), 2(a), (b), (c), 3, 4, 5, 6(a), (b), 7(a) and (b).

More specifically, I find that the two unfair labor practice charges were filed and served

as alleged in the complaint. Additionally, I conclude that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it is appropriate for the Board to exercise its jurisdiction in this matter.

Further, I find that the following individuals are 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: Terminal Manager Matthew Godfrey; Operations Manager Rick West; Regional Manager of Employee Relations Steve Dusko, and Assistant Terminal Manager Rusty Staab.

Based on the admissions in the Respondent's answer, I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act and that since about April 1, 2008, the Respondent has recognized the Union as the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of Respondent's employees in a bargaining unit which is an appropriate unit within the meaning of Section 9(b) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 1, 2013 through March 31, 2018.

The Respondent has admitted, and I find, that this appropriate bargaining unit consists of "All employees in the classifications of work covered by the ABF National Master Freight Agreement (NMFA), as referred to in article 3, section 1 of the NMFA, effective April 1, 2013 through March 31, 2018."

The complaint alleges, the Respondent has admitted, and I find that between about September 19 and 23, 2017, the Respondent installed video surveillance cameras in the break room/locker room areas of the A, B and C shacks at Respondent's facility.

At hearing, the parties stipulated that on September 19, 2017, the Respondent installed a surveillance camera in the Shack B break room, and that on September 20, 2017, it installed surveillance cameras in the Shack A and Shack C break rooms at its Dayton facility. I so find.

The Respondent also has admitted, and I find, that the installation of these video surveillance cameras relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

In its answer, the Respondent also has admitted, and I find, that since about September 23, 2017, the Union has requested, in writing, that Respondent furnish the Union with the following information:

A detailed description of when the Company determined to install the cameras and the decision making process in this regard;

Copies of all directives, instructions, guidelines, or rules pertaining to the use of the cameras by security and/or management personnel;

A description of the type of cameras and the fields of view covered by the cameras; and

A description of specific events/activities necessitating the installation of the cameras.

The complaint also alleges, the Respondent has admitted, and I find, that since about September 28, 2017, Respondent, by Steve Dusko, has failed and refused to furnish the Union with this requested information.

### **Contested Issues**

The disputed issues are matters of law rather than of fact. The Respondent has admitted that it installed surveillance cameras in three break rooms at its Dayton facility. It has also admitted that the installation of these cameras was a mandatory subject of bargaining. However, it denies that it thereby violated the Act.

The Respondent likewise has admitted that the Union requested certain information and that it has not provided this information, but denies it thereby violated the Act. In deciding whether the Respondent acted unlawfully, I first must determine whether the requested information was relevant and necessary for the Union to perform its duties as exclusive bargaining representative.

### **The Alleged Unilateral Change**

When a union is the exclusive bargaining representative of an appropriate unit of employees, their employer has a duty to notify the union and give it a reasonable opportunity to negotiate before making a material, substantial, and significant change in working conditions. The Board has held that installing and using surveillance cameras in the workplace is such a change and, accordingly, an employer violates the Act when it installs such cameras in the workplace without first giving the union the required notice and opportunity to bargain. *Anheuser-Busch, Inc.*, 342 NLRB 560 (2004).

However, under certain limited circumstances, an employer does not violate the Act if it makes a material, substantial and significant change in working conditions even though it did not afford the union advance notice and an opportunity to bargain.

For instance, a union may waive its right to advance notice and bargaining by agreeing to sufficiently specific language in a collective-bargaining agreement. However, the Board will not lightly infer waivers of statutory rights. *Gannett Co.*, , 333 NLRB 355 (2001).

An employer also lawfully may make a unilateral change if the employer is following an established past practice and does not alter the status quo. *The Post Tribune Co.*, 337 NLRB 1279 (2002).

In the present case, on September 19 and 20, 2017, the Respondent installed video cameras in three break rooms at its Dayton facility. These break rooms were located in buildings designated Shack A, Shack B, and Shack C. The break rooms in Shack A and Shack B have lockers in which employees can store lunches and various types of clothing, such as boots and

cold weather gear. The Union maintains that the break rooms in Shacks A and B also serve as locker rooms where employees change clothes, sometimes taking off everything except underwear. Therefore, it objects to the presence of cameras in those areas. It does not object to the camera in the break room in Shack C because there are no lockers there and employees do not change clothes there.

The Respondent installed the security cameras in September 2017, while the parties' 2013–2018 collective-bargaining agreement was in effect. This agreement doesn't have a management- rights clause, but it does include a provision relating to the use of video cameras. Article 26 of that agreement includes the following provisions:

#### Section 2. Use of Video Cameras for Discipline and Discharge

The Employer shall not install or use video cameras in areas of the Employer's premises that violate the employee's right to privacy such as in bathrooms or places where employees change clothing or provide drug or alcohol testing specimens.

#### Section 3. Audio, Video and Computer. Tracking Devices

The Employer may use video, still photos derived from video, electronic tracking devices and/or audio evidence to discipline an employee without corroboration by observers if the employee engages in conduct such as dishonesty, theft of time or property, vandalism, or physical violence for which an employee could be discharged without a warning letter. If the information on the video, still photos, electronic tracking devices and/or audio recording is to be utilized for any purpose in support of a disciplinary or discharge action, the Employer must provide the Local Union, prior to the hearing, an opportunity to review the evidence used by the Employer.

This contractual language does not specifically authorize the Respondent to install video cameras, but only states where the Respondent may not do so. It might seem reasonable to infer from the prohibition of cameras in this limited category of locations that the Union has agreed that the Respondent may install them at any other locations on its property. However, the Board will not lightly infer waivers of statutory rights. In *Rockwell International Corp.*, 260 NLRB 1346, 1347 (1982), the Board stated:

Where, as here, an employer relies on a purported waiver to establish its freedom unilaterally to change terms and conditions of employment not contained in the contract, the matter at issue must have been fully discussed and consciously explored during negotiations and the union must have consciously yielded or clearly and unmistakably waived its interest in the matter.

