J.B. Hunt Transport, Inc.                        Employer  

and

International Brotherhood of Teamsters Local No. 142 and Local Union No. 330, as joint representative  

Petitioner

DECISION AND ORDER

On November 30, 2021, International Brotherhood of Teamsters Local No. 142 (“Local 142”) filed its original petition in this case with the National Labor Relations Board (“Board”) under Section 9(c) of the National Labor Relations Act (“Act”). On December 3, 2021, Local 142 amended the petition to include International Brotherhood of Teamsters Local No. 330 (“Local 330”), as joint representative. By this petition, Local 142 and Local 330 (collectively, “Petitioner”) seek to represent drivers employed by J.B. Hunt Transport, Inc. (“Employer”) working out of Joseph T. Ryerson & Son Inc. (“Ryerson” or “Ryerson Steel”) facilities currently located in Burns Harbor, Indiana, and Elgin and Dekalb, Illinois.

A hearing officer of the Board held a hearing in this matter on December 21, 2021. At the hearing, the parties stipulated to the following appropriate unit of employees (“Unit”):

**Included:** All full-time and regular part-time drivers employed by the Employer who report to or work out of Ryerson Steel’s 310 Tech Drive, Burns Harbor, IN facility, 2850 Technology Drive, Elgin, IL facility, or 1085 North Peace Road, Dekalb, IL facility.

**Excluded:** All managers, office clerical employees, professional employees, employees supplied by a temporary placement agency, guards and supervisors as defined by the Act, and all other employees.

There are approximately 19 employees in the stipulated bargaining unit.

The Employer contends its operations at the Ryerson facilities in Burns Harbor, Indiana, and Dekalb and Elgin, Illinois, will definitely and imminently cease within 120 days from December 8, 2021, and there is no “useful purpose” in conducting an election. Petitioner maintains the Employer’s cessation of operations is not definite and, should the employees vote in favor of representation, there is a “useful purpose” in bargaining over the effects of the cessation and continued representation with a successor company.
As explained below, based on the record, having reviewed the parties’ briefs and carefully considered the arguments, and relevant Board law, I find cessation of the Employer’s business at Burns Harbor, Indiana, and Dekalb and Elgin, Illinois, to be definite and imminent. Accordingly, I am dismissing the petition.

I. EMPLOYER’S OPERATION

The Employer has four business units. Relevant to the instant petition is Dedicated Contract Services (“DCS”), which essentially provides full fleet services to the Employer’s customers. Nick Hobbs is the Chief Operating Officer and President of DCS. Senior Vice President of Operations David Keefauver reports to Hobbs and is responsible for operations throughout the United States. Keefauver oversees six Vice Presidents of Operations, covering separate geographic regions. Each region has one to two Senior Directors, under which approximately 10 to 14 Directors work. The Employer also provides various personnel, such as Operations Managers, dispatchers, and drivers. The DCS business unit employs approximately 1800 employees, servicing approximately 230 customers across 617 unique operations. Each operation or account\(^1\) has a separate schedule series while the overall relationship between DCS and a particular customer is governed by a master contract.

Senior VP Keefauver testified that the Employer is in business to make a profit and a significant part of his role is ensuring DCS stays profitable and within expectations, which the Employer has publicly set as an operating ratio of 86 to 88 (or a 12% to 14% profit margin). On a monthly basis, Keefauver reviews profit and loss (“P&L”) statements, detailing revenue and cost items and calculating the operating ratio, for all DCS customers and their accounts across all regions and assesses DCS’s profitability. If an account has a higher-than-expected operating ratio, the Employer attempts to bring it back within parameters.

