



United States Government
NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

September 20, 2011

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

e-filed

Re: Crystal Soda Water Company, Inc.
Case 4-CA-38046

Dear Executive Secretary Heltzer:

Enclosed please find an original and one (7) copy of Counsel for the General Counsel's Motion for Default or Summary Judgment (including attachments thereto) in the above-referenced cases.

Copies of the above Motion have been served this day on the persons below by first class mail and by e-mail.

Very truly yours,

EMILY DESA
Counsel for the Acting General Counsel

cc:
Louis Kahanowitz, President, Crystal Soda Water Company, Inc., P.O. Box 406,
Scranton, PA 18501-0406 (crystal.lk@att.net)
Robert D. Mariani, Esq., P.O. Box 230, Scranton, PA 18501-0230 (rmariani@mariani-
law.com)

ED/dma

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

CRYSTAL SODA WATER COMPANY, INC.

and

Case 4-CA-38046

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 229

MOTION FOR DEFAULT OR SUMMARY JUDGMENT

Counsel for the Acting General Counsel, pursuant to Sections 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board (herein called the Rules and the Board, respectively), hereby moves for Default or Summary Judgment and requests the Board to transfer, and continue before the Board, the Complaint issued herein and the proceedings related thereto. In support of the Motion, Counsel for the General Counsel avers as follows:

1. The charge in this matter was filed by International Brotherhood of Teamsters, Local 229, on March 31, 2011. A copy of the charge was served on Crystal Soda Water Company, Inc., herein called Respondent, on March 31, 2011. Copies of the charge and the affidavit of service thereof are attached hereto and marked as Exhibits 1 and 2, respectively.

2. On June 27, 2011, the Regional Director for the Fourth Region of the Board issued a Complaint and Notice of Hearing in this matter alleging that Respondent had engaged in conduct in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (herein called the Act). Respondent timely file its Answer on

July 9, 2011. The hearing on the Complaint has been postponed until further. Copies of the Complaint and Notice of Hearing, Respondent's Answer and the Order Postponing the Hearing Until Further Notice are attached hereto and marked as Exhibits 3, 4 and 5, respectively.

3. On September 16, 2011, Respondent withdrew its Answer to the Complaint. A copy of Respondent's letter withdrawing its Answer is attached hereto as Exhibit 6.

4. Respondent's withdrawal of its Answer is equivalent to not filing an Answer in the first place, or at all.

5. Under Section 102.20 of the Rules, if no answer is filed, the allegations of the Complaint shall be found by the Board. It is therefore submitted that the Board should find the allegations alleged in the Complaint.

7. **NOW THEREFORE**, the undersigned Counsel for the Acting General Counsel moves that: (1) the Complaint in this proceeding be transferred to and continued before the Board; (2) the Board find the allegations of the Complaint to be true; (3) the Board issue a Decision and Order finding and concluding that Respondent has violated Section 8(a)(1) and (5) of the Act as alleged in the Complaint and to post an appropriate notice; and (4) the Board grant such other and further relief as may be appropriate.

Signed at Philadelphia, Pennsylvania this 20th day of September, 2011.



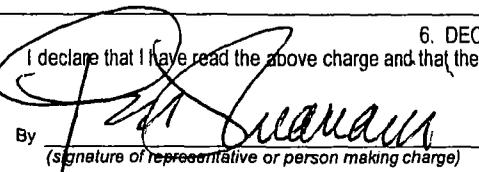
EMILY DESA
Counsel for the Acting General Counsel
National Labor Relations Board
Fourth Region
(215) 597-5358

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 4-CA-38046	Date Filed 3/31/11

