

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

THE AMERICAN BOTTLING COMPANY, INC.,
d/b/a DR. PEPPER SNAPPLE GROUP,
Respondent,

and

Case No. 8-CA-39327

TEAMSTERS LOCAL UNION NO. 293 a/w
THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, Charging Party,
and

TEAMSTERS LOCAL UNION NO. 348 a/w
THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, Intervenor-Party to Contract,
and

TEAMSTERS LOCAL UNION NO. 1164 a/w
THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, (Party in Interest).

**REPLY BRIEF ON BEHALF OF
INTERVENOR TEAMSTERS LOCAL UNION NO. 348**

INTRODUCTION

Intervenor¹ Teamsters Local Union No. 348, pursuant to Section 102.46(h) of the Board's Rules and Regulations, files this reply brief in response to the Answering Brief of Counsel for the Acting General Counsel and in response to the Answering Brief of Charging Party Teamsters Local Union No. 293 in the above referenced case.

By exceptions and brief filed September 9, 2011, Local 348 has shown that the Employer's continued recognition of Teamsters Local Union No. 348 as the bargaining unit representative at the relocated facility does not support findings of Section 8(a)(2) violations, or give rise to findings of any reasonable tendency to coerce employees in the selection of their

¹ Teamsters Local Union No. 348 is an intervenor party pursuant to the Acting Regional Director's Order Granting Intervention issued April 11, 2011 in this case.

bargaining representative. Because the Board has held that the Act, in similar relocation, merger and consolidation situations, provides that a collective-bargaining agreement in effect at the old location “is logically applied”² to the relocated facility, no violation of Section 8(a)(3) is established by giving effect to the union security clauses of the agreement. Local 348 submits that the Complaint should be dismissed in its entirety.

REPLY TO ANSWERING BRIEF STATEMENTS OF FACTS

A. No material dispute with Local 348 calculations of respective employee complements

Counsel for the Acting General Counsel contends that the record supports a finding that Teamsters 348 represented a unit totaling fifty-five (55) members at the Akron facility, and of that complement the Akron unit included only fifteen (15) employees classified as drivers. (GC Answering Brief page 2 and footnote 4) The record testimony reflected that seventeen (17) Akron facility employees classified as drivers and represented in the Local 348 bargaining unit as of January 14, 2011 transferred to the Twinsburg facility³, bringing the total Local 348 represented complement to fifty-seven (57) employees.

Charging Party Local 293 adopts the ALJD’s calculation (ALJD 4:5-13) that the Local 348 Akron bargaining unit consisted of fifty-seven (57) employees, but claims that the twenty-two (22) sales representatives previously represented by Local 293 at Maple Heights and the thirty-five (35) unrepresented merchandiser employees at Maple Heights must be added in the calculation of Local 348’s majority status. (CP Answering Brief at page 5) However, neither Counsel for the Acting General Counsel nor Charging Party dispute the admitted theory of the Complaint that acknowledges that the twenty-two (22) Maple Heights sales representatives are

² Harte & Co., 278 NLRB 947, 955 (1986); See also, Metropolitan Teletronics Corp., 279 NLRB 957, 960 (1986)

³ Intervenor Exhibit 1, Tr. 670.

not to be included as part of the recognized bargaining unit at Twinsburg.⁴ All parties recognized that the classification of merchandiser was within the scope of the Local 348 recognized bargaining unit at Akron, and that these same contract conditions would apply to the newly transferred merchandiser employees at Twinsburg. (Tr. 459; Tr. 622-623; Tr. 671)⁵

These differences do not change the enumeration among the two bargaining units at Maple Heights and the Akron bargaining unit, which Local 348 consistently advanced at the bargaining table with Respondent, showing that Local 348’s representation “predominates” in the amended bargaining unit at Twinsburg as a majority of the represented employees. (See, Local 348 Exceptions Brief Chart No. 1):

Akron Local 348		Maple Heights Local 293		Maple Heights Local 1164	
Drivers	17	Drivers	28	Warehouse Workers	13
Warehouse Workers	10	Transport Drivers	5	Custodian	1
Vending Employees	3	Helpers/Vending Employees	4		
Mechanics	2				
Merchandisers	25				
Total Employees	57	Total Employees	37	Total Employees	14

By January 17, 2011, all of the Employer’s Akron facility bargaining unit operations, together with the Maple Heights operations, had been relocated to the Twinsburg facility. (Tr. 144-154; Tr. 162-165; Tr. 265-273; Tr. 328-332) As a matter of a mathematical calculation, neither Counsel for the Acting General Counsel nor Charging Party dispute that the relevant employee complement at Twinsburg was as set out in Local 348 Exception Brief Chart No. 2:

⁴ GC Exh. 1(e); Tr. 348, lines 13-14; “Nowhere are we alleging that the sales representatives belonged in the unit.”