Certain startup costs are associated with beginning a new account, such as hiring drivers, including sign-on bonuses, acquiring office space, buying and repositioning equipment, and relocating management personnel. Thus, DCS does not plan on reaching its target operating ratio until after the first two to three months on a new account. Following this startup period, generally within the first 90 to 120 days of a new account, DCS’s low- to mid-level managers conduct a post implementation assessment (“PIA”) with the customer’s local and regional managers. The parties review discrepancies between DCS’s initial expectations when designing the schedule series compared to the actualities following its implementation and discuss how both sides can improve performance. Conversations generally involve day-to-day things DCS can do better for the customer and what the customer can do to make the process easier for DCS; however, if the discrepancies between design and actual are significant, DCS may seek an adjustment in the rate it charges. Should the PIA show that an account is unlikely to meet parameters for profitability, either party may cancel the contract with the requisite notice. Senior VP Keefauver testified that DCS generally tries to “stay openminded” during the first two months, which are “just data

\(^{1}\text{An operation or account typically consists of a single location but may contain multiple locations.}\)
collecting,” so the Employer can justify any requests for rate increases or terminating the account, if necessary.

**Operations at Ryerson Steel**

The Employer began providing fleet services to Ryerson Steel through DCS in December 2019 at a single location in Kansas City, Missouri. The parties expanded their relationship in mid-2021 to an additional 11 accounts. On May 3, 2021, DCS added Omaha, Nebraska, and Des Moines and Eldridge, Iowa; on June 21, 2021, Ambridge, Pennsylvania, and Shelbyville, Kentucky, and Columbus and Streetsboro, Ohio; on July 12, 2021, Indianapolis, Indiana; and, on August 2, 2021, Milwaukee, Wisconsin, and the accounts at issue in the instant petition—Elgin, Illinois, and Burns Harbor, Indiana, which includes a location in Dekalb, Illinois.

A trailing six-month (“T6M”) P&L statement was created for all Ryerson accounts through October 2021 and revealed substantial losses. As shown in the chart below, only the Indianapolis account was profitable.

<table>
<thead>
<tr>
<th>Account Location</th>
<th>T6M Operating Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Burns Harbor</strong></td>
<td>207%</td>
</tr>
<tr>
<td>Ambridge</td>
<td>176%</td>
</tr>
<tr>
<td>Columbus</td>
<td>149%</td>
</tr>
<tr>
<td><strong>Elgin</strong></td>
<td>141%</td>
</tr>
<tr>
<td>Omaha</td>
<td>134%</td>
</tr>
<tr>
<td>Eldridge</td>
<td>129%</td>
</tr>
<tr>
<td>Streetsboro</td>
<td>120%</td>
</tr>
<tr>
<td>Des Moines</td>
<td>116%</td>
</tr>
<tr>
<td>Shelbyville</td>
<td>113%</td>
</tr>
<tr>
<td>Kansas City</td>
<td>112%</td>
</tr>
<tr>
<td>Milwaukee</td>
<td>103%</td>
</tr>
<tr>
<td>Indianapolis</td>
<td>92%</td>
</tr>
</tbody>
</table>

According to Senior VP Keefauver, DCS and Ryerson had informal conversations regarding the financial situation as early as September 2021, although he was not personally involved. On October 5, 2021, high-level DCS Managers began arranging to meet with high-level Ryerson executives in early November 2021 regarding the viability of certain accounts and the parties’ relationship. On October 6, 2021, the parties tentatively agreed to meet on November 3, 2021.

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2 The record is devoid of information regarding DCS accounts other than those with Ryerson and does not contain operating ratios by month or beyond the trailing six-month operating ratios in October 2021. I note the DCS PowerPoint presentation on November 3, 2021, below, includes a slide listing “Flawless Texas startup.” However, the record does not reveal any information about a DCS-Ryerson account in Texas.

3 A T6M P&L statement reports the cumulative profit and loss for the previous 6 months. In the case of accounts that have been operational for less than 6 months, the T6M P&L covers the entirety of their operation.
On November 3, 2021, high-level executives from DCS and Ryerson met in Atlanta, Georgia, where DCS made a presentation showing difficulties across multiple industries—supply chain, logistics, freight, and transportation. Among other things, DCS highlighted a historical driver shortage necessitating increased sign-on bonuses. Following the meeting, DCS scheduled PIA events with Ryerson to determine what change, if any, were needed to the parties’ existing accounts.

