

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DUTCHESS OVERHEAD DOORS, INC.

and

Cases 3-CA-26813
3-CA-26965

EMPIRE STATE REGIONAL COUNCIL OF
CARPENTERS, LOCAL 42

Alfred M. Norek, Esq., of Albany, NY,
for the General Counsel.

Paula Clarity, Esq., of Melville, NY,
for the Charging Party.

J. Scott Greer, Esq., of Poughkeepsie, NY,
for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on April 13, 2009, in Albany, New York, pursuant to a Complaint and Notice of hearing in the subject case (complaint) issued on February 19, 2009, by the Acting Regional Director for Region 3 of the National Labor Relations Board (the Board). The underlying charges and amended charges were filed on various dates in 2008¹ and 2009, by Empire State Regional Council of Carpenters, Local 42 (the Charging Party or Union) alleging that Dutchess Overhead Doors, Inc. (the Respondent or Employer) has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent violated Section 8(a)(1) and (5) of the Act by its insistence, as a condition of reaching a successor collective-bargaining agreement, that the Union agree to amend the recognition article to delete reference to 9(a) status and substitute instead 8(f) status, the unilateral increase of hourly wage rates for employees without prior notice and without first bargaining with the Union to a good faith impasse, and the refusal to furnish the Union with necessary and relevant information concerning wage rates, job titles and hourly wage adjustments for employees.

On the entire record, including my observation of the demeanor of the witnesses and after considering the briefs filed by the General Counsel, Charging Party, and the Respondent, I make the following

¹ All dates are in 2008 unless otherwise indicated.

Findings of Fact

I. Jurisdiction

5 The Respondent is a corporation, with its principal place of business located in
 Poughkeepsie, New York, where it annually derives gross revenues in excess of \$500,000 and
 purchased and received goods valued in excess of \$50,000, directly from points located outside
 the State of New York. The Respondent admits and I find that it is an employer engaged in
 10 commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a
 labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

15 At all material times, the Union has been the designated exclusive collective-bargaining
 Representative of the Unit and has been recognized by the Respondent. This recognition has
 been embodied in successive collective-bargaining agreements, including an agreement which
 was effective by its terms from May 31, 2005, to May 31.

20 On December 20, 2001, the Board issued a decision in *Dutchess Overhead Doors, Inc.*
 337 NLRB 162, finding that the Respondent violated Section 8(a)(1) and (5) of the Act by failing
 and refusing to comply with the terms of the Master Agreement between Construction
 Contractors' Association of Hudson Valley, Inc. and the Upstate Regional Council of
 25 Carpenters, International Brotherhood of Carpenters and Joiners of America, AFL-CIO.² The
 1990 Master Agreement, that the Respondent signed stated in pertinent part:

30 The Union has claimed and demonstrated and the Employer is
 satisfied and acknowledges that the Union represents a majority
 of the Employers' employees in an appropriate bargaining unit for
 purposes of collective bargaining. Accordingly, the Union requests
 recognition under Section 9(a) of the NLRA, and the Employer
 recognizes the Union as the exclusive bargaining agent under
 section 9(a) of the NLRA for all employees within the contractual
 35 bargaining unit.

40 On September 4 and 9, 2003, the Respondent and the predecessor Union entered into a
 Stipulated Settlement Agreement that ordered the Respondent to recognize the Union as the
 collective-bargaining agent of its employees in accordance with an agreement between Upstate
 Carpenters and the Contractors Association, effective June 1, 1999 through May 31, 2002, and
 to bargain with Upstate over the terms and conditions of their employment (GC Exh. 3). That
 Settlement Agreement resolved the underlying unfair labor practice charge in Case 3-CA-21892
 that was the subject of the Board's Decision in 337 NLRB 162 (2001). As part of the Stipulated
 Settlement Agreement, the Respondent agreed to comply with all the terms and conditions of
 45 the Overhead Door Agreement, effective June 1, 2002 through May 31, 2005. That collective-
 bargaining agreement includes language that the Overhead Door Contract is a Section 9(a)
 agreement under the Act. In addition, the Stipulated Settlement Agreement provides that the
 Respondent must recognize the Union as the exclusive bargaining representative of its

50 ² The Union herein is the successor to the Upstate Regional Council of Carpenters, United
 Brotherhood of Carpenters and Joiners of America, AFL-CIO (GC Exh. 3).

