

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

STG CARTAGE, INC. DBA XPO LOGISTICS

and

**Cases 21-CA-289133
21-CA-296505**

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 21-CA-289133 and Case 21-CA-296505, which are based on charges filed by International Brotherhood of Teamsters (Charging Party or Union), against XPO Logistics Cartage, LLC dba XPO Logistics, and STG Logistics, Inc. and STG Cartage, LLC, herein correctly designated as STG Cartage, Inc. dba XPO Logistics (Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 21-CA-289133 was filed by the Charging Party on January 19, 2022, and a copy was served on Respondent by U.S. mail on January 19, 2022.

(b) The first amended charge in Case 21-CA-289133 was filed by the Charging Party on March 18, 2022, and a copy was served on Respondent by U.S. mail on March 21, 2022

(c) The second amended charge in Case 21-CA-289133 was filed by the Charging Party on October 31, 2022, and a copy was served on Respondent by U.S. mail on November 2, 2022.

(d) The third amended charge in Case 21-CA-289133 was filed by the Charging Party on May 25, 2023, and a copy was served on Respondent by U.S. mail on May 30, 2023.

(e) The charge in Case 21-CA-296505 was filed by the Charging Party on May 25, 2022, and a copy was served on Respondent by U.S. mail on May 26, 2022.

(f) The first amended charge in Case 21-CA-296505 was filed by the Charging Party on June 30, 2022, and a copy was served on Respondent by U.S. mail on June 30, 2022.

(g) The second amended charge in Case 21-CA-296505 was filed by the Charging Party on May 25, 2023, and a copy was served on Respondent by U.S. mail on May 30, 2023

2. (a) At all material times, Respondent, a Delaware limited liability company, has been engaged in the business of transportation logistics services, with places of business located at 5800 Sheila Street, Commerce, California (Commerce facility) and 10250 Airway Rd., San Diego, California (San Diego facility).

(b) During the 12-month period ending December 31, 2022, a representative period, Respondent, in conducting its operations described above in paragraph 2(a), performed services valued in excess of \$50,000 in States other than the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. (a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)

(b) At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)

6. Since at least January 12, 2022, Respondent has misclassified its employee-drivers as independent contractors, thereby inhibiting them from engaging in Section 7 activity and depriving them of the protections of the Act.

7. About January 17, 2022, Respondent, by (b) (6), (b) (7)(C), at the San Diego facility, told employees that they do not have a right to organize because they are not employees, thereby inhibiting them from engaging in Section 7 activity and depriving them of the protections of the Act.

8. About February 8 or 10, 2022, Respondent, at the San Diego facility, by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) threatened employees with futility and loss of benefits by telling them if they voted for the union, they would not be able to work the hours they wanted and would have to use Respondent's trucks instead of their own.

9. About February 17, 2022, Respondent, in its newsletters "The Commerce Independent" and "The San Diego Independent" which were disseminated to its employees at the Commerce and San Diego facilities, threatened employees with futility and loss of benefits about organizing a union by stating in the newsletter that, "As employees they also comply with rules and policies, like scheduled shifts and assigned delivery routes."

10. About March 1, 2022, (b) (6), (b) (7)(C), over the phone, threatened employees with futility and loss of benefits by telling them that if they selected the union as their bargaining representative, their hours would change, and they would give up their trucks.

11. About March 3, 2022, Respondent, by (b) (6), (b) (7)(C), over the phone:

(a) Threatened employees with futility and loss of benefits by telling employees if they selected the union as their representative for collective bargaining, Respondent would determine many aspects of the employees' work, including schedules, cargo, and truck ownership.

(b) Threatened employees with unspecified reprisals if they selected the union as their bargaining representative by telling employees that if they selected the union, Respondent would determine their working conditions.

12. About March or April 2022, Respondent, by (b) (6), (b) (7)(C), in the office at the San Diego facility, interrogated employees about their thoughts about the union.

13. (a) About April 26, 2022, Respondent granted increases in the rates in Schedule B of the Independent Contractor Operating Contract for employees with the specific rates and locations listed below.