Senior VP Keefauver testified that, based on the operating ratios, he initially planned to terminate the four worst-performing accounts—Burns Harbor, which includes Dekalb, Ambridge, Columbus, Elgin. However, certain Ryerson accounts are interrelated to the extent that DCS could not feasibly terminate only one of the accounts. Specifically, Keefauver testified that Ambridge relies on Streetsboro and, relevant to the instant case, Burns Harbor and Elgin operate “as a collective.” Due to the interrelation, Keefauver ultimately decided to terminate the Burns Harbor, including Dekalb, Elgin, Ambridge, and Streetsboro accounts.

Two PIA events were held between DCS and Ryerson on December 1 and 8, 2021, in Columbus, Ohio, and Minneapolis, Minnesota, respectively. The December 8 event examined the effect of the industrywide issues on the Burns Harbor, including Dekalb, Elgin, Des Moines, Omaha, Eldridge, and Milwaukee accounts.

On December 8, 2021, directly following the PIA event in Minneapolis, DCS provided Ryerson the contractual 120-day notice to terminate the Burns Harbor, including Dekalb, Elgin, Ambridge, and Streetsboro accounts. Senior VP Keefauver testified that DCS and Ryerson continue to negotiate over the remaining accounts, which may be salvageable through rate increases and additional changes. Keefauver further testified that conversations between DCS and Ryerson regarding the soon-to-be terminated accounts primarily involve DCS encouraging Ryerson to end the relationship sooner than 120 days and “there is no scenario that [DCS is] going to go past 120 days” at the Burns Harbor, including Dekalb, and Elgin accounts.

According to Senior VP Keefauver, employees were orally notified they would be terminated within 120 days. Keefauver was the only witness to testify at the preelection hearing. No drivers were present at hearing, nor were any managers, supervisors, or employees of Ryerson.

II. BOARD LAW REGARDING CESSATION OF OPERATIONS

The Board will dismiss a petition where an employer’s cessation of operations is definite and imminent, such as when an employer completely ceases to operate, sells its operations, or fundamentally changes the nature of its business. Retro Environmental, Inc./Green JobWorks,

4 I note that both Burns Harbor and Elgin fall within the four worst performing accounts, regardless, and Keefauver testified that Streetsboro would not have been terminated but for its connection to Ambridge.

5 According to Senior CP Keefauver, DCS has the ability to recuperate startup costs, although he does not believe it will do so for these four Ryerson accounts because startup costs are a small percentage of DCS’s losses at Ryerson and it would like to retain any salvageable accounts.

Factors considered in determining whether there is sufficient evidence an employer’s cessation of operations to warrant dismissal of the petition are the period of time between the representation hearing and the expected date of contraction or cessation, steps taken by the employer to effectuate the change, and whether the employees have been notified. Hughes Aircraft, above at 82–83; see also MJM Studios of New York, Inc., 336 NLRB 1255, 1255–1256 (2001).

The party asserting a cessation of operations bears the burden of showing, through concrete evidence, that it is both imminent and definite. Retro Environmental, above, slip op. at 4; Hughes Aircraft, above at 83; Martin Marietta, above at 646–647.

III. APPLICATION OF BOARD LAW TO THIS CASE

The Employer maintains the 120-day notice and Senior VP Keefauver’s testimony clearly establish the cessation of its business in Burns Harbor, Indiana, and Dekalb and Elgin, Illinois, is definite and imminent; and, thus, the Unit will cease to exist in less than four months. Petitioner argues the cessation is not “definite” because: (1) DCS and Ryerson remain in “ongoing negotiations” about “all” Ryerson accounts, (2) industrywide issues will force Ryerson to pay more for its trucking services, regardless of who provides them, and Ryerson has an interest paying that greater cost to DCS, if for no other reason than continuity of operations and dealing with one provider for all of its trucking, and (3) DCS has an interest in accepting the greater compensation and remaining at Burns Harbor, including Dekalb, and Elgin, even at lower profitability, in order to preserve its overall relationship with Ryerson.

Petitioner further contends that, even assuming the Employer proves a definite-and-imminent cessation, a “useful purpose” is served by conducting an election since, should the employees choose representation, Petitioner could (1) bargain over the effects of the closure, and (2) continue to represent the employees when a successor takes over fleet services at Burns Harbor, including Dekalb, and Elgin.