⁵ See also, Intrv. Exh. 1, spreadsheet showing increased wage rates for relocated merchandiser employees from Maple Heights.

	Akron Local 348		Maple Heights Former Local 293		Maple Heights Former Local 1164
17	Drivers	28	Drivers	13	Warehouse Workers
10	Warehouse Workers	5	Transport Drivers	1	Custodian
3	Vending Employees	4	Helpers/Vending Employees		
2/2 ⁶	Mechanics				
25/35 ⁷	Merchandisers				
2 ⁸	Transport Drivers				
96	Total Employees	37	Total Employees	14	Total Employees

Unrepresented in amended Akron/Twinsburg bargaining unit.

12 account manager combination – from Akron

22 sales representatives – from Maple Heights

B. Failure to acknowledge record evidence of Local 293 and Local 1164 relinquishment of representation rights to Local 348 in the recognized Twinsburg unit

As predicate to the discussion regarding a question concerning representation upon the relocation of the Akron and Maple Heights facilities to Twinsburg, Counsel for the Acting General Counsel recounts the record testimony describing the reaction of Local 293 representative Max Zemla to the Employer’s demands on January 12th and January 13th that the Maple Heights sales representatives either transfer to other unit positions or be excluded from the Local 348 bargaining unit at Twinsburg⁹. (GC Answering Brief pages 3-4 and 15-16) The Acting General Counsel fails to acknowledge that all three unions had previously agreed that the only demand for continuing recognition in the relocated Twinsburg bargaining unit would be from Local 348.

⁶ Two (2) mechanics from Maple Heights.

⁷ Thirty-five (35) merchandisers from Maple Heights.

⁸ Two (2) transport drivers reassigned from Columbus.

⁹ The contract benefits of these particular Maple Heights sales employees were addressed by the negotiators for all three unions on January 11th and 12th, when a tentative agreement was reached for these employees to transfer without loss of pay or benefits to other bargaining unit classifications. (Tr. 74-75; Tr. 662-663)

Local 348 President Ziga testified that as of December 1, 2010 Local 293 Secretary-Treasurer Zemla had conceded that the Twinsburg facility should fall under Local 348's jurisdiction and that Zemla was only concerned about the sales representatives maintaining Union representation. (Tr. 642) Zemla confirmed that Local 293 reached an agreement on December 1, 2010 that Local 348 would seek to represent all employees at the new facility. (Tr. 122-124) Specifically, Zemla acknowledged that Local 293 and Local 348 agreed that Local 348 would seek to represent employees at the new facility and Local 293 would not demand recognition, and that Local 348 would pay a service fee to Local 293 regarding its former members. (Tr. 123, 648) Also at that meeting, the three Local Unions agreed that Local 293 would put together a proposal in response to the Company's presentation on November 16, 2010. (Tr. 643) That was the proposal that the Unions later presented to the Employer at the December 13th meeting. (Tr. 644; GC Exh. 6)

On December 13, 2010 in a meeting between representatives of the Employer, Local 293 and Local 348 at the Local 348 offices in Akron, the Unions presented a joint proposal to the Employer¹⁰. (Tr. 60-62, 65; GC Exh. 6) Local 293 agent Zemla acknowledged that the Unions' December 13th proposal, which he drafted, proposed to the Employer that Local 348 would represent all employees, including then-current members of Local 293. (Tr. 107-108; GC Exh. 6, p. 3, Item 5) The proposal specified that Local 348 would represent the employees at Twinsburg. (Tr. 431-432, 570; GC Exh. 6) The proposal included changing the Teamsters Local 348 recognition clause from the Akron contract to include different language, but still naming Local 348 as the representative. (Tr. 570; GC Exh. 6) In the December 13th proposal, the Unions proposed that certain employees who were members of Local 293 would be represented