Employees and acknowledges an ongoing collective-bargaining relationship with the Union from the date of the Stipulated Settlement Agreement up to and including May 31.³

By letter dated March 24, Union Representative Andrew Vooris advised Respondent's President Daniel Madsen that the Union wanted to commence negotiations for a successor collective-bargaining agreement (GC Exh. 6). By letter dated March 25, the Respondent also requested to negotiate the terms of a successor agreement (GC Exh. 7).

The parties commenced face to face negotiations on April 24, and the Union submitted its initial draft successor agreement to the Respondent (GC Exh. 8).⁴

The parties continued to exchange written contract proposals during May 2008 (GC Exh. 9 and 10).

By letter dated May 28, the Respondent for the first time informed the Union that the contract recognition clause should read 8(f) and not 9(a) (GC Exh. 11).

The parties met on June 3 to continue negotiations toward a successor collective-bargaining agreement and the Union submitted a second and third draft agreement for the Respondent's consideration (GC Exh. 12). The drafts contained the same recognition language as was contained in the first draft. During this meeting, the parties tentatively agreed to the majority of economic items including wages, however, still outstanding were a number of issues concerning health insurance and the question in the recognition clause of 9(a) versus 8(f) status. This was the last face to face negotiation session between the parties.

By letter dated June 7, Vooris responded to the Respondent's inquiry that the reason the draft agreements contain the reference to 9(a) status is based on the Stipulated Settlement Agreement signed by the Respondent on September 4, 2003 (GC Exh. 13).

By letter dated June 20, the Respondent stated "that the question of the 9(a) versus 8(f) relationship is not answered by virtue of the September 4, 2003 settlement agreement or the collective-bargaining agreement that was signed pursuant to the settlement. In order to create a 9(a) agreement the union must prove by either election or authorization cards that it represents the majority of the employees at Dutchess Overhead. My understanding is that the relationship between the union and Dutchess Overhead has its genesis in a multiemployer prehire agreement entered into by CCA on behalf of Dutchess Overhead several years ago. Everything that I have seen supports the notion that the union and Dutchess Overhead enjoy an 8(f) relationship" (GC Exh. 15).

³ Both the June 1, 2002 to May 31, 2005, and the June 1, 2005 to May 31, Dutchess Overhead Door agreements provide in the recognition clause that "The Union has claimed and the Employer is satisfied and acknowledges that the Union represents a majority of the Employer's employees in an appropriate bargaining unit for purposes of Collective Bargaining. Accordingly, the Union requests recognition under Section 9(a) of the NLRA and the Employer recognizes the Union as the exclusive bargaining agent under Section 9(a) of the NLRA for all employees within the contractual bargaining unit" (GC Exh. 4 and 5).

⁴ This draft in article 1-recognition provides that "The Employer recognizes the Union as the exclusive bargaining representative, under Section 9(a) of the National Labor Relations Act, of all fulltime and part-time installation and service employees and fulltime warehouse employees employed by the Employer."

5 During this period, in a telephone conversation with one of Respondent's Attorneys, Vooris officially learned for the first time that the Employer had given its employees an hourly wage increase of seventy-five cents. Vooris testified that prior to this telephone conversation there were no oral or written agreements that employees would receive such an increase without prior notice to the Union. In addition, Vooris stated that the parties made no oral or written agreements that certain items in the course of their negotiations could be implemented piecemeal without first reaching a final successor collective-bargaining agreement.

10 By letter dated July 3, the Union apprised the Respondent that the Article 1, section 1, language regarding 9(a) status has been contained in Union agreements for over 18 years and pointed out that the Respondent has signed such agreements in 1990 and 1994 (GC Exh. 17 and 18).

15 By e-mail dated July 10, the Union provided successor collective-bargaining agreement draft number 5 to the Respondent. That document included the same 9(a) language in the recognition clause as in prior drafts (GC Exh. 21). It also indicated that the parties were very close to agreeing on the outstanding health insurance issues and were nearing completion of their negotiations so that an agreement could be submitted to the employees for ratification.

20 By e-mail dated July 17, the Respondent informed the Union that it has a significant problem with the recognition language as proposed. The Respondent further stated that it does not believe that the Union has ever demonstrated 9(a) representation and it is possibly a violation for the Employer to acknowledge 9(a) representation without a vote or at least authorization cards. Accordingly, the Respondent believes that the language of the agreement is an 8(f) prehire contract (GC Exh. 22).

