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**Proppant Specialists, LLC and International Union of
Operating Engineers, Local 139, AFL-CIO.**
Case 30-CA-082116

August 15, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND BLOCK

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the Union on May 31, 2012, the Acting General Counsel issued the complaint on June 26, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's requests to recognize and bargain and to furnish relevant and necessary information following the Union's certification in Case 30-RC-006783. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.¹

On July 12, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On July 13, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish the Union with necessary and relevant information, but contests the validity of the certification based on the ground that the Board improperly found that Barrett Oliver is not a statutory supervisor in the underlying representation proceeding. The Respondent also alleges that the Board lacks a quorum because the President's recess appointments are constitutionally invalid, and the Board lacks the authority to act.²

¹ In its answer to the complaint and response to the Notice to Show Cause, the Respondent states that its correct name is FTS International Proppants, LLC. However, in the underlying representation proceeding, the Respondent stipulated that its name is as reflected herein.

² For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (2012), we reject this argument.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.³ See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find there are no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent admits, that on about April 25, May 8, and May 22, 2012, the Union requested that the Respondent furnish it with the names, addresses, and telephone numbers of employees in the unit, and that since about May 29, 2012, the Respondent has refused. The complaint also alleges, and the Respondent admits, that this information is relevant for and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit. The Respondent denies, however, that the Union is the exclusive collective-bargaining representative of the unit. This contention has been rejected above. We find, therefore, that the Respondent unlawfully refused to furnish the Union with the requested information.

Accordingly, we grant the Motion for Summary Judgment, and will order the Respondent to bargain with the Union and to furnish the Union with the information requested.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a limited liability corporation, with its headquarters in Brady, Texas, has been engaged in the business of manufacturing and delivering industrial sands from its Tomah, Wisconsin facility.

During the past calendar year the Respondent, in conducting its operations described above, sold and shipped goods and materials valued in excess of \$50,000 directly to customers located outside the State of Wisconsin.

³ Member Hayes did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is therefore appropriate.

⁴ Therefore, the Respondent's requests to dismiss the complaint and certification of the bargaining representative are denied.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the International Union of Operating Engineers, Local 139, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on June 9, 2011, the Union was certified on April 19, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time equipment operators, lab techs, and mechanics employed by the Employer at its Tomah, Wisconsin facility, but excluding all managerial employees, office clericals, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

On about April 25, May 8, and May 22, 2012, the Union, by letter, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit and to furnish it with information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about May 29, 2012, the Respondent has refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit and has refused to furnish the Union with the requested information. We find that this failure and refusal to bargain and to furnish the Union with the requested information constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about May 29, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and to furnish the Union with the requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Un-

ion and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information it requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Proppant Specialists, LLC, Brady, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Union of Operating Engineers, Local 139, AFL–CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, its role as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) On request, recognize and bargain with the Union as the exclusive representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time equipment operators, lab techs, and mechanics employed by the Employer at its Tomah, Wisconsin facility, but excluding all managerial employees, office clericals, guards, and supervisors as defined in the Act.

(b) Furnish the Union with the information it requested on April 25, May 8, and May 22, 2012.

(c) Within 14 days after service by the Region, post at its facility in Towah, Wisconsin, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judge's Order."

forms provided by the Regional Director for Region 30, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.⁶ Reasonable steps shall be taken by the Respondent 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 its 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 May 29, 2012.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 30 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.

Dated, Washington, D.C. August 15, 2012

Mark Gaston Pearce,	Chairman
Brian E. Hayes,	Member
Sharon Block,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

⁶ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives 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 and refuse to recognize and bargain with International Union of Operating Engineers, Local 139, AFL-CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT fail and refuse to furnish the Union with requested information that is necessary for, and relevant to, its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for the employees in the following bargaining unit:

All full-time and regular part-time equipment operators, lab techs, and mechanics employed by us at our Tomah, Wisconsin facility, but excluding all managerial employees, office clericals, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested about April 25, May 8, and May 22, 2012.

PROPPANT SPECIALISTS, LLC