¹⁰ Local 1164 representatives were not in attendance, but its representative at the hearing Local 1164 President Roberto Paro acknowledged that Local 1164 maintained no claim to be recognized at Twinsburg. (Tr. 183-184)

by Local 348 in all contract matters. (Tr. 571; GC Exh. 6) Local 348 President Ziga testified that there was no doubt among the Local Unions that Local 348 would be the recognized representative at Twinsburg, and that there was agreement on this point among all three Local Unions¹¹. (Tr. 644)

Under the rendition of facts submitted in the Answering Brief of Counsel for the Acting General Counsel, there seems no dispute that the record reflects the only bona fide “question concerning representation” of employees at the Employer’s Twinsburg facility as of January 17, 2011 existed exclusively among the twenty-two (22) sales representatives transferring from Maple Heights. (GC Answering Brief page 3, citing Tr. 75; 317-317; 663 and GC Answering Brief pages 15 and 16) The facts in this record do not support the Acting General Counsel’s theory that a valid QCR existed among in the bargaining unit employees recognized under the amended Local 348 collective bargaining agreement at the relocated Twinsburg facility. (See, Local 348 Exception Brief Charts 1 and 2, above)

REPLY ARGUMENT

The Acting General Counsel’s theory in this case is erroneously premised on the assertion that a question concerning representation, “QCR”, was created in the bargaining unit covered by the amended Local 348 collective bargaining unit at the opening of the relocated Twinsburg facility¹². The Acting General Counsel relies upon the “strict neutrality” policies of Hudson Berlind Corp., 203 NLRB 421, 423 (1973) and Schreiber Trucking Co., Inc., 148 NLRB 697 (1964). (GC Answering Brief pages 12-13) However the neutrality doctrines of Midwest

¹¹ On December 30, 2010, Local 293 and Local 348 representatives discussed the resolution of the internal Teamsters jurisdictional dispute. (Tr. 657-658) Subsequently, representatives of Local 293 and Local 1164 submitted letters to the Teamsters Joint Council advising withdrawal of their claims for jurisdiction, practically leaving Local 348 as the only Local Union continuing to assert representation among the relocated Twinsburg employees. (Tr. 81; GC Exh. 12; Tr. 187-188, Resp. Exh. 1)

¹² GC Exh. 1(e), Complaint ¶5(A), ¶5(D) and ¶8(B).

Piping & Supply Co., 63 NLRB 1060 (1945), upon which the Board's holdings in Hudson Berlind and Schreiber Trucking extensively rely, were modified in RCA del Caribe, Inc., 262 NLRB 963 (1982) and Bruckner Nursing Home, 262 NLRB 955 (1982).

Thus it is recognized under the Act that there is no impediment to an Employer's continuation of recognition under a valid, existing collective bargaining agreement¹³ or extending recognition to one union among rivals having the support of a majority of the unit employees. See, Le Marquis Hotel, LLC, 340 NLRB 485, 492 (2003) and Alliant Foodservice, Inc., 335 NLRB 695, 669, note 2 (2001)(member Liebman, dissenting citing Bruckner Nursing Home, 262 NLRB at 957). Therefore, in the transfer, relocation, consolidation and merger context of cases such as this one, it is incumbent upon the General Counsel to apply enforcement theories that afford "maximum protection to the complementary statutory policies of furthering stability in industrial relations and of insuring employee free choice", RCA Del Caribe, Inc., 262 NLRB at 966.

Both Counsel for the Acting General Counsel and Counsel for the Charging Party, and the ALJ, fail to acknowledge the proper bargaining unit status of the thirty-five (35) previously unrepresented Maple Heights merchandiser employees and the two (2) unrepresented Maple Heights mechanics in the January 14th to 17th relocation to Twinsburg. (GC Answering Brief page 14; CP Answering Brief page 5). No Board case or policy is cited by either party negating an application of the bargaining unit classification principles in Tree of Life, Inc. d/b/a Gourmet Award Foods, Northeast, 336 NLRB 872, 873-874 (2001) in the coverage of the Local 348 CBA to these classifications at the Twinsburg relocation. The proper analysis is not whether the Maple Heights merchandiser or mechanics employees of this same Employer are

¹³ RCA Del Caribe, Inc., 262 NLRB 963, 964-65 and n. 12 (1982)("Under this rule, an employer will not violate Section 8(a)(2) by post petition negotiations or execution of a contract with an incumbent...")

newly hired by the Employer for the Twinsburg relocation, but rather that these employees are assigned by the same Employer to perform the classified bargaining unit work recognized under the long-standing Local 348 recognition clause. See, e.g., General Equipment Co., 297 NLRB 430, n.3, 434 (1989) and Parkview Furniture Mfg. Co., 284 NLRB 947, 972-973 (1987)(previously unrepresented employees of “alter-ego” employer covered by existing CBA).