25 By letter dated July 18, the Union strongly opposed the Respondent's position that the parties' expired collective-bargaining agreement was an 8(f) prehire agreement and submitted a decision of the Board to the Employer in support of its position (GC Exh. 23).

30 By e-mail dated August 7, the Union submitted its sixth and final proposed draft successor collective-bargaining agreement to the Respondent that contained the same Section 9(a) recognition language as in prior drafts. The Union asserted that since the parties now appear to agree on the health insurance issues, the agreement is ripe for a ratification vote by the employees (GC Exh. 25).

35 By e-mail dated August 8, the Respondent for the first time informed the Union that it believed it was at impasse as it concerned the recognition language, however, it agreed that they are otherwise in agreement with all other provisions in the proposed successor-collective bargaining agreement (GC Exh. 26).⁵

40 By letter dated December 22, the Union requested that the Employer provide it with the job title and wage rates of all employees covered under the parties' collective-bargaining agreement as of January 1, and any title changes and wage increases afforded these employees since that time (GC Exh. 28).

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⁵ Since the expiration of the parties' collective-bargaining agreement, the Respondent has adhered to all provisions that were either discussed in negotiations, appeared in the Union's final draft successor collective-bargaining agreement or were contained in the prior agreement with the exception of the recognition language.

By letter dated January 9, 2009, the Respondent provided a schedule of the job titles and wage rates for all employees under the parties' agreement as of January 1. It did not, however, provide the Union with any title changes and wage increases afforded employees in 2008 (GC Exh. 29).

5 By letter dated January 12, 2009, the Union renewed its request for the wage rates of all employees covered under the parties' agreement as of September 1, and any wage increases afforded these employees since January 1, and the date of the increase (GC Exh. 30).

10 By letter dated January 20, 2009, the Respondent informed the Union that the parties' expired collective agreement was an 8(f) prehire contract and therefore, it declined to provide the requested information (GC Exh. 31).

15 By letter dated January 26, 2009, the Union requested four items of information that is alleged in paragraph 11 of the complaint (GC Exh. 32).

By letter dated February 3, 2009, the Respondent declined to provide the requested information arguing that the parties' agreement expired on May 31, and since it was an 8(f) prehire contract there was no obligation to provide the information (GC Exh. 33).

20 B. The Position of the Parties

The General Counsel contends that the parties' expired collective-bargaining agreement recognized the Union as the majority bargaining representative under Section 9(a) of the Act. Therefore, the Respondent's insistence in reaching a successor collective-bargaining agreement conditioned on the requirement that the Union substitute 8(f) status in the recognition clause violates Section 8(a)(1) and (5) of the Act. In addition, the General Counsel argues that the unilateral increase of employees hourly wage rates without notice or bargaining with the Union to a good faith impasse and refusing to provide necessary and relevant information to the Union is also violative of Section 8(a)(1) and (5) of the Act.

30 The Respondent defends its conduct by asserting that the parties' expired collective-bargaining agreement is governed under Section 8(f) of the Act. Therefore, it argues that once the agreement expired, it was under no obligation to provide the Union with the requested information. With respect to the increase in employees hourly wage rates, the Respondent contends that the wage rates were agreed to by the parties during negotiations at a time prior to reaching impasse and were implemented after the expiration of the parties' collective-bargaining agreement.

40 C. The 8(a)(1) and (5) Allegations

1. Section 8(f) versus 9(a) Status

a. Facts

45 Prior to the execution of the Stipulated Settlement Agreement in September 2003, the Board had filed with the United States Court of Appeals for the Second Circuit an application for enforcement of its Order in 327 NLRB 162 (2001).

50 In consideration of the Stipulated Settlement Agreement, that resolved the enforcement application, the Respondent agreed to comply with all the terms and conditions of the Overhead Door Agreement and the Master Agreement effective June 1, 2002 through May 31, 2005 (GC

Exh. 4). The Respondent acknowledged that the Overhead Door Agreement is a 9(a) contract under the Act.

