

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

HANSON AGGREGATES BMC, INC.

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542,
AFL-CIO**

**Cases 4-CA-34678
4-CA-35134
4-CA-35140
4-CA-35189
4-CA-35487
4-CA-35553
4-CA-36099
4-CA-36256
4-CA-36468
4-CA-36530
4-CA-37161
4-CA-37348**

DECISION AND ORDER

Statement of the Cases

On May 9, 2011, Hanson Aggregates BMC, Inc. (the Respondent), and the Acting General Counsel of the National Labor Relations Board entered into a Unilateral Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

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

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

The Respondent is a Delaware corporation with a quarry in Penns Park, Pennsylvania (the quarry), and is engaged in extracting and processing crushed stone and manufacturing bituminous asphalt.

In conducting its business operations during the one-year period ending December 31, 2008, and on an annual basis, the Respondent sold and shipped goods and materials valued in excess of \$50,000 directly to points located outside the Commonwealth of Pennsylvania.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

2. The labor organization involved

International Union of Operating Engineers Local 542, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees employed by Respondent at the quarry, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

On September 9, 2004, the Union was certified as the exclusive collective bargaining representative of the Unit.

At all times since September 9, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, Hanson Aggregates BMC, Inc., Penns Park, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that there was no Union representation because the Union pulled the stewards out of the facility.

(b) Threatening employees that it would fire employees who supported the Union.

(c) Making any changes to the eligibility requirements for the annual safety bonus program without giving the Union notice and an opportunity to bargain over any changes, and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(d) Selecting employees for promotion, promoting them, and changing their rate of pay without first giving the Union notice and an opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(e) Changing the payment schedule for the annual safety bonus payment covering unit employees without first giving the Union notice and an opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(f) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit by unilaterally changing the terms and conditions of employment of these employees absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(g) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit by failing to provide, or to timely provide, the Union with requested information that is relevant and necessary for the Union to perform its duties as the exclusive collective-bargaining representative of the unit employees.

(h) Changing employees' work schedules such that they would have less than 9.5 hours turnaround time between the ending of one shift and the beginning of another absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(i) In any other 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 and in good faith concerning wages, hours, and other terms and conditions of employment with the Union as the exclusive representative of all the employees in the bargaining unit set forth below, and, if an

understanding is reached, embody such understanding in a written, signed agreement. The bargaining unit at the Respondent's Penns Park, Pennsylvania facility is:

All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees employed by Respondent at the quarry, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

(b) Refrain from making any changes to the terms and conditions of employment of employees in the unit absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(c) Within 14 days of the Board's approval of this Agreement, upon request from the Union, rescind the promotions of the following individuals and reduce their wages to reflect the positions to which they are returned.

Michael Kleban
Donald Filkins
Joseph Leonard
Samantha Morrison

(d) Within 14 days after service by the Region, post at its facility in Penns Park, Pennsylvania copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 4, 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. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification, on a form provided by the Region, attesting to the steps the Respondent has taken to comply therewith.

Dated, Washington, D.C., July 18, 2011.

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, 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

POSTED 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 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 do anything that interferes with these rights.

WE WILL NOT tell you that you do not have Union representation because the Union pulled its stewards out of our facility.

WE WILL NOT tell you that we will discharge employees who support the Union.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit at our Penns Park, Pennsylvania facility, which consists of the following employees:

All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees employed by us at the quarry, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit set forth above by unilaterally changing the terms and conditions of employment of these employees absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

WE WILL NOT refuse to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit set forth above by failing to provide, or to timely provide, the Union with requested information that is relevant and necessary for the

Union to perform its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT change the eligibility requirements for our annual safety bonus program and **WE WILL NOT** change the payment schedule of our annual safety bonus program without first providing the Union with notice about the proposed change and offering to bargain with the Union about it.

WE WILL NOT select bargaining unit employees for promotion, promote bargaining unit employees, or change their rate of pay without first providing the Union notice about the proposed change and offering to bargain with the Union about it.

WE WILL NOT change employees' work schedules such that they would have less than 9.5 hours turnaround time between the ending of one shift and the beginning of another absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act. Some of those rights are described at the top of this notice.

WE WILL, if the Union requests it, rescind the promotions of Michael Kleban, Donald Filkins, Samantha Morrison and Joseph Leonard and reduce their wages to reflect the positions to which they are returned.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees, and if an understanding is reached, reduce it to writing and sign it.

WE WILL refrain from making any changes to the terms and conditions of employment of employees in the unit absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

HANSON AGGREGATES BMC, INC.

(Employer)

DATE: _____

BY: _____
(Representative) (Title)