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Crystal Soda Water Company	b. Tel. No. 570-347-5661
	c. Cell No.
	f. Fax No. 570-347-9788
d. Address (Street, city, state, and ZIP code) P.O. Box 406 Scranton, PA 18501-0406	e. Employer Representative Louis Kahanowicz
	g. e-Mail
	h. Number of workers employed 8
i. Type of Establishment (factory, mine, wholesaler, etc.) bottling and distribution	j. Identify principal product or service soft drink beverages
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) and (d) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Teamsters Local 229 is the exclusive bargaining representative for the truck drivers and production and warehouse employees of the Respondent Employer. Local 229 is a party to a collective bargaining agreement with Crystal Soda Water Company which is scheduled by its terms to expire on March 31, 2011. Respondent Employer has violated the above sections of the Act by repudiating its collective bargaining agreement with Local 229 through its failure and refusal to pay the contractually required wages, health care contributions and pension contributions for all members of the bargaining unit so that such members are without pay for their work performed and without health insurance coverage for themselves and their dependents. Continued on page 2 ---->	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Brotherhood of Teamsters Local 229	
4a. Address (Street and number, city, state, and ZIP code) 3104 N. Main Avenue Scranton, PA 18508	4b. Tel. No. 570-344-7219
	4c. Cell No.
	4d. Fax No. 570-344-6432
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Tel. No. 570-342-9399
Robert D. Mariani (Print/Type name and title or office, if any)	Office, if any, Cell No.
	Fax No. 570-342-9990
	e-Mail rmariani@mariani-law.com
Address P.O. Box 230, Scranton, PA 18501-0230	3/29/2011 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Form NLRB-501

(2-08)

March 29, 2011

Page 2

Additionally, the Respondent Employer has further violated the above sections of the Act by failing and refusing to bargain with Teamsters Local 229 despite its repeated requests that it do so.

Finally, the Respondent Employer has committed an additional violation of the Act by informing Local 229 that it will not continue the terms and conditions of employment beyond the scheduled March 31, 2011 contract expiration date while it refuses to engage in bargaining for a new agreement or otherwise fulfill its obligations under the Act.



United States Government
NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658

March 31, 2011

Louis Kahanowicz
Crystal Soda Water Company
P.O. Box 406
Scranton, PA 18501

Re: Crystal Soda Water Company
Case 4-CA-38046

Dear Mr. Kahanowicz:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also enclosed is a copy of Form NLRB 4541, pertaining to our investigation and voluntary adjustment procedures, and a memorandum outlining procedures and practices for electronic communications with Regional Offices. Assistance is available from the National Labor Relations Board for persons with limited English proficiency. Requests for such assistance should be communicated to the assigned Board Agent as early in the course of the proceeding as possible.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceedings before the National Labor Relations Board and the Courts. In the event you choose to have a representative appear on your behalf, please have your representative complete Form NLRB 4701 and forward it promptly to this office.

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: <http://www.nlr.gov>, select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. Of course, the Agency will continue to accept timely filed paper documents.

Please be advised that under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may have received a solicitation by organizations or persons who have obtained public information concerning this matter and who seek to represent you before our Agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored

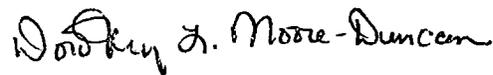
relationship with the National Labor Relations Board; their information regarding this matter is only that which must be made available to any member of the public.

Your cooperation with this office is invited so that all facts of the case may be considered. Accordingly, you are requested to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge. However, the submission of a position letter, or memorandum, or the submission of affidavits not taken by a Board Agent does not constitute full and complete cooperation. Full cooperation consists of permitting the assigned Board Agent to take sworn affidavits from relevant witnesses. Absent your willingness to submit such evidence, the Regional Office will decide the merits of this matter on the evidence available.

Please be advised that evidence and statements of position submitted by the parties will be used by the Agency without qualification or condition. If conditions are incorporated into position statements or evidence submitted during the investigation, they will be disregarded and such position statements or evidence will be considered in the investigation and may be introduced into the record in the event the matter is litigated.

All communications and submissions should be made to the Board Agent indicated below.