Madsen admitted on cross examination that he retained counsel to represent the Respondent in connection with the execution of the Stipulated Settlement Agreement and the 2002 and 2005 Master Agreements (GC Exh. 3, 4, and 5). He also confirmed that each of those agreements states that the “Employer is satisfied and acknowledges that the Union represents a majority of the Employer’s employees in an appropriate bargaining unit for purposes of Collective Bargaining. Accordingly, the Union requests recognition under Section 9(a) of the NLRA and the Employer recognizes the Union as the exclusive bargaining agent under Section 9(a) of the NLRA for all employees within the contractual bargaining unit.” Lastly, Madsen confirmed that he had the opportunity to review each of the documents before he signed all three agreements.

b. Analysis

The Board in *Staunton Fuel & Material, Inc.* 335 NLRB 717 (2001) addressed the issue of how a union whose status as a bargaining representative is governed by Section 8(f) can acquire through agreement with the employer the status of majority bargaining representative under Section 9(a) of the Act.

The Board held that a written agreement will establish a 9(a) relationship if its language unequivocally indicates that the union requested recognition as majority representative, the employer recognized the union as a majority representative, and the employer’s recognition was based on the union’s having shown, or having offered to show, an evidentiary basis of its majority support. The Board noted that the approach taken by the Tenth Circuit in two cases, *NLRB v. Triple C Maintenance, Inc.*, 219 F. 3d 1147 (10th Cir. 2000) and *Oklahoma Installation Co.*, 219 F. 3d 1160 (10th Cir. 2000) establishes a legally sound and eminently practical set of standards for self-sufficient majority recognition. In both cases, the court confirmed that written contact language, standing alone could independently establish 9(a) bargaining status. To be sufficient, such language must unequivocally show (1) that the union requested recognition as the majority representative of the unit employees; (2) that the employer granted such recognition; and (3) that the employer’s recognition was based on the union’s showing of its majority support. As the Tenth Circuit discussed in *Triple C*, although it would not be necessary for a contract provision to refer explicitly to Section 9(a) in order to establish that the union has requested and been given 9(a) recognition, such a reference would indicate that the parties intended to establish a majority rather than an 8(f) relationship.

The General Counsel alleges in paragraph 8 of the complaint that the Respondent has insisted, as a condition of reaching a successor collective-bargaining agreement, that the Union agree to amend the recognition article to delete the reference to 9(a) status and substitute instead 8(f) status.

The Respondent argues that the Union never presented authorization cards to the Respondent to establish majority recognition status nor did it ever participate in a Board conducted representation election. Therefore, they opine in the absence of these requirements, the parties’ expired collective-bargaining contract is an 8(f) prehire agreement.

I find that the Respondent’s argument to this effect is misplaced because the record evidence conclusively establishes that by its execution of the Stipulated Settlement Agreement and the 2002 and 2005 Master Agreements it acknowledged that the Union conclusively

demonstrated that it represented a majority of the Employer's employees in an appropriate unit.⁶ Under these circumstances, the Employer agreed to recognize the Union as the exclusive bargaining agent under Section 9(a) of the Act. *Allied Mechanical Services*, 351 NLRB 79, 81-84 (2007) (settlement agreement incorporated language indicative solely of a 9(a) relationship).

5 Applying the above principles from the *Staunton Fuel & Material, Inc.* case, I find that the Union unequivocally obtained 9(a) status in its two most recent collective-bargaining agreements in addition to the acknowledgement by the Respondent that it agreed to 9(a) status in the Stipulated Settlement Agreement.⁷

10 Accordingly, the Respondent by insisting as a condition of reaching a successor collective-bargaining agreement that the Union agree to amend the recognition article to delete reference to 9(a) status and substitute instead 8(f) status, has violated Section 8(a)(1) and (5) of the Act.⁸

15 2. Unilateral Increase of Hourly Wage Rates

The General Counsel alleges in paragraphs 9 and 10 of the complaint that the Respondent unilaterally increased the hourly wage rates for unit members without prior notice and without first bargaining with the Union to a good faith impasse.

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a. Facts

Madsen acknowledged that he participated in several collective-bargaining sessions with the Union. He testified that during these sessions discussions occurred concerning wages, and the parties tentatively agreed to a seventy-five cent increase effective June 1. He admitted, however, that he did not inform the Union about the wage increase before it was given to the employees.

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Vooris testified that during a telephone conversation with one of Respondent's attorney's, he was informed that employees had received a seventy-five cent hourly wage increase during June 2008. Vooris stated that the Union was not given any advance notice of the hourly wage increase and as of June 30 neither party had declared an impasse in the negotiations. Moreover, his un rebutted testimony confirms that no oral or written agreements were made to permit either party to implement sections of the contract without first reaching a full and complete agreement on all contract articles. Vooris noted that it was not until August 8, that the Respondent first declared impasse regarding the Recognition article (GC Exh. 26).

