

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 21

**XPO CARTAGE, INC.**

**and**

**Cases 21-CA-150873  
21-CA-164483**

**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-150873 and Case 21-CA-164483, which are based on charges filed by International Brotherhood of Teamsters (Union), against XPO Cartage, Inc. (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 Respondent has violated the Act as described below.

1. (a) The original charge in Case 21-CA-150873 was filed by the Union on April 24, 2015, and a copy was served on Respondent by U.S. mail on April 24, 2015.

(b) The first amended charge in Case 21-CA-150873 was filed by the Union on June 29, 2015, and a copy was served on Respondent by U.S. mail on June 30, 2015.

(c) The second amended charge in Case 21-CA-150873 was filed by the Union on August 11, 2015, and a copy was served on Respondent by U.S. mail on August 11, 2015.

(d) The third amended charge in Case 21-CA-150873 was filed by the Union on August 20, 2015, and a copy was served on Respondent by U.S. mail on August 21, 2015.

(e) The fourth amended charge in Case 21-CA-150873 was filed by the Union on April 14, 2016, and a copy was served on Respondent by U.S. mail on April 14, 2016.

(f) The fifth amended charge in Case 21-CA-150873 was filed by the Union on June 1, 2016, and a copy was served on Respondent by U.S. mail on June 2, 2016.

(g) The original charge in Case 21-CA-164483 was filed by the Union on November 18, 2015, and a copy was served on Respondent by U.S. mail on November 19, 2015.

(h) The first amended charge in Case 21-CA-164483 was filed by the Union on February 25, 2016, and a copy was served on Respondent by U.S. mail on February 29, 2016.

2. (a) At all material times, Respondent, a Delaware corporation, has been engaged in the business of transportation logistics services, with a place of business located at 5800 Sheila Street, Commerce, California (herein Commerce facility).

(b) During the 12-month period ending December 31, 2015, a representative period, Respondent, in conducting its business 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:

Enrique Flores	Safety Manager
Ezequiel Chevez	Recruiter
Hector Banuelos	Dispatch Manager/Supervisor
Miguel Camacho	Yard Manager
Steve (unknown last name)	Assistant to the Security Department

(b) At all material times, the following individual held the position set forth opposite his name and has been an agent of Respondent within the meaning of Section 2(13) of the Act:

Armando (unknown last name)	Dispatcher
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6. On or about February 26, 2015, Respondent, by Hector Banuelos, at the dispatch window at the Commerce facility, told an employee that the employee was not receiving work assignments because he was wearing Union insignia.

7. On or about March 4, 2015, Respondent, by Dispatcher Armando, at the dispatch window at the Commerce facility, prohibited employees from talking about the Union during working hours while permitting employees to talk about other non-work subjects.

8. On or about March 6, 2015, Respondent, by Ezequiel Chevez, in the hallway outside of Enrique Flores's office at the Commerce facility, prohibited employees from wearing Union insignia at work while permitting employees to wear other insignia.

9. On or about April 22, 2015, Respondent, by Enrique Flores, at Flores's office at the Commerce facility:

(a) interrogated an employee about the employee's union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees;

(b) implicitly threatened an employee with job loss and/or unspecified reprisals if the Union won or came into the Commerce facility.

10. On or about April 27, 2015, Respondent, by Ezequiel Chevez and Miguel Camacho, by photographing and/or video recording employees engaging in a strike outside the Commerce facility, engaged in surveillance of employees engaged in union activities.

11. On or about May 5, 2015, Respondent, by Enrique Flores, in Flores's office at the Commerce facility:

(a) interrogated an employee about the employee's union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees;

(b) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employees;

(c) threatened an employee with less desirable work because of his Union support and activity, or if the Union came into the Commerce facility.

12. On or about September 30, 2015, Respondent, by Miguel Camacho, by photographing and/or video recording employees engaging in handbilling outside the Commerce facility, engaged in surveillance or created the impression of surveillance of employees engaged in union activities.

13. (a) At all material times since at least about February 11, 2015, Respondent has maintained as a condition of employment for its employees and has required its employees to sign and be bound by Equipment Lease Agreements and Independent Contractor Hauling Agreements (Agreements) which contain provisions that require employees to resolve disputes

through individual arbitration proceedings and relinquish any rights they have to resolve disputes through collective or class action.

(b) At all material times, employees would reasonably conclude that the provisions of the Agreements described above in paragraph 13(a) preclude employees from engaging in conduct protected by Section 7 of the Act.

(c) At all material times, employees would reasonably conclude that the provisions of the Agreements described above in paragraph 13(a) interfere with employees' access to the Board and its processes.

14. Since at least December 30, 2014, 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.

15. (a) On or around February 26, 2015, Respondent refused to assign work to its employee Humberto Canales.

(b) Respondent engaged in the conduct described above in paragraph 15(a) because employee Humberto Canales assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

16. (a) In or about the months of March through June 2015, Respondent denied a truck-repair loan to its employee Domingo Avalos, and then required him to make a large cash payment to have the truck repaired.

(b) On or around June 18, 2015, Respondent prohibited its employee Domingo Avalos from working.

(c) Respondent engaged in the conduct described above in paragraphs 16(a)

and (b) because employee Domingo Avalos assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

17. By the conduct described above in paragraphs 6 through 14, 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.

18. By the conduct described above in paragraphs 15 and 16, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

19. 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 in above in paragraphs 15 through 16, the General Counsel seeks an order requiring that the Respondent reimburse discriminatees for all search-for-work and work-related expenses regardless of whether the discriminatees received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel also seeks an order requiring that employee Domingo Avalos be made whole, including reimbursement for any moneys paid toward purchasing Respondent's truck, which truck was forfeited as a result of Respondent's unlawful conduct.

Further, as part of the remedy for the unfair labor practices alleged above in paragraphs 6 through 16, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent's representative read the Notice to the employees in English and in Spanish on worktime in the presence of a Board agent.

Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during worktime in the presence of Respondent's supervisors and agents identified above in paragraphs 6 through 12.

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 **received by this office on or before July 28, 2016, or postmarked on or before July 27, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

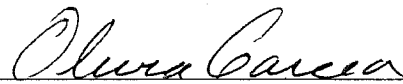
An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests 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 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 **October 17, 2016**, at 1:00 p.m. at the National Labor Relations Board, Region 21, 888 S. Figueroa Street, Ninth Floor, Hearing Room 902, Los Angeles, CA, 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 at Los Angeles, California this 14<sup>th</sup> day of July 2016.



Olivia Garcia, Regional Director, Region 21  
National Labor Relations Board  
888 South Figueroa Street, Ninth Floor  
Los Angeles, CA 90017-5449

Attachments