Very truly yours,



DOROTHY L. MOORE-DUNCAN
Regional Director

Case assigned to: Barbara C. Joseph
Telephone Number: (215)597-7638
Email: Barbara.Joseph@nlrb.gov

Supervisor: Donald M. Spooner
Telephone Number: (215)597-7630
Email: Donald.Spooner@nlrb.gov

cc:

International Brotherhood of Teamsters Local 229
3104 North Main Street
Scranton, PA 18508

Robert D. Mariani, Esquire
Robert D. Mariani, P.C.
P. O. Box 230
Scranton, PA 18501-0230

DLMD/ec

**NATIONAL LABOR RELATIONS BOARD
AFFIDAVIT OF SERVICE**

Crystal Soda Water Company

and

International Brotherhood of Teamsters Local 229

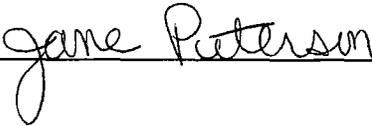
**Donald M. Spooner
Barbara C. Joseph**

CASE NO. 4-CA-38046

I certify that I served the above referred to charge this day by postpaid first class mail on the addressee(s) named above, together with a transmittal letter to which this is a true copy.



Subscribed and sworn to before me March 31, 2011.



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

CRYSTAL SODA WATER COMPANY, INC.

and

Case 4-CA-38046

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 229

COMPLAINT AND NOTICE OF HEARING

International Brotherhood of Teamsters, Local 229, herein called the Union, has charged that Crystal Soda Water Company, Inc. herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on March 31, 2011, and a copy was served by first class mail on Respondent on March 31, 2011.

2. (a) At all material times, Respondent, a Pennsylvania corporation, has been engaged in the operation of a beverage bottling facility in Scranton, Pennsylvania, herein called the facility.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), sold and shipped goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

(c) 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.

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

4. At all material times, Louis Kahonowitz held the position of Respondent's President and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) All of Respondent's full time drivers, mechanics, and production employees, herein called the Unit, have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(b) At all material times, the Union has been the designated exclusive collective bargaining representative of the Unit and the Union has been recognized as the representative by Respondent. This recognition has been embodied in successive collective bargaining agreements, the most recent of which, herein called the Agreement, being effective by its terms from April 1, 2008 through March 31, 2011.

(c) At all material times, since at least April 1, 2008, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

6. (a) Since the Fall of 2010, a more precise date being unknown to the Acting General Counsel, during the effective dates of the Agreement, Respondent ceased: (1) paying Unit employees their accrued holiday and vacation pay as required by Articles 5 and 6 of the Agreement; (2) paying health insurance premiums as required by Article 15 of the Agreement; and (3) making pension contributions as required by the Pension Fund-Monthly Accounts provision of the Agreement.

(b) On or about March 31, 2011. Respondent ceased its operations at the facility.

(c) The subjects set forth above in subparagraphs (a) and (b), relate to wages, hours and other terms and conditions of employment of the Unit, and are mandatory subjects for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in subparagraph (a): (1) without the consent of the Union; and (2) without having afforded the Union an opportunity to bargain with Respondent with respect to this conduct.

(e) Respondent engaged in the conduct described above in subparagraph (b), without adequate notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to the effects of this conduct.

7. By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain collectively with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

8. 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 and 7, the Acting General Counsel seeks an order requiring Respondent to: (1) make whole the Unit employees in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968); and (2) to reimburse employees of amounts equal to the difference in

taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination as alleged above in paragraphs 6 and 7; and to submit the appropriate documentation to the Social Security Administration so that, when backpay is paid, it will be allocated to the appropriate periods. The Acting 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 Complaint. The Answer must be **received by this office on or before July 11, 2011, or postmarked on or before July 10, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this Regional Office.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at **<http://www.nlr.gov>**, click on the **File Case Documents** tab, and then 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 two (2) hours after 12:00 noon (Eastern Time) on the due date for the 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 Sections 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of the 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 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 be accomplished in conformance with the requirements of Section 102.114 of 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 untimely filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that at **10:00 a.m.** on **September 21, 2011**, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania. At the hearing, Respondent and any other party to this proceeding have the

right to appear and present testimony regarding the allegations in this 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.