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⁶ Madsen admitted that he never asked the Union to independently submit evidence of majority status in the form of authorization cards nor did he demand a Board conducted representation election.

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⁷ Contrary to the Respondent's argument in brief, I find no ambiguity to warrant review of extrinsic evidence to determine the parties' intent. Here, it is clear that the Respondent at all material times recognized the Union as a Section 9(a) representative.

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⁸ The scope of the bargaining unit is a permissive subject of bargaining over which a party may not insist to impasse. *Cold Heading Co.*, 332 NLRB 956 (2000). Thus, the Respondent's insistence on changing the scope of the bargaining unit violates the Act. *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007) (the scope of the bargaining unit is a permissive subject of bargaining over which a party may not insist to impasse).

b. Analysis

Based on the forgoing, I find that the Respondent unilaterally implemented an hourly wage increase for bargaining unit employees without prior notice and without first bargaining with the Union to a good faith impasse. Likewise, I find as discussed above, that even though the hourly wage increase was given after May 31 when the parties' collective-bargaining agreement expired, the terms and conditions of the Section 9(a) agreement continued in full force and effect. Therefore, there was an obligation to provide notice and engage in negotiations over a mandatory subject of bargaining before implementation could occur.

For all of the above reasons, I find that the Respondent violated Section 8(a)(1) and (5) of the Act.

3. Refusal to Provide Information

The General Counsel alleges in paragraph 11 of the complaint that the Respondent has refused to furnish the Union with necessary and relevant information that it requested on or about January 26, 2009.

The Board has held that a union is entitled to requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties as the employees' exclusive bargaining representative." *Southern Nevada Builders Assn.*, 274 NLRB 350, 351, (1985). This liberal discovery-type standard nevertheless contains an important limitation: the data must be of use in fulfilling statutory duties. The "duty to furnish . . . information stems from the underlying statutory duty imposed on employers and unions to bargain in good faith with respect to mandatory subjects of bargaining." *Cowles Communications, Inc.*, 172 NLRB 1909 (1968).

It is long-established law that the duty to bargain in good faith embodied in Section 8(a)(5) of the Act includes the obligation of employers to provide their employees' collective bargaining representatives with requested information which is relevant and necessary to the representative's duty to bargain on behalf of employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Such information may be needed for bargaining, for administering and policing collective-bargaining agreements, for communicating with bargaining unit members, or for preserving unit employees' work, among other reasons. The requested information at issue in this case falls into the category of policing and administering the Agreement.

a. Facts

By letter dated December 22, the Union requested the Respondent to provide the job title and wage rates of all employees as of January 1, and any title changes and wage increases afforded these employees since that time.

By letter dated January 9, 2009, the Respondent provided a schedule of the job title and wage rates for all employees covered by the parties' collective-bargaining agreement as of January 1. It did not provide, however, the information the Union had requested concerning any title changes or wage increases afforded the employees in 2008.

Accordingly, by letter dated January 12, 2009, the Union requested the wage rates of all employees as of September 1, and any wage increases afforded the employees since January 1, and the date of the increase.

By letter dated January 20, 2009, the Respondent refused to provide the requested information arguing that the parties' collective-bargaining agreement is an 8(f) prehire contract that expired on May 31, and therefore there is no obligation to provide the requested information.

5 By letter dated January 26, 2009 the Union requested four items of information which is alleged in paragraph 11 of the complaint.

b. Analysis

10 Based on the above recitation, I find that the Respondent did provide the respective job title for employees in the unit between January 1 and December 31, and the wage rates for each unit employee as of January 1. The Respondent did not, however, in response to the Union's January 12 and 26, 2009 information requests, provide the amount of any adjustment instituted to the employee's hourly wage rates or the date such adjustment was made.
15 Likewise, the Respondent did not provide the Union with the name, job title, and rate of pay of each unit employee that was employed as of January 1, 2009.

20 Based on the above discussion, and particularly noting my previous finding that the parties' contract was a 9(a) agreement, there was an obligation by the Respondent to provide necessary and relevant information to the Union. Since the terms and conditions of employment continue after the expiration of a 9(a) collective-bargaining agreement, the Respondent's refusal to provide the information in items 3 and 4 of the January 26, 2009 request is violative of Section 8(a)(1) and (5) of the Act.

