

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

**NEBRASKALAND, INC.**

**and**

**Case 2-CA-39715**

**LOCAL 342, UNITED FOOD AND  
COMMERCIAL WORKERS INTERNATIONAL  
UNION**

**DECISION AND ORDER<sup>1</sup>**

**Statement of the Case**

On September 21, 2011, Nebraskaland, Inc. (the Respondent), Local 342, United Food and Commercial Workers International Union (the Charging Party Union), and the Acting General Counsel of the National Labor Relations Board entered into a 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.

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

**Findings of Fact**

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<sup>1</sup> On May 31, 2011, the Acting Regional Director for Region 2 issued an Order Consolidating Cases and Rescheduling Hearing, and Consolidated Complaint in Cases 2-CA-39715 and 2-CA-39996. On Sept. 21, 2011, the parties entered into the instant Formal Settlement Stipulation in Case 2-CA-39715. Case 2-CA-39715 was severed from Case 2-CA-39996 and the allegations in that case (set out in para. 13 of the consolidated complaint) were retained for further processing. Accordingly, the administrative law judge issued an Order severing Case 2-CA-39715 from Case 2-CA-39996 on Sept. 21, 2011.

### 1. The Employer's business

The Respondent is a New York corporation with a place of business at Hunts Point Market Cooperative, 355 Food Center Drive, Building G, Bronx, New York (the Respondent's facility) where it is engaged in the business of wholesale sales and distribution of meat and other food products.

Annually, the Respondent, in the course and conduct of its business operations as described above, purchases and receives goods and services valued in excess of \$50,000 directly from suppliers located outside the State of New York.

The Respondent is now and has been at all times an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

### 2. The labor organization involved

Local 342, United Food and Commercial Workers International 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 warehouse employees, employed by Respondent at Respondent's facility, excluding drivers, driver's helpers, inventory clerks hired after November 15, 2004, night billing, front end employees, office personnel and sales representatives, and guards, professional employees, and supervisors as defined in the Act.

Since on or about November 14, 2004, and at all material times, the Charging Party Union has been the designated exclusive collective-bargaining representative of the unit and since that time has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which was effective from July 1, 2005 to October 31, 2009.

At all times since November 14, 2004, based on Section 9(a) of the Act, the Charging Party 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, Nebraskaland, Inc., Bronx, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from:

(a) Asking employees to instigate decertification of the Charging Party Union.

(b) Threatening employees with termination if they do not take action to decertify the Charging Party Union as their collective-bargaining representative.

(c) Making clear to employees that those who support the Charging Party Union will be terminated and those who do not support the Charging Party Union will keep their jobs.

(d) Promising employees benefits in exchange for rejecting the Charging Party Union.

(e) Telling employees that they would receive better benefits if the Charging Party Union were not their bargaining representative.

(f) Soliciting grievances directly from employees.

(g) Discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to hire or tenure of employment or any other term or conditions of employment, because they have engaged in activities on behalf of the Charging Party Union or in order to discourage employees from engaging in such activities.

(h) Failing to provide to the Charging Party Union, or unnecessarily delaying providing, information that is relevant and necessary to the Charging Party Union's performance of its duties as the collective-bargaining representative of employees in the unit.

(i) Failing to bargain collectively with the Charging Party Union concerning the effects of technological changes that have been implemented.

(j) Refusing to bargain collectively and in good faith with the Charging Party Union for a collective-bargaining agreement to succeed the one that expired on October 31, 2009.

(k) 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 Charging Party 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 which the Board finds will effectuate the policies of the Act.

(a) Within 14 days of the Board's Order, remove from Respondent's files any reference to the discharge of Thomas Garcia and, within 3 days thereafter, notify him in writing that this was done and that the discharge will not be used against him in any way.

(b) Within 14 days of the Board's Order, make Thomas Garcia whole for any loss of pay he may have suffered by reason of the alleged discrimination against him, by payment to him of \$22,187 comprised of \$21,313 in backpay and \$874 in interest. Separate checks will issue for backpay (less statutory deductions) and interest (not subject to statutory deductions). Garcia has stated that he waives reinstatement to his former position.

(c) Within 14 days of the Board's Order, submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

(d) Within 14 days of the Board's Order, furnish the Charging Party Union with the information regarding workers' compensation that they requested in Paragraphs 12 and 13 of the information request they sent dated October 23, 2009.

(e) On request, bargain in good faith with the Charging Party Union concerning the effects of technological changes that have been instituted and, if an understanding is reached, reduce it to writing and sign it.

(f) On request, bargain in good faith with the Charging Party Union for a collective-bargaining agreement to succeed the one that expired on October 31, 2009, and if an understanding is reached, reduce it to writing and sign it.

(g) Within 14 days of service by the Region, post at its facility copies of the attached notice marked "Appendix A." Copies of the notice, in English and Spanish, on forms provided by Region 2, 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 the bulletin board outside the small office on the receiving dock and all other place where notices to employees are customarily posted. Respondent will take reasonable steps to ensure the notices are not alter, 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 September 1, 2009.

(h) Within 21, days after service by the Region, file with the Acting Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C., November 21, 2011.

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Mark Gaston Pearce, Chairman

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Craig Becker, Member

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Brian E. Hayes, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**

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 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 ask employees to instigate decertification of Local 342, United Food and Commercial Workers International Union, herein the Union.

WE WILL NOT threaten employees with termination if they do not take action to decertify the Union as their collective-bargaining representative.

WE WILL NOT make clear to employees that those who support the Union will be terminated and those who do not support the Union will keep their jobs.

WE WILL NOT promise employee benefits in exchange for rejecting the Union.

WE WILL NOT tell employees that we would give them better benefits if the Union were not their bargaining representative.

WE WILL NOT solicit grievances directly from employees.

WE WILL NOT discharge or refuse to reinstate employees, or in any other manner discriminate in regard to hire or tenure of employment or any other term or condition of employment, because they have engaged in activities on behalf of the Union or in order to discourage employees from engaging in such activities.

WE WILL NOT fail to provide the Union, or unnecessarily delay in providing, information that is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of employees in the following unit:

- All full-time and regular part-time warehouse employees, employed by Respondent at Respondent's facility, excluding drivers, driver's helpers, inventory clerks hired after November 15, 2004, night billing, front end employees, office

personnel and sales representatives, and guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT fail to bargain collectively with the Union concerning the effects of technological changes that we have implemented.

WE WILL NOT refuse to bargain collectively and in good faith with the Union for a collective-bargaining agreement to succeed the one that expired on October 31, 2009.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

WE WILL, within 14 days of the Board's Order, remove from our files any references to the discharge of Thomas Garcia and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful action will not be used against him in any way.

WE WILL, within 14 days of the Board's Order, make whole, with interest, Thomas Garcia for lost wages he suffered because of his unlawful discharge. Thomas Garcia has stated that he does not desire reinstatement to his former position.

WE WILL, within 14 days of the Board's Order, submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

WE WILL, within 14 days of the Board's Order, furnish the Union with the information regarding workers' compensation that the Union requested in Paragraphs 12 and 13 of the information request it sent us dated October 23, 2009.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit concerning the effects of technological changes that we have instituted, and, if an understanding is reached, reduce it to writing and sign it.

WE WILL, on request, bargain in good faith with the Union for a collective-bargaining agreement to succeed the one that expired on October 31, 2009, and, if an understanding is reached, reduce it to writing and sign it.

NEBRASKALAND, INC.  
(Employer)

DATE: \_\_\_\_\_ BY: \_\_\_\_\_  
(Representative) (Title)