Because there was no demand or claim for representation of the merchandiser or mechanic classifications by the Charging Party Local 293 or Local 1164 at any time prior to the January 14th amendment of the Local 348 CBA and the January 17th relocation to Twinsburg¹⁴, these unrepresented Maple Heights classifications are properly recognized within the Local 348 employee complement¹⁵.

The Answering Brief of Counsel for the Acting General Counsel, at pages 10 to 14, fails to make a compelling argument precluding a finding by this Board that the Local 348 collective bargaining agreement properly transferred to Twinsburg upon the relocation of operations, under either the Harte & Co., 278 NLRB 947, 955 (1986) “substantial complement” analysis or the “predominant representative” analysis of Metropolitan Teletronics Corp., 279 NLRB 957, 960 (1986), based upon the actual classifications of employees in the recognized unit at Twinsburg¹⁶.

¹⁴ Charging Party, at pages 6 to 8 of its Answering Brief, attempts to argue that the Twinsburg relocation resulted in an entirely “new” or changed operation, impliedly creating a different bargaining unit. That theory is not expressly advanced by the Acting General Counsel and contradicts the record evidence showing that the Twinsburg unit employees were performing the same work, with the same supervisors, for the same customers and with the same equipment as previously utilized at Akron and Maple Heights. (Tr. 144-154; Tr. 162-165; Tr. 265-273; Tr. 328-332)

¹⁵ Local 348 was the recognized representative of more than a majority of the employees in the recognized collective bargaining agreement classifications, as compared with the combined members of Local 293 and Local 1164 in the unit recognized at Twinsburg, (Chart 1, above: 57 Akron to 51 Maple Heights) and once the unrepresented classifications are properly acknowledged, Local 348’s representation predominates under the ALJ’s employee complement calculations, (Chart 2, above: 96 out of 147, or sixty-five (65) percent).

¹⁶ Counsel for the Acting General Counsel grudgingly admits that Article XIV of Local 348’s CBA mandates that the Employer to provide transferred employees with contractual dove-tailed seniority at the Twinsburg location (GC Answering Brief page 11)

Neither does the Acting General Counsel adequately provide this Board with a reasoned basis for rejecting Intervenor Local 348's contract bar analysis under General Extrusion Co., 121 NLRB 1165, 1167-1168 (1958) and Union Carbide Corp., 190 NLRB 191, 192 (1971)¹⁷.

Given the ALJ's finding that "[t]here is no record evidence that these employees have abandoned their support for Locals 293 and 1164, or that there has been any significant employee turnover, in the 7 months since", ALJD 20:48 – 50, "a finer balance between the oftentimes conflicting policy considerations of fostering stability in labor relations while assuring conditions conducive to the exercise of free choice by employees"¹⁸ would have been achieved by proper application of the contract bar rules. "Free choice is thus not denied, but merely delayed." Nott Co., 345 NLRB 396, 402 (2005) (dissenting opinion by member Liebman).

CONCLUSION

For the foregoing reasons and authority, Intervenor Teamsters Local Union No. 348 respectfully submits that its Exceptions in this case should be granted, and that the Complaint be dismissed in its entirety.

Dated this 7th day of October, 2011.

Respectfully submitted,

/s/ James F. Wallington

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¹⁷ The amended CBA between the Employer and Teamsters Local 348 (Intvr. Exh. 2) at the relocated Twinsburg facility stated a contract term of June 1, 2008 to May 31, 2012, therefore the "employee rights" for any valid representation petition at Twinsburg matured as early as the month of March, 2011.

¹⁸ Deluxe Metal Furniture Co., 121 NLRB 995, 997 (1958)

Certificate of Service

I hereby certify that on this 7th day of October, 2011, I electronically filed the foregoing paper in Case 8-CA-39327 with the Executive Secretary for the National Labor Relations Board using the Board's E-File system, and served copies by email addressed to the representatives of the parties in this matter as follows:

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