I recognize the statutory mandate for conducting an election where the Board finds “a question of representation affecting commerce exists.” Section 9(c)(1) of the Act. However, the Board has long found no useful purpose in conducting an election where the unit of employees will cease to exist in the short term. See M. B. Kahn Construction Co., Inc., 210 NLRB 1050, 1051 fn. 3 (1974) (Member Fanning, dissenting) (collecting cases). The instant petition presents just such a case.
Unlike cases where employers have speculated on the cessation of their operations, the uncontroverted evidence here shows the Employer sent the contractually required 120-day termination notice to Ryerson on December 8, 2021, and “there is no scenario” where it will continue operations beyond 120 days at Burns Harbor, including Dekalb, and Elgin. Rather, it is Petitioner who prognosticates of circumstances that could conspire to keep the Employer under contract with Ryerson or keep the Unit intact; however, there is no record evidence regarding whether Ryerson is replacing the Employer, assuming operations itself, or how the accounts will be structured in the future. Senior VP Keefauver testified that, in his 27-year career with the Employer, he could not recall an instance where the Employer received more than a 30-percent rate increase and Burns Harbor would require nearly a 100-percent increase to fall within the parameters for continued operations. There was no testimony from any drivers or anyone at Ryerson. While I am cognizant of Member Fanning’s dissent, above, which highlights the time preceding a cessation of operations as “perhaps the most critical period of [an] employment relationship,” I am bound to apply extant Board law. Thus, I find the Employer’s cessation of operations at Burns Harbor, including Dekalb, and Elgin is definite and imminent, and no useful purpose would be served by conducting an election. Accordingly, I dismiss the instant petition.

However, if there is new evidence that the Employer has not ceased operations consistent with evidence submitted at hearing and the Unit has remained in existence for a substantially longer period of time, I will entertain a motion by Petitioner to reinstate the petition.

IV. CONCLUSIONS

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based on the entire record in this proceeding, I find:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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6 See, for example, Gibson Electric, 226 NLRB at 1063 (ordering election where unfurled evidence showed “the employer’s initial anticipated completion date was inaccurate”); Canterbury of Puerto Rico, 225 NLRB 309 (ordering election where evidence showed additions to employee complement and employer efforts to continue operating). Compare Cal-Neva Lodge, 235 NLRB 1167 (1978) (dismissing petition where operations had ceased and testimony they would resume in near future was speculative).

7 According to Keefauver, Ryerson was orally notified on December 8 and received written notification on December 9, 2021, then subsequently notified the Employer it had received the termination notice.

8 M. B. Kahn, 210 NLRB 1051. See also Martin Marietta, 214 NLRB at 746 (Member Fanning, dissenting).

9 The parties stipulated to the following commerce facts:

The Employer, J.B. Hunt Transport, Inc., an Arkansas corporation with locations throughout the United States, including facilities located in Burns Harbor, Indiana, Dekalb, Illinois, and Elgin, Illinois, is engaged in the business of providing transportation services to its customers. During the past 12 months, a
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time drivers employed by the Employer who report to or work out of Ryerson Steel’s 310 Tech Drive, Burns Harbor, IN facility, 2850 Technology Drive, Elgin, IL facility, or 1085 North Peace Road, Dekalb, IL facility.

**Excluded:** All managers, office clerical employees, professional employees, employees supplied by a temporary placement agency, guards and supervisors as defined by the Act, and all other employees.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

V. ORDER

Based on the Employer’s definite and imminent cessation of operations at the Ryerson accounts in Burns Harbor, including Dekalb, and Elgin, no useful purpose will be served by directing an election. Accordingly, the petition in this matter is dismissed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67(c) of the Board’s Rules and Regulations you may obtain a request for review of this Decision by filing a request with Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Sections 102.67(d) and (e) of the Board’s Rules and Regulations and must be filed by February 3, 2022.

A request for review must be filed by electronically submitting (E-Filing) it through the Agency’s web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.
A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: January 20, 2022

PATRICIA K. NACHAND
Regional Director
National Labor Relations Board
Region 25
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