Signed at Philadelphia, Pennsylvania on this 27th day of June, 2011.

Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

CRYSTAL SODA WATER COMPANY, INC

and

Case 4-CA-38046

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 229

ANSWER TO COMPLAINT

And now comes the Respondent and answers the Complaint as follows:

1. Admitted
2. Admitted as to all sections.
3. Admitted
4. Admitted that Louis Kahanowitz was the President of Respondent.
5. Admitted as to all sections.
6. (a) Admitted that Respondent lacked the funds to continue operations and to pay the Unit employees some accrued holiday and vacation pay, certain health insurance premiums and certain pension contributions.
 - (b) Admitted
 - © Denied as being a legal conclusion. After the Respondent determined that it lacked the funds to continue operations it notified the Union and all matters were discussed with the Unit's representatives at several meetings.
 - (d) Denied as a legal conclusion as to whether the Union has to consent to a plant closing when the Company does not have funds to continue operations. It is further denied that the

Respondent refused or did not engage in bargaining with the Union on all issues. In point of fact there were a series of meetings to explain the Company's position and to discuss the effect of same.

8. Denied as stated and as a legal conclusion. The Respondent has not engaged in unfair labor practices. The Company suffered such financial losses due to the loss of key customers and a depressed economy so that it could no longer operate the business. In point of fact, the Respondent stayed in business and continued to employ and compensate its Union personnel far beyond the time that it was prudent or economically feasible to do so. The Company is using its commercially reasonable best efforts to sell assets to raise funds to satisfy its obligations to the Union employees in amounts to be agreed upon and over a payment schedule to be negotiated. However, severance pay should not be awarded as none was ever agreed upon and would be an unfair obligation imposed on the Company.

WHEREFORE, the Respondent respectfully requests that the within Complaint be dismissed.

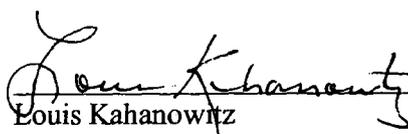
CRYSTAL SODA WATER COMPANY, INC.

By Louis Kahanowitz, President
Louis Kahanowitz, President

7/9/11

VERIFICATION

I hereby verify that the statements contained in this Answer are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa C. S. Section 4904, relating to unsworn falsification to authorities.


Louis Kahanowitz

July 9, 2011
(Date Signed)

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

CRYSTAL SODA WATER COMPANY, INC.

and

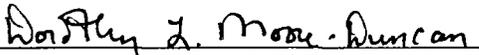
Case 4-CA-38046

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 229

ORDER POSTPONING HEARING UNTIL FURTHER NOTICE

IT IS ORDERED that the hearing in the above-entitled matter scheduled to be held on September 21 , 2011 be, and it hereby is, postponed until further notice.

Signed at Philadelphia, Pennsylvania this 16th day of September, 2011.


DOROTHY L. MOORE-DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

Crystal Soda Water Company
PO Box 406
Scranton, Pa 18501-0406

September 16, 2011

Dorothy Moore-Duncan, Esq.
Regional Director
National Labor Relations Board
Region 4
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106-4404

Case No. 4-CA-38046

Dear Mrs Duncan:

Pursuant to conversations with counsel for the Board and counsel for the Union and after having had a chance to review the Transmarine holdings we have decided to withdraw the answer filed to all allegations of the Complaint filed by the Board in this case thus making a Hearing on the issues unnecessary.

We understand that the amounts that may be owed are still subject to further discussions and the only issues are in regard to whether we had committed an unfair labor practice.

Sincerely Yours,


Louis Kahanowitz, President.

cc: Robert Mariani, Esq.
cc: Emily DeSa, Esq

Exhibit 6