25 Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

30 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all relevant times, the Union has been the exclusive collective-bargaining representative of the following employees of Respondent in an appropriate bargaining unit within the meaning of Section 9(b) of the Act.

35 All full-time and part-time installation and service employees and full-time warehouse employees employed by the Employer, excluding office clerical employees, guards and all professional employees and supervisors as defined in the Act and all other employees.

40 4. The Union is the exclusive bargaining representative of the employees in the Unit for purposes of collective-bargaining within the meaning of Section 9(a) of the Act.

45 5. The Respondent violated Section 8(a)(1) and (5) of the Act by insisting on a non-mandatory subject of bargaining and demanding that the Union agree to amend the recognition article to delete reference to 9(a) status and substitute instead 8(f) status, by unilaterally increasing the hourly wage rates for unit employees without prior notice and without first bargaining with the Union to a good faith impasse, and by failing and refusing to furnish the Union with the information it requested in items 3 and 4 on January 26, 2009.

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Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent will be required to recognize the Union as the majority bargaining representative of the unit employees under Section 9(a) of the Act, and negotiate with the Union on request. In addition, the Respondent will be required on the Union's request, to rescind all unilateral hourly wage rate changes put into effect in June 2008. Lastly, the Respondent must provide to the Union the necessary and relevant information it requested in items 3 and 4 on January 26, 2009.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Dutchess Overhead Doors, Inc., Poughkeepsie, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to recognize and engage in bargaining with the Union as the Section 9(a) majority bargaining representative of the unit employees.
- (b) Insisting on a non-mandatory subject of bargaining and demanding as a condition of reaching a collective-bargaining agreement that the Union agree to change its status as a Section 9(a) representative under the Act to such status under Section 8(f) of the Act.
- (c) Unilaterally increasing the hourly wage rates of employees without prior notice and bargaining with the Union to a good faith impasse.
- (d) Refusing to provide the Union with the necessary and relevant information it requested in items 3 and 4 on January 26, 2009.
- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

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

- (a) Furnish the Union with the information it requested in items 3 and 4 on January 26, 2009.
- (b) Upon the request of the Union, rescind the wage increases granted to unit employees.
- (c) Upon request, bargain with the Union as the exclusive Section 9(a) representative of the employees concerning terms and conditions of employment and, if an understanding is reached, include it in a signed agreement.

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- 5 (d) Within 14 days after service by the Region, post at its facility in Poughkeepsie, New York copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. 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 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 May 28, 2008.
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- 15 (e) 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.

20 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

25 Dated, Washington, D.C. July 1, 2009

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Bruce D. Rosenstein
Administrative Law Judge

50 ¹⁰ If this Order is enforced by a Judgment of the 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 JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE 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.

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 in any like or related manner interfere with or restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT refuse to recognize the Union as the majority bargaining representative of our employees under Section 9(a) of the National Labor Relations Act.

WE WILL NOT as a condition of reaching a collective-bargaining agreement, insist that the Union agree to change its status as the recognized representative under Section 9(a) of the Act, to such status under Section 8(f) of the Act.

WE WILL NOT refuse to negotiate in good faith in order to reach a successor collective-bargaining agreement with the Union.

WE WILL NOT unilaterally increase employees hourly wage rates without prior notice or bargaining to a good faith impasse with the Union.

WE WILL NOT refuse to provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as the employees' collective-bargaining representative.

WE WILL, upon request, commence negotiations with the Union in order to reach a successor collective-bargaining agreement, and if an understanding is reached, include it in a signed agreement.

WE WILL, upon the request of the Union, rescind the wage increase we unlawfully granted you until we are able to bargain in good faith to an agreement or lawful impasse on the subject of wages.

WE WILL provide the Union with the information it requested in items 3 and 4 on January 26, 2009.

WE WILL, upon request, bargain in good faith with your Union concerning your terms and conditions of employment and, if an agreement is reached, include the understanding in a signed agreement.

Dutchess Overhead Doors, Inc.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov, 130 South Elmwood Avenue, Suite 630, Buffalo, New York 14202
(716) 551-4931, Hours: 8:30 a.m. to 5:00 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (716) 551-4946.