

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 17, 2013

Elisabeth A. Shumaker  
Clerk of Court

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

v.

FIRST TRANSIT, INC.,

Respondent.

No. 13-9609

JUDGMENT

Before **LUCERO, EBEL** and **TYMKOVICH**, Circuit Judges.

This matter is before the Court on the application for enforcement and consent judgment submitted by petitioner National Labor Relations Board. The application for enforcement is granted and the proposed judgment filed on December 5, 2013 is adopted by the court and attached to this order.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	Board Case Nos.
	:	28-CA-097436
FIRST TRANSIT, INC.	:	28-CA-100888
	:	
Respondent	:	

JUDGMENT

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Respondent, First Transit, Inc., its officers, agents, successors, and assigns, on November 21, 2013, in Board Case Nos. 28-CA-097436 and 28-CA-100888; and upon the record in that proceeding.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Tenth Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the Respondent, First Transit, Inc., its officers, agents, successors, and assigns, abide by and perform the directions of the Board set forth in its order. (See attached Order and Appendix)



Judge, United States Court of Appeals  
for the Tenth Circuit

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

FIRST TRANSIT, INC.

**ORDER**

First Transit, Inc., Farmington, New Mexico, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

- (a) Refusing to bargain collectively with Sheet Metal, Air, Rail and Transportation Workers (the Union) as the exclusive representative of its employees in the following appropriate unit (the Unit):

All full-time and regular part-time Red Apple Transit drivers employed by Respondent in Farmington, New Mexico; excluding all dispatchers/ schedulers, guards, managers, road supervisors and supervisors as defined by the Act.

- (b) Making unilateral changes without giving the Union notice and an opportunity to bargain over any proposed changes in employees' terms and conditions of employment.
- (c) Failing and refusing to provide relevant information requested by the Union for the purpose of carrying out its representational duties, including the cost and the portion that the Respondent pays towards medical benefits and contact information for each unit employee.
- (d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

- (a) Upon request, bargain collectively with the Union as the exclusive representative of employees in the Unit and, if an understanding is

reached, reduce it to writing and sign it. On resumption of bargaining, the Union's status as the exclusive collective-bargaining representative of the Unit shall be extended for 12 months thereafter, as if the initial year of the certification has not expired.

- (b) Rescind any or all of the unilateral changes, including the medical note rule, key rule, and the changes to employees' schedules, and bargain in good faith with the Union regarding these changes until the parties reach a lawful impasse.
- (c) Unconditionally provide the Union with the information it requested concerning the Respondent's cost and portion paid for employees' medical benefits and contact information for each employee in the Unit.
- (d) Within 14 days of service by Region 28 of the National Labor Relations Board, post at its Farmington, New Mexico facility copies of the attached notice marked "Appendix A." Copies of the notices, on forms provided by Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 31, 2013.
- (e) This stipulation is subject to the approval of the Board and, immediately upon approval by the Board, it will be retroactively effective to the date of execution of the stipulation.
- (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX A

### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

Pursuant to a stipulation providing for a Board Order and a consent judgment of any appropriate United States Court of Appeals.

#### **FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** fail or refuse to bargain with, or recognize, Sheet Metal, Air, Rail and Transportation Workers (Union) as your representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit:

All full-time and regular part-time Red Apple Transit drivers employed by Respondent in Farmington, New Mexico, excluding all dispatchers/ schedulers, guards, managers, road supervisors and supervisors as defined by the Act.

**WE WILL NOT** refuse to meet and bargain in good faith with your Union about any proposed changes in wages, hours, and working conditions before putting such changes into effect.

**WE WILL NOT** unilaterally, without first offering the Union notice and a meaningful opportunity to bargain, make changes to your terms and conditions of employment, including by requiring you to provide a doctor's note upon return from leave; changing your schedules; or directing you to return your facility keys to us.

**WE WILL NOT** refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

**WE WILL NOT** withdraw recognition from the Union or refuse to recognize and bargain with the Union as your bargaining representative.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE WILL** immediately recognize the Union as your representative in dealing with us regarding wages, hours, and other working conditions of the employees in the Unit set forth above.

**WE WILL**, on request, bargain with the Union as your representative concerning wages, hours and working conditions. If an agreement is reached with the Union, we will sign a document containing that agreement. The certification year will extend 1 year from the date that good-faith bargaining begins.

**WE WILL**, if requested by the Union, rescind any or all changes to your terms and conditions of employment that we made without bargaining with the Union, as referenced above.

**WE WILL** provide the Union with the information it requested on August 7, between October 29 and November 1, and on December 21, 2012.

FIRST TRANSIT, INC.

\_\_\_\_\_  
(Employer)

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

(Representative)

(Title)