The present record does not establish that the parties fully discussed and consciously explored the issue of placing cameras in break rooms. Therefore, I conclude that a defense based

solely on the theory of waiver would fall short.

However, the Respondent does have a past practice of installing video cameras on its property in any places except in bathrooms, or where employees change clothes or give specimens for drug testing. For brevity, I will refer to these locations as “personal privacy spaces.” The record leaves no doubt that the Respondent has installed cameras at other places where employees are not expected to be in a state of dishabille, and the Union has not objected. The Local Union’s secretary-treasurer and business agent, Dan Webb, testified as follows:

Q. Okay. And so we're all clear here, I just want to make sure I understand it. The Union is not objecting to the installation of cameras in other areas of the facility, correct?

A. No, sir.

Q. Okay. The company wants to focus a camera on where the trucks back into the dock, no problem with that?

A. They have them currently. It's not a problem.

Q. No problem in the exterior areas, right?

A. Other -- no -

Q. No problem in any hallways that might exist in the -

A. Just so long as they're not pointed at the locker rooms, it's not a problem.

Q. And they can install those cameras without talking to you at all, correct? That's your—

A. To your knowledge, yes.

Q. And that would be pursuant to the language, correct?

A. Yes, sir.

Based on this testimony and the record as a whole, I find that the Respondent did have an established past practice, not contested by the Union, of installing cameras anywhere on its premises except the personal privacy spaces. Therefore, whether the Respondent acted lawfully turns on whether the break rooms are personal privacy spaces—where the Respondent specifically has promised not to install cameras. If they are not personal privacy spaces, the Respondent did not deviate from its past practice of installing cameras at its discretion.

The General Counsel’s witnesses offered testimony that people do change clothes in the break rooms. However, I am skeptical of that evidence. It is possible that employees sometimes did undress in the break rooms when no one else was around. They did not like to use the restrooms because of the condition of those facilities. The Union had complained to management about the sanitary condition of the restrooms and leaking sinks.

However, employees cannot simply convert an area intended for public use into a personal privacy space without the Respondent’s knowledge or approval. The law of adverse

possession does not apply, and in any event, I find that instances in which people changed clothes in the break room were infrequent at most, and surreptitious.

Additionally, the break rooms included not merely lockers but also tables where employees ate. People of both sexes often used the break rooms. Windows also allowed people in adjoining offices to view at least some parts of the break rooms.

Moreover, unlike a locker room used by students or athletes to change in and out of uniform, the break rooms had only lockers but no benches on which to sit. Anyone stripping down to underwear would find it quite awkward.

Rather, I conclude that the Respondent intended the break rooms to be used by employees to eat lunch, and to store their possessions in lockers while they worked. Employees certainly would don or doff outerwear, such as cold weather gear and boots, but continued to wear their street clothes. The break rooms did not constitute personal privacy spaces and Respondent's installation of cameras there was consistent with its past practice.

### **The Information Request**

On September 23, 2017, the Union sent the Respondent the information request alleged in the complaint and set forth earlier in this decision. The Respondent's answer admits that it failed and refused to furnish the Union with the requested information. However, it denies the information's relevance.

The Board has held that the installation of security cameras in the workplace constitutes a material, significant, and substantial change in terms and conditions of employment. *Anheuser-Busch, Inc.*, above. It follows that information related to an employer's decision to install such cameras, and to the operation of those cameras, is relevant to, and necessary for the Union to discharge its duties as exclusive bargaining representative. I so find.

Regional Manager Steve Dusko denied the information request in a letter to Business Agent Webb dated September 28, 2017. It stated, in part, "The company is unable to comply with this request as we believe the information requested is not proper under Article 7, Section 2 of the ABFNMFA."

That portion of the collective-bargaining agreement states that requested information must relate to the specific issues and general time periods involved in the grievance. However, I conclude that the information requested by the Union satisfies this requirement.

Moreover, the duty to furnish information is a statutory duty, not a creation of the collective-bargaining agreement. A union certainly can waive the right to receive such information by an appropriate provision in the contract. However, the Board's rules concerning the waiver of a statutory right apply. The record does not establish that the Union made a clear and unequivocal waiver in this case.

In sum, I conclude that the Respondent did not violate the Act by the unilateral change

alleged in complaint paragraph 7, but that it did violate Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested relevant information.

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, Remedy, Order, and Notice. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

During this proceeding, counsel demonstrated the highest standards of professionalism and civility, which are truly appreciated. The hearing is closed.

**APPENDIX B**

**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 the National Labor Relations Act and has ordered us to post and abide by this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join or assist a union
- Choose representatives to bargain on your behalf with an employer
- Act together with other employees for your mutual aid or protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to furnish the Union, the International Brotherhood of Teamsters and its constituent local union, General Truck Drivers, Warehousemen, Helpers, Sales and Service, and Casino Employees, Local 957, International Brotherhood of Teamsters, with information it requests which is relevant to and necessary for the performance of its duties as the exclusive bargaining representative of a unit of our employees.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish the Union with the information it requested pertaining to our installation of video surveillance cameras in certain break rooms in our facilities.

ABF FREIGHT SYSTEM, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_

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](http://www.nlr.gov).

John Weld Peck Federal Building, 550 Main Street, Room 3003, Cincinnati, OH 45202-3271  
(513) 684-3686, Hours 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/09-CA-208379](http://www.nlr.gov/case/09-CA-208379) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., 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, (513) 684-3733.