<u>Rate</u>		<u>Location(s)</u>
Port Fee	--	Commerce facility
Hazardous Rate	--	Commerce facility
Fuel Supplemental Percentage Increase	--	Commerce and San Diego facilities
Customer detention time rate	--	Commerce and San Diego facilities

(b) Respondent engaged in the conduct above in paragraph 13(a) in order to dissuade employees from supporting the Union.

14. About May 2022, Respondent, by (b) (6), (b) (7)(C) at the Commerce facility, threatened employees with futility by telling them that Respondent would bargain in bad faith and use delay tactics to prevent a contract if employees voted for the Union as their bargaining representative.

15. During the week of June 13, 2022, Respondent, by (b) (6), (b) (7)(C) during a call:

(a) Interrogated employees about their union membership, activities, and sympathies by asking them what they thought about the Union.

(b) Threatened employees with loss of benefits by telling them if the Union came in, they would be replaced by new trucks or equipment and they would not be able to set their own schedules or refuse an assignment.

16. About June 16, 2022, Respondent, by (b) (6), (b) (7)(C), at the San Diego facility, interrogated employees about their thoughts on the upcoming union election.

17. About June 17, 2022, Respondent, by (b) (6), (b) (7)(C), at the San Diego facility, interrogated employees about how they intended to vote in the union election.

18. About June 2022, Respondent, by (b) (6), (b) (6), (b) (7)(C) at the San Diego facility, interrogated employees about how they intended to vote in the union election.

19. By the conduct described above in paragraphs 6 through 18, Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

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

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 6 through 20, the General Counsel seeks an order requiring Respondent to:

- Reclassify as employees, drivers who have been misclassified as independent contractors and make them whole, including direct or foreseeable consequential or pecuniary harm they incurred as a result of the Respondent's misclassification and other unlawful conduct.
- Grant the Union access to nonwork areas at Respondent's Commerce facility and San Diego facility during employees' nonwork time.
- Provide the Union with the contact information, including addresses, phone numbers, and email addresses (if known), of its current employees at Respondent's Commerce facility and San Diego facility.
- That at a meeting or meetings scheduled to ensure the widest possible attendance, (b) (6), (b) (7)(C), read

the Notice to Employees in English and in Spanish on paid work time, in the presence of a Board agent and all supervisors and agents who work at Respondent's Commerce facility. The Union may video record the meeting(s). Alternatively, the General Counsel seeks an order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent have a Board agent read the Notice to Employees in English and Spanish, on paid work time, in the presence of supervisors and managers who work at Respondent's Commerce facility. The Union may video record the meeting(s).

- That at a meeting or meetings scheduled to ensure the widest possible attendance, **(b) (6), (b) (7)(C)**, read the Notice to Employees in English and in Spanish on paid work time, in the presence of a Board agent and all supervisors and agents who work at Respondent's San Diego facility. The Union may video record the meeting(s). Alternatively, the General Counsel seeks an order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent have a Board agent read the Notice to Employees in English and Spanish, on paid work time, in the presence of supervisors and managers who work at Respondent's Commerce facility. The Union may video record the meeting(s).
- Schedule with Region 21 of the NLRB mandatory training session(s) at the Commerce and San Diego facilities for all Respondent supervisors, managers and agents (including security personnel) conducted by a representative of the National Labor Relations Board regarding employee rights protected by Section 7 of the National Labor Relations Act, including employees' rights to unionize.

At least 7 days prior to the training session(s) submit an attendance list to Region 21.

- Respondent to post the Board's Explanation of Employee Rights poster, alongside the Notice to Employees in English and Spanish issued in this case at its Commerce and San Diego facilities, and if Respondent customarily uses electronic means to communicate with employees, to electronically post and electronically distribute the Explanation of Employee Rights to employees employed since January 12, 2022, at its Commerce and San Diego facilities.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **electronically filed with this office on or before August 3, 2023.** Respondent also must serve a copy of the answer on each of the other parties. The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's

website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a consolidated complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **December 11, 2023**, at 11 a.m., at the National Labor Relations Board, Region 21, 312 N. Spring Street, 10th Floor, Los Angeles, CA 90012, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached

Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: July 20, 2023



William B. Cowen, Regional Director
National Labor Relations Board, Region 21
US Court House, Spring Street
312 N Spring Street, 10th Floor
Los Angeles, CA 90012

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 21-CA-289133 and 21-CA-296505

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.